

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 18TH DAY OF NOVEMBER 2019 / 27TH KARTHIKA, 1941

WP(C).No.21008 OF 2019(A)

PETITIONER:

THE SOUTH INDIAN BANK LIMITED
SIB HOUSE, T.B. ROAD, MISSION QUARTERS,
THRISSUR-680 001, REPRESENTED BY ITS CHIEF FINANCIAL
OFFICER AND THE AUTHORISED SIGNATORY, SMT. CHITHRA
HARIHARAN.

BY ADVS.
SRI.G.SIVADAS (Sr.)
SRI.SHAJI THOMAS
SRI.JEN JAISON

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY ITS REVENUE SECRETARY, DEPARTMENT OF
REVENUE, MINISTRY OF FINANCE, 128-A/NORTH BLOCK, NEW
DELHI-110 001
- 2 THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
REPRESENTED BY ITS CHAIRMAN, NORTH BLOCK, NEW DELHI-110
001
- 3 THE GOODS AND SERVICE TAX COUNCIL,
5TH FLOOR, TOWER II, JEEVAN BHARTI BUILDING, JANPATH
ROAD, CONNAUGHT PLACE, NEW DELHI-110 001
- 4 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, MINISTRY OF
FINANCE, SECRETARIAT, THIRUVANANTHAPURAM-695 001
- 5 THE PRINCIPAL NODAL OFFICER,
JOINT COMMISSIONER (TECH), OFFICE OF THE COMMISSIONER
OF CENTRAL TAX AND CENTRAL EXCISE , KOCHI, C.R.
BUILDING, I.S. PRESS ROAD, KOCHI-682 018
- 6 JURISDICTIONAL OFFICER,
OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL TAX AND
CENTRAL EXCISE, THRISSUR, C.R. BUILDING, SAKTHAN NAGAR,
THRISSUR-680 001
- 7 ADDL R7, CHIEF EXECUTIVE OFFICER,
GOODS AND SERVICE TAX NETWORK, EAST WING, 4TH FLOOR,

WORLD MARK-1, AEROCITY, NEW DELHI-110037
ADDL R7 IMPEADED AS PER ORDER DATED 02-08-2019 IN IA
1/2019 IN WP(C) 21008/2019

R1, R3 BY ADV. MR.P.R.AJITH KUMAR, CGC
R2, R5-6 BY SRI.P.R.SREEJITH, SC, CENTRAL BOARD OF
EXCISE AND CUSTOMS
R7 BY SRI.P.R.SREEJITH,SC,GOODS AND SERVICES TAX
NETWORK

BY GOVERNMENT PLEADER SMT.M.M JASMINE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18.11.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, the South Indian Bank Limited, is before this Court aggrieved by Ext.P1 letter dated 15.05.2019 issued by the 5th respondent, whereby the latter rejected the request of the petitioner to correct a *bona fide* error which occurred while filing Form GST TRAN -1, on account of which the eligible credit under the earlier indirect tax laws could not be transferred to the petitioner in the GST regime. It is the case of the petitioner in the Writ Petition that it had obtained a centralised registration for its various branches, located across 30 States, in connection with their service tax registration under the erstwhile Finance Act, 1994 as amended, governing the levy of service tax. The returns filed by them in the various States have been accepted for the purposes of assessment to service tax and the entitlement of the petitioner to the input tax credit availed was also accepted by the revenue authorities through the acceptance of the returns filed by the petitioner during the relevant period (April 2017 to June 2017). With effect from 1st July 2017, consequent to the introduction of the GST regime in India, the petitioner applied for and obtained registration as an input service distributor under the GST

regime. For the purposes of distributing the CENVAT credit that had accumulated in its account to the 30 branches located across the country, it preferred an application for transitioning the credit to its various branches in the country. The application in Form GST TRAN -1 that was filed by it on 22.12.2017 showed the registration number of the input service distributor that was obtained by it under the GST regime for the purposes of seeking a transfer of the accumulated credit to the respective branches. The application was rejected by Ext.P1 communication, where the stand taken by the respondents is that the petitioner had erroneously shown the GSTIN pertaining to the input service distributor instead of the GSTIN of the assessee to whom the credit had to be transferred. The said defect is stated to be non-rectifiable, and therefore, the 5th respondent expressed its inability to assist the petitioner in the matter of transfer of credit.

2. It is the further case of the petitioner that the inability of the petitioner to provide the details of the purchase invoices, on the strength of which credit was taken under the erstwhile regime, is also cited as a reason for not entertaining the application submitted by the petitioner for transfer of credit. It is submitted that while such details are no longer available with the petitioner, the availment of credit

under the erstwhile regime was never in dispute and the returns filed by the petitioner during the relevant period were accepted by the revenue authorities. Alternatively, it is submitted that if, for any technical reason, the respondents are not able to accommodate the request of the petitioner for transfer of credit as an Input Service Distributor, then he should be permitted to revise the Form GST TRAN -1 to transfer the accumulated credit, after apportioning the same at his end, to the respective branches.

3. A statement has been filed on behalf of the respondents 2, 5 and 6, wherein the stand taken is that under Rule 117 of the CGST Rules, the last date for filing of TRAN -1 Form expired on 27.12.2017 and at this distance of time the petitioners application for revision of TRAN -1 Form cannot be entertained. With regard to the request of the petitioner for allowing him to distribute the accumulated credit through the TRAN-1 Form already filed by him, it is stated that for technical reasons the said request cannot be acceded to since the software used for permitting distribution of credit by the input service distributor has been built keeping in mind the distribution effected after the introduction of GST, and therefore, cannot be made applicable to distribution of accumulated credit pertaining to the pre-

GST period.

4. I have heard the learned Senior counsel Sri.G.Sivadas duly assisted by Sri.Shaji Thomas appearing for the petitioner, Sri.P.R.Sreejith the learned Standing counsel for Excise and Customs, Sri.P.R.Ajith Kumar, the learned Central Government Counsel for respondents 1 and 3 and also the learned Government Pleader appearing for the official respondents of the State.

5. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that it is not in dispute in the instant case that the input tax credit accumulated in the account of the petitioner was validly taken during the pre-GST period. The returns filed by the petitioner during the relevant period have all been accepted by the revenue authorities and, in the absence of a requirement to migrate to the GST regime, the petitioner would have been able to distribute the credit to its various branches through the input service distribution mechanism that was in place prior to the introduction of the GST Act. Although the petitioner has since obtained a registration as an input service distributor under the GST Act, the non-availability of the details of the purchase invoices, on the strength of which the input credit was availed, virtually prevents the petitioner from pursuing the Form

GST TRAN -1 already filed by it before the 5th respondent. I note, however, that if the petitioner is permitted to file individual Form GST TRAN-1 in respect of each of the recipient branches, then the accumulated credit could be distributed to its various branches without having to furnish details of the invoices, on the strength of which the credit was taken during the relevant time before the introduction of GST. In effect, this procedure would facilitate the transfer of credit in a situation where the accumulation of credit as also the entitlement of the petitioner to distribute the credit to its various branches is not in dispute. I also take note of the decision of the Delhi High Court in **Blue Bird Pure Pvt.Ltd. V. Union of India and Others [(2019) 68 GSTR 340(Delhi)]**, where, taking note of the contention of the respondents regarding the technical difficulty in permitting assesseees to transfer accumulated credit to the GST regime, it was observed that the Department should either open the online portal so as to enable the assessee to file rectified TRAN -1 Form electronically or accept manually filed TRAN-1 Form with correction before a specified date so as to render justice to the assesseees. In the instant case, as already noted, the availment of credit by the petitioner, and its entitlement to distribute the credit to its various branches is not disputed. I am therefore of the view that the 5th respondent should either permit the petitioner to file a rectified TRAN-1 Form electronically in favour of each of its branches in

the country, or accept manually filed TRAN -1 Form with the appropriate corrections, on or before 30.12.2019. The time limit specified above shall be strictly adhered to, so that the petitioner will be able to distribute the accumulated credit to its branches immediately thereafter.

The Writ Petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

APPENDIX

PETITIONERS EXHIBITS

- EXHIBIT P1 TRUE PHOTOCOPY OF THE LETTER NO. C. NO. IV/16/30/2019-TECH/2190 DATED 15.05.2019 ISSUED BY THE 5TH RESPONDENT RECEIVED ON 21.05.2019.
- EXHIBIT P2 TRUE PHOTOCOPY OF THE ST -3 RETURN FILED BY THE PETITIONER FOR THE PERIOD APRIL 2017 TO JUNE 2017.
- EXHIBIT P3 TRUE PHOTOCOPY OF THE SCREENSHOT OF THE TABLE 8 OF FORM GST TRAN-1, FILED BY THE PETITIONER.
- EXHIBIT P4 TRUE PHOTOCOPY OF THE FORM GSTR-6.
- EXHIBIT P5 TRUE PHOTOCOPIES OF THE LETTERS DATED 30.04.2019 SUBMITTED BY THE PETITIONER.

RESPONDENTS EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE