

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY ,THE 17TH DAY OF JANUARY 2019 / 27TH POUSHA, 1940

WP(C).No. 41783 of 2018

PETITIONER/S:

EDAYAR METALS
INDUSTRIAL DEVELOPMENT AREA,
MUPPATHADAM, POST ALUVA, PIN-683 110,
REPRESENTED BY ITS PROPRIETOR SIVARAMAN CHANDRABABU.

BY ADV. SRI.K.S.HARIHARAN NAIR

RESPONDENT/S:

- 1 UNION OF INDIA,
THROUGH ITS SECRETARY(REVENUE),
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,
GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI-110 001.
- 2 THE PRINCIPAL SECRETARY,
FINANCE (GST WING), FINANCE (REV.1) DEPARTMENT,
4TH LEVEL, A-WING, DELHI SECRETARIAT,
I.P.ESTATE, NEW DELHI-110 002.
- 3 GST COUNCIL,
THROUGH ITS CHAIRPERSON,
DEPARTMENT OF FINANCE, NORTH BLOCK,
NEW DELHI-110 001.
- 4 GOODS AND SERVICES TAX NETWORK,
THROUGH ITS CHAIRMAN, EAST WING, 4TH FLOOR,
WORLD MARK-1, AEROCITY, NEW DELHI-110 037.
- 5 THE COMMISSIONER,
STATE GOODS AND SERVICES TAX DEPARTMENT.,
KARAMANA, THIRUVANANTHAPURAM, KERALA-695 002.
- 6 THE NODEL OFFICER FOR STATE GST,
GOODS AND SERVICES TAX DEPARTMENT, KARAMANA,
THIRUVANANTHAPURAM, KERALA-695 002.

WP(C) .No. 41783 of 2018

- 7 THE NODEL OFFICER,
CENTRAL GST, GOODS AND SERVICES TAX DEPARTMENT,
THIRUVANANTHAPURAM.
- 8 THE STATE TAX OFFICER,
DEPARTMENT OF STATE GST,
NORTH PARAVUR, PIN-683 513.
- 9 THE COMMISSIONER,
CENTRAL GOODS AND SERVICES TAX DEPARTMENT,
IS PRESS ROAD, ERNAKULAM, PIN-682 018.

BY ADVS.

SRI.HARIDAS P.NAIR, CGC

SRI.P.R.SREEJITH, SC, CENTRAL BOARD OF EXCISE AND
CUSTOMS

SRI.P.R.SREEJITH,SC,GOODS AND SERVICES TAX NETWORK

SMT.THUSHARA JAMES, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17.01.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, a registered dealer under the Kerala Value Added Tax Act, has now migrated to the Goods and Services Tax regime. To use the input tax available to its credit at the time of migration, the petitioner had to upload FORM GST TRAN-1 within the stipulated time. The petitioner asserts that though it attempted to upload the Form within the time, it failed because of some system error. The petitioner, therefore, seeks directions to enable him to take credit of the available input tax.

2. Heard the learned counsel for the petitioner as well as the learned Government Pleader, besides perusing the record.
3. There is a circular issued by the Government of India for “setting up an IT Grievance Redressal Mechanism to

address the grievances of taxpayers due to technical glitches on GST Portal.” Paragraph 5 of the circular outlines the procedure the Nodal Officers is to follow. It reads:

5. Nodal officers and identification of issues 5.1 GSTN, Central and State government would appoint nodal officers in requisite number to address the problem a taxpayer faces due to glitches, if any, in the Common Portal. This would be publicized adequately.

5.2 Taxpayers shall make an application to the field officers or the nodal officers where there was a demonstrable glitch on the Common Portal in relation to an identified issue, due to which the due process as envisaged in law could not be completed on the Common Portal.

5.3 Such an application shall enclose evidences as may be needed for an identified issue to establish bona fide attempt on the part of the taxpayer to comply with the due process of law.

5.4 *These applications shall be collated by the nodal officer and forwarded to GSTN who would on receipt of application examine the same. GSTN shall after verifying its electronic records and the*

applications received, identify the issue involved where a large section of tax payers are affected. GSTN shall forward the same to the IT Grievance Redressal Committee with suggested solutions for resolution of the problem. “

(italics supplied)

4. Not only the petitioner but also many other people faced this technical glitch and approached this Court. Both the learned counsel submit that this Court on earlier occasions permitted the petitioners to apply to the additional sixth respondent for the issue resolution.
5. So, in this case also, the petitioner may apply to the Nodal Officer. The petitioner applying, the Nodal Officer will look into the issue and facilitate the petitioner's uploading FORM GST TRAN-1, without reference to the time-frame. Ordered so.
6. I may also observe that if the petitioner applies within two weeks after receiving this judgment, the Nodal Officer will consider it and take steps within a week

WP(C) .No. 41783 of 2018

thereafter. If the uploading of FORM GST TRAN-1 is not possible for reasons not attributable to the petitioner, the authority will also enable it to take credit of the input tax available at the time of its migration.

With these directions, I dispose of the Writ Petition.

Sd/-

DAMA SESHADRI NAIDU

JUDGE

Nkr/17.01.19

APPENDIX

PETITIONER'S/S EXHIBITS:

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| EXHIBIT P1 | COPY OF THE PROVISIONAL CERTIFICATE OF REGISTRATION UNDER THE ORDINANCE DATED 28.06.2017. |
| EXHIBIT P2 | COLLECTIVELY: TRUE COPIES OF THE REPRESENTATIONS MADE TO THE RESPONDENTS DATED 31.08.2018. |
| EXHIBIT P3 | COLLECTIVELY: TRUE COPIES OF THE REMINDERS DATED 13.10.2018. |
| EXHIBIT P4 | TRUE COPY OF THE LETTER ISSUED ON BEHALF OF THE 7TH RESPONDENT DATED 15.10.2018. |
| EXHIBIT P5 | TRUE COPY OF THE REMINDER DATED 23.10.2018. |
| EXHIBIT P6 | TRUE COPY OF THE REMINDER DATED 26.10.2018. |
| EXHIBIT P7 | COLLECTIVELY: TRUE COPY OF THE REMINDERS DATED 02.11.2018. |
| EXHIBIT P8 | TRUE COPY OF THE REMINDER DATED 06.12.2018. |
| EXHIBIT P9 | TRUE COPY OF REMINDER SUBMITTED TO CHIEF COMMISSIONER, CENTRAL GST DATED 12.12.2018. |

RESPONDENTS' EXHIBITS : NIL