

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 16TH DAY OF JANUARY 2019 / 26TH POUSHA, 1940

WP(C).No. 54 of 2019

PETITIONER:

LEO LOGISTICS, IX/520/25, LEO LOGISTICS PARK PHASE-3,
NH BYPASS JUNCTION, KUTTANELLUR, THRISSUR-680014,
REPRESENTED BY ITS AUTHORISED SIGNATORY SRI.SAJAN
GANAPATHY.

BY ADV. SRI.S.ANIL KUMAR (TRIVANDRUM)

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY (REVENUE), MINISTRY OF
FINANCE, DEPARTMENT OF REVENUE, GOVERNMENT OF INDIA,
NORTH BLOCK, NEW DELHI-110001.
- 2 THE PRINCIPAL SECRETARY, FINANCE (GST WING) FINANCE
(REV-1) DEPARTMENT 4TH LEVEL, A-WING, DELHI
SECRETARIAT, I.P. ESTATE, NEW DELHI, 110002.
- 3 GST COUNCIL, REPRESENTED BY ITS CHAIRPERSON DEPARTMENT
OF FINANCE, NORTH BLOCK NEW DELHI-10001.
- 4 GOODS AND SERVICE TAX NETWORK
REPRESENTED BY ITS CHAIRMAN, EAST WING, 4TH FLOOR,
WORLD MARK-1, AEROCITY, NEW DELHI-110037.
- 5 THE COMMISSIONER, STATE GOODS AND SERVICE TAX
DEPARTMENT, TAX TOWERS, KARAMANA, THIRUVANANTHAPURAM-
695002.
- 6 THE ASSISTANT COMMISSIONER/NODAL OFFICER,
CENTRAL GST AND CENTRAL EXCISE, THRISSUR DIVISION,
THRISSUR-680001.

BY ADV. SRI.P.R.SREEJITH, SC, GOODS AND SERVICES TAX
NETWORK
CGC SRI. P. VIJAYAKUMAR
SR. SC SRI SREELAL WARRIER.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16.01.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, a registered dealer under the Kerala Value Added Tax Act and also under the Central Sales 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 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 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

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE PROVISIONAL CERTIFICATE OF REGISTRATION UNDER THE ORDINANCE DATED 21.9.2017.
- EXHIBIT P2 TRUE COPY OF STATEMENT SHOWING THE RATE DIFFERENCE ON CLOSING STOCK AS ON 30.6.2017.
- EXHIBIT P3 TRUE COPY OF THE CIRCULAR NO.39/13/2018-GST DATED 3.4.2018.
- EXHIBIT P4 TRUE COPY OF THE NOTIFICATION NO.21/2017 DATED 23.11.2017.
- EXHIBIT P5 TRUE COPY OF JUDGMENT DATED 14.6.2018 OF THIS HON'BLE COURT IN W.P.(C) 17348 OF 2018.
- EXHIBIT P6 TRUE COPY OF LETTER DATED 13.11.2018 ADDRESSED TO THE 6TH RESPONDENT.

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY //

P.A. TO JUDGE

SD