

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 3RD DAY OF AUGUST 2018 / 12TH SRAVANA, 1940

WP(C).No. 25208 of 2018

PETITIONER

LAMIT TUBES & MOULDINGS LLP,
15/764 A, INDUSTRIAL ESTATE, MANJERI,
MALAPPURAM, KERALA - 676 121.

BY ADVS.SRI.SUKUMAR NAINAN OOMMEN
SRI.SHERRY SAMUEL OOMMEN
SRI.RAHUL IPE PRASAD

RESPONDENTS:

1. UNION OF INDIA
REPRESENTED BY SECRETARY, DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE, ROOM NO.46, NORTH BLOCK,
NEW DELHI - 110 001.
2. GOODS AND SERVICE TAX NETWORK (GSTN)
THROUGH ITS CHAIRMAN, EAST WING, 4TH FLOOR,
WORLD MARK - 1, AEROCITY, NEW DELHI - 110 001.
3. GOOD AND SERVICE TAX COUNCIL,
THROUGH ITS SECRETARY, 5TH FLOOR, TOWER II,
JEEVAN BHARTI BUILDING, JANPATH ROAD,
CONNAUGHT PLACE, NEW DELHI - 110 001.
4. THE DEPUTY COMMISSIONER
DEPARTMENT OF KERALA STATE GOODS AND SERVICE TAX,
CIVIL STATION, MALAPPURAM - 676 505
5. THE INSPECTOR OF CENTRAL TAX AND CENTRAL EXCISE,
OFFICE OF THE SUPERINTENDENT OF CENTRAL TAX AND
CENTRAL EXCISE, MANJERI RANGE, PULIKKAL TOWER,
COURT ROAD, MANJERI, MALAPPURAM - 676 121.
6. THE NODEL OFFICER FOR STATE GST,
GOODS AND SERVICE TAX DEPARTMENT, KARAMANA,
THIRUVANANTHAPURAM, KERALA 695 002.

(ADDL.6TH RESPONDENT IS IMPLEADED AS PER ORDER DTD.3.8.2018 IN I.A.No.14148 of 2018)

R1&3 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 BY ADV. SRI.P.R.SREEJITH,SC,GOODS AND SERVICES TAX NETWORK
R BY GOVERNMENT PLEADER DR.THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-08-2018,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 25208 of 2018 (A)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: TRUE COPY OF THE PETITIONER'S REGISTRATION CERTIFICATE UNDER THE KERALA VALUE ADDED TAX ACT, 2003

EXHIBIT P2: TRUE COPY OF THE PETITIONER'S REGISTRATION CERTIFICATE UNDER THE KERALA GOODS AND SERVICE TAX ACT, 2017

EXHIBIT P3(A)-(TRUE COPIES OF THE INVOICES RELATING TO THE PURCHASES BETWEEN 30/01/2017 TO 01/04/2017

EXHIBIT P4: TRUE COPY OF THE TABULAR COLLATION OF THE INVOICES RELATING TO PURCHASES BETWEEN 30/01/2017 TO 01/04/2017

EXHIBIT P5: TRUE COPY OF THE PETITIONER'S ELECTRONIC CREDIT LEDGER

EXHIBIT P6: TRUE COPY OF THE SCREEN SHOT OF THE ERRORS FACED BY THE PETITIONER WHILE FILING FORM GST TRAN-1

EXHIBIT P7: TRUE COPY OF THE E-MAIL DATED 21/12/2017 SENT BY THE PETITIONER TO THE GST CELL

EXHIBIT P8: TRUE COPY OF THE AUTO GENERATED E-MAIL DATED 22/12/2017 IN RESPONSE TO THE GRIEVANCE RAISED BY THE PETITIONER

EXHIBIT P9: TRUE COPY OF THE CIRCULAR NO.39/13/2018-GST DATED 03/04/2018

EXHIBIT P10: TRUE COPY OF THE STATUS OF THE GRIEVANCE RAISED BY THE PETITIONER

EXHIBIT P11: TRUE COPY OF THE E-MAIL BEARING THE WRITTEN NOTE OF THE 5TH RESPONDENT DATED 02/07/2018

CSS/

DAMA SESHADRI NAIDU, J.

W.P.(C). No. 25208 of 2018

Dated this the 3rd day of August, 2018

JUDGMENT

The petitioner, a partnership firm, registered 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 for taking credit of the available input tax.

2. Heard the learned counsel for the petitioner, Sri N.Nagaresh, the learned Assistant Solicitor General and Dr.Thushara James, the learned Government Pleader, as well as Sri P.R.Sreejith, the learned Standing Counsel, besides perusing the record.

3. The Government of India issued a circular 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

petitioner to apply to the Nodal Officer concerned to have the issue resolved.

5. So, here too, 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

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