BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.11.2018
CORAM:
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD)Nos.22010 & 22011 of 2018

M/s.Anbu Motors,
Rep. by its Partner
A.Charles .. Petitioner in WP(MD)22010/18

M/s.Anbu Automobile,
Rep. by its Partner
A.Charles .. Petitioner in WP(MD)22011/18

Vs.

1.The Principal Chief Commissioner,
Goods and Service Tax Act,
[Previously Central Excise and Customs],
Nungambakkam, Chennai - 600 034.

2.Union of India,
Rep. by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi - 110 001.

3.The Chairman,
Goods and Service Tax Network (GSTIN),
East Wing, World Mark - 1,
4th Floor, Tower B, Aerocity,
Indira Gandhi International Airport,
New Delhi - 110 037. .. Respondents 1 - 3 in both WPs

4.Government of Tamil Nadu,
Rep. by its Secretary,
State Tax Department, Fort St. George,
Chennai - 600 009.

5.The State Tax Officer,
Commercial Tax Building,
Ramanathapuram. .. Respondents 4 & 5 in WP(MD) 22010/18

6.The Superintendent of GST & Central Excise,
Ramanathapuram Range,
Manamadurai. .. 4th respondent in WP(MD)22011/18

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the first respondent to enable the petitioner to file GST TRAN 1 electronically and treat it as filed in accordance with law.

For Petitioner : Mr.S.Karunakar (In both WPs)

For Respondents : Mr.R.Aravindan,
Standing Counsel
for R.1 & R.3 (In both WPs)

Mr.K.Ashokkumar Ram
for R.2 (In both WPs)

Mr.D.Muruganantham,
Additional Government Pleader
for R.4 & R.5 in WP(MD)22010/18
for R.4 in WP(MD)22011/18

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COMMON ORDER

There writ petitions are filed seeking a Writ of Mandamus, directing the first respondent to re-open and reinstate the facility of online submission of TRAN-1, so as to enable the petitioners to file GST TRAN-1.

2. Heard the learned Counsel appearing for the petitioners, learned Standing Counsel appearing for respondents 1 & 3, learned Counsel appearing for the second respondent and the learned Additional Government Pleader appearing for all other respondents.

3. The petitioners before this Court are dealers registered under the Central Goods and Service Tax Act, 2017 and they had attempted to file GST TRAN-1 form in GSTN portal to avail transitional credit upon the implementation of GST. But, according to the petitioners, due to technical glitches in the portal, they could not complete the filing process within the statutory due date ie. before 27.12.2017. Therefore, according to the petitioners, they had tried the Help Desk / Seva Kendra, Grievance Redressal Portal as well as the jurisdictional officers, but, all the efforts made by the petitioners have ended in vain. According to the petitioners, they were driven from one end to the other and having left with no other option, they are before this Court.

4. The Government of India, in order to address the technical issues and the grievances, has issued a circular in Circular No.39/13/2018-GST, to facilitate, among other things, TRAN-1 submission. This circular contemplates appointment of Nodal Officers to facilitate the filing by the struggling TRAN 1 filers. But, the grievance of the petitioners is that so far, no such Nodal Officer is appointed, which is not refuted by the learned Standing Counsel.

5. The learned Counsel for the petitioners relied upon a decision of this Court made in *W.P.(MD)No.18532 of 2018, dated 10.09.2018* (in the case of *Tara Exports, Rep. by its Partner, Narayan Bharathan v. Union of India, Rep. by Principal Secretary, Ministry of Finance, New Delhi and others*), wherein, this Court, after discussing various issues and various decisions rendered by

various Courts across the Country, has passed the following order:

> "7. *The Circular issued by the Union Government has also recognized that the grievances of the tax paying public are genuine in character and therefore, evolved a structural mechanism to address the grievances of general and specific natures. In respect of TRAN 1, the guidelines gave relief only to the tax payers, who had attempted to file TRAN 1 in the GSTN Portal before the statutory due date, ie., 27.12.2017. The onus to provide evidences, for non-filing before the due date because of technical glitches, was left with the tax payers, vide the above circular. Here, the petitioner has made attempts even to file their return by manual mode, before the Assistant Commissioner, CGST & Central Excise, Tirunelveli, on 31.01.2018, which, in the opinion of this Court, is a genuine attempt made by the petitioner.*
>
> *8. GST is a new progressive levy. One of the progressive ideal of GST is to avoid cascading taxes. GST Laws contemplate seamless flow of tax credits on all eligible inputs. The input tax credits in TRAN 1 are the credits legitimately accrued in the GST transition. The due date contemplated under the laws to claim the transitional credit is procedural in nature. In view of the GST regime and the IT platform being new, it may not be justifiable to expect the users to back up digital evidences. Even under the old taxation laws, it is a settled legal position that substantive input credits cannot be denied or altered on account of procedural grounds.*
>
> *9. In view of the foregoing discussions and also considering the special circumstances of the case that the petitioner has made genuine efforts for filing returns not only through online but also manually, this Court is of the view that the petitioner may be granted the relief as prayed for.*
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> *10. Accordingly, this writ petition is disposed of, with a direction to the respondents either to open the portal, so as to enable the petitioner to file the TRAN 1 electronically for claiming the transitional credit or accept the manually filed TRAN 1, dated 31.01.2018, and allow the input credits, after processing the same, if it is otherwise eligible in law. Considering the facts and circumstances of this case, this Court has passed the above order and therefore, it shall not be a precedent. No costs."*

6. On a perusal of the typed set of papers accompanying the petition, this Court finds the various communications addressed by the petitioners with regard to the technical glitches faced by them in filing TRAN-1. Going by the supporting documents filed in the typed set of papers, this Court is satisfied that the petitioners have made genuine attempts to file their returns, which satisfies the ingredient of the circular in Circular No.39/13/2018-GST also.

Therefore, this Court is of the view that the decision relied upon by the learned Counsel for the petitioners in *W.P.(MD)No.18532 of 2018, dated 10.09.2018* (cited supra) would squarely apply to the present cases on hand.

7. Following the same, these writ petitions are disposed of, with a direction to the respondents to open the portal, so as to enable the petitioners to file their TRAN-1 electronically for claiming the transitional credit and allow the input credits, after processing the same, if it is otherwise eligible in law. No costs.

Sd/
Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar(CS-I)

To

1.The Principal Chief Commissioner,
Goods and Service Tax Act,
[Previously Central Excise and Customs],
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2.The Secretary,
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Ministry of Finance,
Department of Revenue,
North Block, New Delhi - 110 001.
3.The Chairman,
Goods and Service Tax Network (GSTIN),
East Wing, World Mark - 1,
4^{th} Floor, Tower B, Aerocity,
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4.The Secretary,
Government of Tamil Nadu,
State Tax Department, Fort St. George,
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5.The State Tax Officer,
Commercial Tax Building,
Ramanathapuram.
6.The Superintendent of GST & Central Excise,
Ramanathapuram Range,
Manamadurai.
+2cc to Mr.S.Karunakar, Advocate, SR.No. 93938,93937
+1cc to Mr.R.Aravindan, Advocate, SR.No.94311
+2cc to Mr.K.ASOK KUMAR RAM, Advocate, SR.No. 94198,94197
+1cc to M/s.Special Government Pleader,SR.No. 93832

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KK/RP/SAR-1/29.11.2018/4P-13C