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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **10.09.2018**

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD)No.18532 of 2018

Tara Exports
Represented by its' Partner
Narayan Bharathan
3D/1, Nelson Compound (upstairs),
Jeyaraj Road, Near Raj Hotel,
Thoothukudi. .. Petitioner

Vs.

1. The Union of India,
   Rep. by the Principal Secretary,
   Ministry of Finance,
   Department of Revenue,
   136 A, North Block, New Delhi 110 001.

2. Goods and Service Tax Council,
   Through its' Chairman,
   Goods and Service Tax, Secretariate,
   5th Floor, Tower – V, Jeevan Bharathi Building,
   Janpath Road, Connaught Place, New Delhi.

3. The Principal Commissioner of CGST and
   Central Excise, Chennai North Commissionerate,
   26/1, Mahathma Gandhi Road, Chennai 600 034.

4. The Principal Secretary /
   Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk, Chennai 600 005.

5. The Assistant Commissioner (ST),
   Kuzhithurai Assessment Circle,
   at Kattathurai, Kanyakumari District.

6. The Central GST Officer,
   Nagercoil Range, Sivaraj Buildings,
   Nagercoil.

7. The Assistant Commissioner,
   CGST and Central Excise,
   2/1, Nehru Nagar, STC College Road,
   NGO 'A' Colony,
   Tirunelveli 627 007. .. Respondents

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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus

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directing the respondents to either re-open and reinstate the facility of online submission of TRAN 1 to the petitioner or manually accept the hard copy of TRAN 1 of the petitioner and allow the duty credit of Rs.50,50,050/- to the petitioner towards the stock held as on 30.06.2017 in respect of liability of GST received by the petitioner.

For Petitioner : Mr.M.Azeem
For Respondents : Mr.S.Paramasivam for R.1 to R.3
Mr.A.Thiyagarajan, Government Advocate for R.4 to R.7

ORDER

This writ petition has been filed seeking a writ of mandamus, directing the respondents either to re-open and reinstate the facility of online submission of TRAN 1 to the petitioner or manually accept the hard copy of TRAN 1 of the petitioner and allow the duty credit of Rs.50,50,050/- to the petitioner towards the stock held as on 30.06.2017 in respect of liability of GST received by the petitioner.

2. Heard the learned counsel appearing for the respective parties and perused the materials placed on record.

3. The petitioner-Company, which is an importer, a processor of cashew nuts, a trader, exporter of cashew kernels and a dealer under the fifth respondent, had attempted to file GST TRAN-1 form in GSTN portal to avail transitional credit upon the implementation of GST. But, according to the petitioner, 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 petitioner, they had tried the grievance redressal portal, but, all the efforts made by the petitioner have ended in vain. In the meantime, the petitioner has filed the TRAN 1 form, manually, on 31.01.2018, before the Assistant Commissioner, CGST & Central Excise, Tirunelveli. However, the same was returned with a direction to contact the Help Desk, with a remark that the returns can only be filed online. Accordingly, the petitioner had sent an email, dated 02.03.2018, to the Help Desk, however, no fruitful reply addressing their grievance was received.

4. In the meantime, 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, dated 02.03.2018, 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, it is the contention of the petitioner that no such Nodal Officer is appointed till date.

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5. According to the petitioner, in cases of similar nature, various High Courts of this Country has granted relief to the tax payers by directing the authorities to open the portal and/or receive the manually filed forms and/or approach the Nodal Officers appointed by the Government in this regard. In support of his contention, the learned Counsel for the petitioner has placed reliance on the following decisions of several High Courts:

i) judgment of the Allahabad High Court, in the decision reported in ***2018 (10) G.S.T.L. 423 (AIL)***, in the case of ***Continental India Private Ltd., v. Union of India***;

ii) judgment of the Bombay High Court, in ***WP(L)No.2230 of 2018***, in the case of ***Abicor and Binzel Technoweld Private Ltd., v. The Union of India and Anr***, dated 06.02.2018;

iii) Order of the Chhattisgarh High Court, in ***WP(T)No.68 of 2018***, in the case of ***M/s.Dhamtari Krishi Kendra v. Union of India and others***, dated 14.05.2018;

iv) Order of the Delhi High Court, in ***WP(C)No.1300 of 2018, etc., batch***, dated 09.04.2018;

v) Order of the Kerala High Court in ***WP(C)No.17348 of 2018***, dated 14.06.2018, in the case of ***E.V.Radha Krishna Kurup v. Union of India and others***; and

vi) Order of this Court in ***WP.No.18794 of 2018***, dated 24.07.2018, in the case of ***M/s.Calibre Industries v. The Principal Commissioner, GST and Central Excise, Chennai and others***.

6. On a perusal of the judgments / orders relied upon by the petitioner, it is seen that relief, as sought for, has been granted in favour of the aggrieved petitioners to some extent.

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

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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.

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.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Principal Secretary,
   Union of India,
   Ministry of Finance,
   Department of Revenue,
   136 A, North Block, New Delhi 110 001.

2. The Chairman,
   Goods and Service Tax Council,
   Goods and Service Tax, Secretariate,
   5th Floor, Tower – V, Jeevan Bharathi Building,
   Janpath Road, Connaught Place, New Delhi.

3. The Principal Commissioner of CGST and
   Central Excise, Chennai North Commissionerate,
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4. The Principal Secretary /
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   CGST and Central Excise,
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   NGO 'A' Colony,
   Tirunelveli 627 007.

+1cc to Mr.M.Azeem, Advocate Sr.No.83202

GK

VB/RP/SAR2/09.10.2018/5P/9C

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