

HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition Nos.32259 and 33573 of 2018

COMMON ORDER: {Per Hon'ble Sri Justice Ramesh Ranganathan}

Heard Sri K.S.Ravi Shankar, learned counsel appearing on behalf of the petitioners, and Sri B.Narasimha Sarma, learned Senior Standing Counsel for CGST and, with their consent, both these writ petitions are disposed of at the stage of admission.

The dispute, in both these writ petitions, relate to the validity of the order passed by the Joint Commissioner, Visakhapatnam on 27.06.2018 rejecting the petitioners' request to receive their return in FORM GST TRAN-1 which would enable them to claim input tax credit for the tax paid prior to the introduction of GST. By Order No.09/2017-GST dated 15.11.2017, the Government of India, in the exercise of the powers conferred by Rule 117 of the Central Goods and Services Tax Rules, 2017 (for short "the CGST Rules") read with Section 168 of the Central Goods and Services Tax Act, 2017 (for short "the CGST Act"), on the recommendation of the GST Council and in supersession of its earlier Order No.07/2017-GST dated 28.10.2017, extended the period for submitting the declarations in FORM GST TRAN-1 till 27.12.2017.

There is a dispute as to whether or not the petitioners made attempts to submit their application in FORM GST TRAN-1, on or before 27.12.2017. Sri K.S.Ravi Shankar, learned counsel appearing on behalf of the petitioners, would submit, relying on the specific averment in the petitioners' representation dated 21.06.2018, that they had attempted to file their return on 27.12.2017. On the other hand Sri B.Narasimha Sarma, learned Standing Counsel, would draw our attention to the letter addressed by the petitioners on 19.02.2018 to submit that, even

on their own admission, the petitioners did not seek to file the return in FORM GST TRAN-1 by 27.12.2017; and they had, in fact, admitted having attempted to do so only on 28.12.2017. The fact, however, remains that the question, whether or not the petitioners had attempted to file their return in FORM GST TRAN-1 on 27.12.2017, has not been examined by the Joint Commissioner in the impugned order.

In the impugned order dated 27.06.2018, the Joint Commissioner rejected the petitioners' plea of server error/technical difficulties in filing FORM GST TRAN-1 on 27.12.2017, holding that the statistics showed that several such returns were filed between 24.12.2017 and 27.12.2017; and there appeared to be no technical glitch/system related matter that prevented the petitioners from filing their TRAN-1 in time.

The Department of Revenue, Central Board of Indirect Taxes and Customs, Ministry of Finance, Government of India issued notification No.48/2018 dated 10.09.2018 amending Rule 117 of CGST Rules and inserted Clause (1A) thereto. It further inserted a proviso to Rule 117(4)(b)(iii). The amended Rule 117(1A) and the proviso to Rule 117(4)(b)(iii) read thus:

“Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in **FORM GST TRAN-1** by a further period not beyond 31st March, 2019, in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.”

“Provided that the registered persons filing the declaration in **FORM GST TRAN-1** in accordance with sub-rule (1A), may submit the statement in **FORM GST TRAN-2** by 30th April, 2019.”

In terms of the amendment brought about by Rule 117(1A) of the CGST Rules, power has been conferred on the Commissioner, on the

recommendations of the GST Council, to extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond 31.03.2019 in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal, and in respect of whom the Council has made a recommendation for such extension.

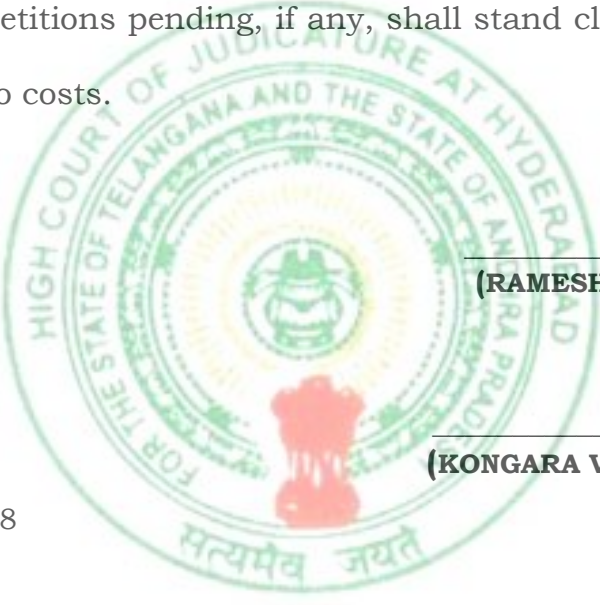
The very fact that the Government of India has, itself, issued a notification amending the Rules is its recognition of the fact that certain dealers were unable to electronically submit their declarations in FORM GST TRAN-1 on 27.12.2017. Pursuant to Notification No.48/2018, the Commissioner (GST) issued Order No.4/2018-GST dated 17.09.2018 exercising his powers under Rule 117(1A) of the CGST Rules, to extend the period for submitting the declarations in FORM GST TRAN-1 till 31.01.2019 for the class of registered persons who could not submit the declaration by the due date on account of technical difficulties on the common portal, and whose cases have been recommended by the Council.

The petitioners claim that their representation dated 14.03.2018, made by them to the GST Council, is still pending consideration of the Council. It is wholly unnecessary for us to examine whether or not the inability of the petitioners to submit their return, in FORM GST TRAN-1 by 27.12.2017, was on account of technical glitches or a server error or any such other difficulties, as these are all matters for the 3rd respondent to examine. The impugned order dated 27.06.2018 does not deal with the petitioners' claim of inability to file their return in FORM GST TRAN-1 on 27.12.2017 because of server error; and, instead, relies on general statistics to justify rejection of the petitioners' claim to have made attempts to file FORM GST TRAN-1 on 27.12.2017. Since the petitioners are entitled to have their case considered in accordance with

law, and in terms of the notifications dated 10.09.2018 and the order dated 17.09.2018, the impugned order dated 27.06.2018 is set aside.

It is open to the petitioners, in terms of the notification dated 10.09.2018 and the subsequent order dated 17.09.2018, to seek recommendation of the GST Council for submission of FORM GST TRAN-1 within the time frame stipulated in the order dated 17.09.2018, and to satisfy the authorities concerned that their attempts to file FORM GST TRAN-1 on 27.12.2017 failed because of a systems error or server related issues.

Both the Writ Petitions are, accordingly, disposed of. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.


(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

03rd October, 2018
JSU

**HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**



Writ Petition Nos.32259 and 33573 of 2018

Date: 03.10.2018

JSU