IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2188 OF 2019

M/s.SKYS Automobil .. Petitioner
Shop No.2,3 & 4, Bansilal Market,
Bansilal Nagar, Station Road,
Aurangabad
Through – Its proprietor,
Shaikh Imran Shakeel,
Age. 29 years, Occ. Business,
R/o. H.No.1-20-33, Juna Bazar,
Aurangabad.

Versus

1. Union of India .. Respondents
Ministry of Finance,
Through – Commissionier,
Central Goods and Service,
Aurangabad.

2. The Joint Commissioner,
State Goods and Service Tax,
Vikrikar Bhavan, Railway Station,
Aurangabad.

3. The Commissioner, State Tax (SGST),
GST Bhavan, 27 Nesbit Road,
Mazgaon, Mumbai – 400 010.

4. Goods and Service Tax Network,
Through – Its Chief Executive Officer,
East Wing, Worldmark-1,
4th Floor, Tower-B, Aerocity,
New Delhi – 110 037.

Mr.S.N. Lavekar, Advocate for the petitiioner.
Mr.D.S. Ladda, Advocate for the respondents.

CORAM : PRASANNA B.VARALE & S.M.GAVHANE,JJ.
DATED : 28.02.2019

ORAL ORDER [PER : S.M.GAVHANE,J.] :-

1. By this petition under Article 226 of the Constitution of India, the petitioner has prayed following substantive reliefs:-

> “B] The Hon'ble High Court may be pleased to direct the respondents to re-open the portal for submission of the FORM GST TRAN-1 for the petitioner and allow the petitioner to upload and file the FORM GST TRAN-1 as per the provisions of the Central Goods and Service Tax Act, 2017 and the rules therein as the earlier data/values uploaded and submitted in the GST TRAN-1 Form is not reflecting the transitional CENVAT credit admissible as input tax credit of the petitioner.
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> C] The Hon'ble High Court may be pleased to direct the Respondents to allow the petitioner to fill and file the GST TRAN-1 Form as per the provisions of Central Goods and Service Tax Act, 2017, if the portal for submission of the returns is not reopened by the Respondents, manually in a manner so as to permit the petitioner to claim the transitional input tax credit as well as the subsequent credit of an

amount of Rs.9,28,526/-

D] In the alternative, the Hon'ble High Court may be pleased to direct the respondents to refund the amount of balance CENVAT credit available with the petitioner before the implementation of the Goods and Service Tax as the petitioner is not able to claim the input tax credit of the same due to the technical glitches in the GST portal of an amount of Rs,9,28,526/-.

2. Case of the petitioner is that it is a proprietor firm as “SKYS Automobil” as mentioned in the title clause. The petitioner is a dealer of Enfield Bullet two wheeler. Respondent No.1 is the Apex Body of the country in respect of the finance and planning and decision, which has introduced the Goods and Service Tax regime in the country in place of the earlier indirect taxes. Respondent No.2 is the local authority of Aurangabad, which supervises and controls the Goods and Service Tax in the city of Aurangabad. Respondent No.3 is superior of Respondent No.2 and the Apex Body of the State of Maharashtra for levy of State Goods and Service Tax in Maharashtra. Respondent No.4 is the agency

appointed by respondent No.1 for managing and operating the on-line web portal of the Goods and Service Tax in the entire country.

3. The petitioner has received registration certificate under Form GST REG-06 on 22.09.2017. On 27.12.2017, the petitioner could not upload its GST TRAN-1 Form on GSTN Portal due to the technical glitches on the website before the due date. The petitioner has made various correspondence with the respondents for filing the GST TRAN-1 and followed the entire instructions, but the respondents failed to sort out the difficulty in filing the TRAN-1 Form. Due to non-filing of TRAN-1 Form, the petitioner could not be credited to avail the benefit of Cash Credit for further period and thereby causes financial loss to subsequent credit of an amount of Rs.9,28,526/-. Therefore, the petitioner prays to allow it to fill and file GST TRAN-1 Form by web-portal or manually and to claim transitional input tax credit as well as subsequent credit of an amount of

Rs.9,28,526/- in the interest of justice.

4. Mr.Lavekar, learned Counsel for the petitioner made submissions in the light of contentions of the petitioner. Referring the documents produced by the petitioner with the list, learned Counsel submitted that the period for submitting declaration in Form GST TRAN-1 was extended initially till 27th December, 2017. Moreover, he referred to the circular of Government of India, Ministry of Finance and particularly clauses 5 and 8 of the said circular.

5. Mr. Lavekar, learned Counsel for the petitioner referred to Notification dated 10th September, 2018 issued by the Government of India, Ministry of Finance, Department of Revenue and clause-2 of the said notification runs as under :-

> "2. In the Central Goods and Services Tax Rules, 2017,
> (i) in rule 117,
> (a) after sub-rule(1), the following sub-rule shall be inserted, namely:-

> "(1A) 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.",

(b) in sub-rule (4), in clause (b), in sub-clause(iii), the following proviso shall be inserted, namely,:-

> "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."

(ii) in rule 142, in sub-rule(5), after the words and figures of "of section 76", the words and figures "or section 125" shall be inserted."

. Thus, learned Counsel for the petitioner prayed to consider the request made by the petitioner.

6. Mr. Ladda, learned Counsel for the respondents, on the other hand, referring to the very notification

dated 10th September, 2018 and particularly, clause (2) of the said notification referred to above in detail, submitted 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, as per the amendment in Rule 117 of the Central Goods and Services Tax Rules, 2017, mentioned in the above said notification dated 10th September, 2018 and therefore the petitioner is not entitled to any of the reliefs claimed in the petition.

7. Learned Counsel for the petitioner does not dispute the position, as mentioned in the aforesaid notification 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.

8. In view of this, as there is no cause of action to file the petition, the petitioner is not entitled to

any of the reliefs claimed in the petition. The petition sans merit and it is liable to be dismissed. Accordingly, same is dismissed.

[S.M.GAVHANE,J.] **[PRASANNA B.VARALE,J.]**

snk/2019/MAY19/wp2188.19