

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-14192-2019 (O&M)
Date of decision: 25.11.2019

Silicon Constructions Pvt. Ltd.

....Petitioner

versus

Union of India and others

....Respondents

CWP-32868-2019

Girdhari Lal Aggarwal Contractors Pvt. Ltd.

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: Hon'ble Mr. Justice Jaswant Singh
Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. Amit Jhanji, Advocate and
Mr. Vivek Kackria, Advocate
for the petitioner(s).

Mr. Sunish Bindlish, Advocate
for respondents No.1 & 3.

Mr. Pankaj Gupta, Addl. A.G., Punjab.

Ms. Mamta Singla Talwar, DAG, Haryana.

GIRISH AGNIHOTRI, J.

CM-17182-2019

Allowed, as prayed for, subject to all just exceptions.

Documents at Annexure P-17 are taken on record.

CWP Nos.14192 and 32868 of 2019

This order shall dispose of ***CWP-14192-2019*** titled as ***“Silicon Constructions Pvt. Ltd. vs. Union of India and others”*** and ***CWP-32868-2019 titled as “Girdhari Lal Aggarwal Contractors Pvt. Ltd. vs. State of Haryana and others”***. For brevity, facts have been taken from ***CWP-14192-2019***.

The petitioner namely, 'Silicon Constructions Pvt. Ltd.' has filed the present writ petition, wherein, the pleaded case is that it is engaged in the business of providing of service of construction and sale of residential flats as well as renting of commercial establishments. The petitioner is registered with Service Tax Department as also with State Tax Authorities and having VAT registration too.

The prayer made in the writ petition is *inter alia* seeking directions to the respondents to credit the 'Input Tax Credit', being the transitional credit, prescribed under Section 140 of the Central Goods and Service Tax Act, 2017, in the account of the petitioner under GST and to accept the TRAN-1s Return manually. It is the case of the petitioner that he had filed the TRAN-1s Return within time, but the same could not be processed and accepted due to technical error and due to the delay by respondents in resolving the technical issue.

We have heard learned counsel for the parties.

Mr. Amit Jhanji, learned counsel appearing for the petitioner has contended that the petitioner had uploaded the TRAN-1s Return and had tried to submit the same on 23.12.2017. The same was submitted, but, in

the status, it was showing that the same was “PROCESSED WITH ERROR”.

The petitioner in the writ petition has referred to various documents and correspondence. However, for the sake of brevity, learned counsel for the petitioner submits that the petitioner has neither received any reply from the department, nor their GST Portal for filing the TRAN-1s Return had been opened and hence, the input tax credit accrued under earlier Taxing statutes could not be carried forward under the GST regime. The petitioner during the course of hearing, relied on the judgment passed by this Court in “**CWP-30949-2018** titled as **Adfert Technologies Pvt. Ltd. vs. Union of India and others**”, decided on 04.11.2019. It is contended that in view of the directions issued in the aforementioned judgment, respondents may kindly be directed to permit the petitioner to file or revise, where already filed incorrect TRAN-1s either electronically or manually statutory Form(s) TRAN-1s on or before 30.12.2019.

Upon notice issued by this Court on 24.05.2019, respondents have put in appearance.

Counsel for the respondents further points out that the date for filing or revising the earlier filled incorrect TRAN-1 has been extended by the Department till 31.12.2019.

Counsel for the petitioner has further informed the Court that the respondent-authorities in spite of the judgments passed by this Court as well as Gujarat and Delhi High Courts, have not permitted the benefit of unutilized credit in terms of the judgments by not opening the relevant

portal or filing of the manual TRAN-I forms. He states that the Hon'ble Delhi High Court, on raising of similar grievance, has passed an order dated 16.10.2018 in **Indusind Media Communications Ltd. & Anr. vs. Union of India & Ors [W.P.(C) 8691/2018]**. For ready reference, the operative portion of the said interim order is reproduced here below:-

It is highlighted that the reflection of Tran-I credit in GSTR-3 is essential as it would ultimately impact the availability of credit for the entire duration – both transitional credit and input credit for the period 01.07.2017 onwards. Learned counsel submits that unless appropriate directions are given to the respondents, it is likely to face severe adverse financial crisis because in the absence of credit, it would have to pay cash throughout the country to the tune of Rs.37 crores.

The GSTR-3B form – in the relevant table dealing with eligible ITC, talks of total ITC available; ITC reversed and the net ITC available. As the deadline for completing this form and availing the credit is 20.10.2018, the respondents are hereby directed to permit the petitioners to fill the GSTR-3 form manually in a manner, as to permit it to claim a credit, subject to the final outcome of the proceedings.

It is clarified that in the GSTR-3B form, the petitioner can claim transitional as well as the post 01.07.2017 input tax credit.

List on 23.01.2019.

Dasti under signatures of the Court Master.

S. RAVINDRA BHAT,

J A. K. CHAWLA, J

OCTOBER 16, 2018

With the able assistance of learned counsel for the parties, we have gone through the order of Division Bench (supra) relied upon by the

petitioner.

Learned counsel for the respondents have not been able to seriously dispute the fact that the present case is also covered by the aforesaid judgment of this Court dated 04.11.2019 as also the interim order reproduced here above.

Accordingly, the present writ petition is allowed in the same terms as “CWP-30949-2018 titled as **Adfert Technologies Pvt. Ltd. vs. Union of India and others**”, decided on 04.11.2019. However, in view of the fact that it is also not disputed before us that the date of filing of the manual returns has been extended upto 30.12.2019, the operative part of the directions shall read as under:-

“Accordingly, we direct respondents to permit the petitioners to file or revise where already filed incorrect TRAN-1 either electronically or manually statutory Form(s) TRAN-1 on or before 30.12.2019.”

It is further directed that the petitioners shall be permitted, in the alternative to claim or enter the unutilized credit in question in their GST-3B forms to be filed for the month of January, 2020 either electronically or manually.

No order as to costs.

(JASWANT SINGH)
JUDGE

(GIRISH AGNIHOTRI)
JUDGE

25.11.2019
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Whether speaking/ reasoned:
Whether Reportable:

Yes/No
Yes/No