IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-33919-2019 (O&M)
Date of decision: 27.11.2019

Rajdhani Sanitary Store

.....Petitioner

versus

State of Punjab and others

....Respondents

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

Present: Mr. Deepak Gupta, Advocate for the petitioner.

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GIRISH AGNIHOTRI, J.

CM-17874-CWP-2019

Application has been filed for impleading Central Board of Indirect Taxes and Customs as party respondent No.4.

For the reasons mentioned in the application, the same is allowed and the Central Board of Indirect Taxes & Customs is ordered to be impleaded as party respondent No.4. Amended memo of parties is taken on record.

Office to tag the same at appropriate place.

CM stands disposed of.

Main case

The petitioner namely Rajdhani Sanitary Store, Ludhiana has filed the present writ petition *inter alia* with the prayer to quash the order dated 04.11.2019 (Annexure P-3), whereby, the respondent has denied the petitioner to carry forward Input Tax Credit in TRAN-I, shown in monthly returns of June 2017. It is also prayed that directions be issued to the respondents to permit carry forward all Input Tax Credit, which was duly shown in monthly returns of June 2017.

The petitioner is a proprietorship concern, and is engaged in trading of wall and floor tiles. The case of the petitioner is that the petitioner was registered under the provisions of Value Added Tax (herein after called as 'VAT') with the State authorities and presently, is registered with State GST Authorities. The petitioner contends that as per returns of June 2017, Cenvat credit to the tune of Rs.17,77,602/- was lying unutilized. It is the case of the petitioner that the petitioner is entitled to carry forward unutilized credit of the above amount, however, it failed to carry forward its credit due to technical glitches. The respondent had not made any mechanical mechanism to carry forward the credit and the petitioner has only one option i.e. loading TRAN-I on the portal of the respondent. The petitioner contends that the respondent vide notification dated 10.09.2018, amended the rules granting power to the Commissioner to extend the time to submit GST TRAN-I upto 31.03.2019, on the recommendation of the council.

The prayer is for carrying forward the unutilized input tax credit in TRAN-I while quashing the order dated 04.11.2019 (Annexure P-3) whereby, the Proper Officer, Ludhiana has declined the request for such transfer. It is claimed that the issue is squarely covered by the decision dated 04.11.2019 of this Court passed in CWP No.30949 of 2018

(Annexure P-4).

Notice of motion.

On the asking, Mr. Pankaj Gupta, Addl. A.G., Punjab, accepts notice on behalf of respondents No.1 to 3, whereas, Mr. Anshuman Chopra, Advocate accepts notice on behalf of respondent No.4. Copies have been supplied.

We have heard learned counsel for the parties.

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.

Counsel for the respondents concede that the matter is covered by judgment dated 04.11.2019, passed in "**CWP-30949-2018** titled as **Adfert Technologies Pvt. Ltd. vs. Union of India and others,".** 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.*
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> *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.*
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> *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 31.12.2019, 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 31.12.2019."*

It is further directed that the petitioner 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

27.11.2019
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Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No