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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 17.12.2019

\+ W.P.(C) 11105/2019

TRIVENI NEEDLES PVT. LTD .THROUGH: ITS AUTHORISED REPRESENTATIVE GURPREET SINGH ..... Petitioner

Through: Mr. A.K. Babbar and Mr. Surender Kumar, Advs.

versus

UNION OF INDIA, THROUGH: MINISTRY OF FINANCE, SECRETARY & ORS. ..... Respondents

Through: Mr. Amit Bansal with Mr. Aman Rewaria and Ms. Vipasha Mishra, Advs. for R-2 and R-3.
Mr. Anuj Aggarwal, Adv. for R-4 and R-5.
Mr. Abhay Prakash Sahay, CGSC with Mr. Amit Kr. Dogra, Advs.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>SANJEEV NARULA, J. (Oral):</u>

1. The present petition under Article 226 of the Constitution of India seeks the following reliefs:

> "(a) Your Lordships may be pleased to issue direction to Respondents to either open the portal so as to enable the Petitioner to file the TRAN-1 forms electronically, failing which the Department shall accept the manually TRAN-1 Form which had been filed with them and even is enclosed with this Writ as there were bonafide difficulties being faced by

Petitioner. The Petitioner claim be thereafter be processed in accordance with law

(b) Your Lordships may be pleased to issue writ of declaration and/or any other appropriate writ(s) declaring Rule 11 7 of the Central Goods and Services Tax Rules, 2017 and Form GST Tran-1 as ultra vires to Section 40(5) and Section 164 of the Central Goods and Services Tax Act, 2017 and also offends Article 14, Article 265 and Article 300A of the Constitution of lndia, 1950;

(c) Pending admission, hearing and final disposal of this application, Your Lordships may be pleased to issue writs(s) and/or direction(s) restraining the Respondents from resorting to or taking any coercive measure action against the Petitioners;

(d) Your Lordships may be pleased to issue writ of declaration and/or any other appropriate writ(s) declaring Section 164 of the Central Goods and Services Tax Act, 2017 as unconstitutional as it suffers from vice of excessive delegation;

(e) Your Lordships may be pleased to Grant ad-interim relief in terms of prayer under Para (c) above;

(f) Issue a Writ of mandamus or any other Writ, order or directions declaring that once the Appellant is entitled to tax credit on A/cs of Input Tax Credit of Rs. 8,23,002/- and that being a onetime entitlement, the appellant/dealer should not be deprived from claiming said credit due to technicalities of law especially when new law is yet to be settle down and allows Appellant to claim legitimate Input Tax Credit by directing Respondent to accept TRAN-I of Appellant.

(g) Issue a writ of Certiorari or any other Writ quashing the Circular No. 39113/2018 dated 03.04.2018 to the extent of not including all dealers to file TRAN-I and with a prayer to issue direction to Respondent to modify it to include all those dealers whose entitlement to Input Tax Credit as per law is there and not to deprive of legitimate credit, simply an reason that they are not in possession of evidence of having tried for filing TRAN-1.

(h) To declare Rule 117 of GST Rules providing time limit for filing TRAN-I as ultravires, contrary and in violation to Section 140 of the GST Act.

> (i) Any other relief in favour of the petitioner company may also be issued in favour of the petitioner company in the interest of justice.
> (j) dispense with the service of advance notice of motion upon Respondent and also dispense with the filing of certified copies of documents made as Annexure in this Petition in view of urgency of the matter.
> (k) Your Lordships may be pleased to issue order(s), direction(s),writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice;
> (l) Or grant any other relief as deemed fit in the circumstances of the case."

2. At the outset, learned counsel for the petitioner submits that if the Court were to issue directions as sought in prayers (a) and (f), he would not press the remaining prayers.

3. The case of the petitioner as stated in the petition is that it is engaged in the business of purchase and sale of bearings and is registered under the Central Goods and Service Tax Act, 2017 (hereinafter referred as 'CGST' Act). As on 01.07.2017, at the time of introduction of the CGST Act, the petitioner had an opening stock of Rs. 65,78,788/- on which it was entitled to a CVD Duty credit of Rs. 7,96,345/- and VAT Input Tax Credit of Rs. 26,657/- totaling to Rs. 8,23,002/-. Petitioner was entitled to transition of CVD Duty credit of the abovenoted amount in terms of Section 140(3),(4) and (5) of the CGST Act.

4. Learned Counsel for the petitioner points out that in the present case, the eligibility of the Petitioner to claim the CVD Duty credit has not been

challenged by the Respondents. In order to avail transition of credit, Petitioner was required to submit a declaration in Form GST TRAN-1 on the GST Portal within the stipulated period of 90 days. Since a large number of taxpayers could not complete the process within the aforesaid period on account of technical glitches and difficulties faced by them, government extended the time period for filing TRAN-1 several times and lastly on the recommendation of the GST Council, it was extended up to 27.12.2017. Petitioner tried filing Form GST TRAN-1 on the common portal, however, the same could not be uploaded due to technical glitches. The petitioner could not avail transition of credit, presumably because of low bandwidth, given the fact that large number of assessees all over India were trying to submit the declaration in Form GST TRAN-1 before the last date.

5. Faced with the situation, petitioner submitted its grievance to Respondent No.3 vide letters dated 19.02.2019 and 20.03.2019. A copy of the letters has been annexed with the present petition. Subsequently on 20.03.2019, the petitioner received an email from the respondents, asking for a proof of the technical glitches faced by the Petitioner. On the same day, the Petitioner replied to the email of the Respondents stating that since the Form GST TRAN-1 was a new concept, the petitioner was unaware that it had to keep a screenshot or any other proof in case it faced technical glitches while submitting the form. With no response having been received from the respondents after 20.03.2019, the petitioner filed the present petition in order to claim CVD Duty credit refund, as till date the portal for filing the Form GST TRAN-1 has not been opened in the case of the petitioner.

6. Petitioner relies upon CBIC Circular No.39/13/2018-GST dated 03.04.2018 issued by the government to address the grievances of the tax payers who could not file the declaration due to technical glitches on GST Portal. Petitioner also relies upon several decisions of this Court including ***M/s Blue Bird Pure Pvt. Ltd vs Union of India and Ors,*** **2019 SCC OnLine 9250** and ***Krish Automotors Private Limited***, **W.P. (C) 3736/2018**, decided on 16.09.2019 to submit that the Court has granted reliefs to several other parties who were in similar situation.

7. Mr. Amit Bansal, learned senior standing counsel for GST submits that the petitioner had not furnished the Form GST TRAN-1 on time and had taken the plea of technical glitches/errors, it therefore cannot seek extension of time on account of its own mistake. It is also stated in the counter affidavit that the petition is highly belated as it has been filed after a period of 6 months after the last communication made by the Petitioner to the department. It is further submitted that the issue of the Petitioner was deliberated upon in the 8^{th} ITGRC meeting. In the said meeting, the Petitioner's case was not allowed for refiling of Form GST TRAN-l because no technical glitches were found in Petitioner's case. The Petitioner's case fell in the Category B1 i.e. the cases where the taxpayer received the error- *'As per GST system log, there are no evidences of error or submission/filing of TRAN-1'*. As per GST System logs, the Petitioner had not tried for Saving/Submitting/Revision of Form GST TRAN-1 and there are no evidences of system errors in the log. It has also been stated that a reasonable period of time was provided to taxpayers, keeping in view their constraints, to file as well as revise Form GST TRAN-I. The information

regarding last dates for filing and revision was placed in public domain and was also given due publicity by way of press release dated 12.01.2017. Therefore, if the Petitioner failed to file the Form GST TRAN-l, the Government cannot be held responsible for such negligence and dereliction of duty on the part of the Petitioner.

8. We have considered the submissions of the parties. The nature of reliefs sought in the present petition and the facts disclosed herein is fully covered by the decision of this Court in ***M/s Blue Bird Pure Pvt. Ltd*** (supra) decided on 22.07.2019, wherein, following the decisions of this Court in ***Bhargava Motors* v. *Union of India***, decision dated 13th May, 2019 in WP (C) 1280/2018 and ***Kusum Enterprises Pvt. Ltd.* v. *Union of India***, 2019-TIOL-1509-HC-DEL-GST, the Court had directed the respondents to either open the online portal or to enable the petitioner to file the rectified TRAN-1 electronically or accept the same manually. The said decision has also been followed by this court in ***M/s Aadinath Industries & Anr vs Union of India***, **W.P. (C) 9775/2019**, decided on 20.09.2019; ***Lease Plan India Private Limited vs Government of National Capital Territory of Delhi and Ors***, **W.P.(C) 3309/2019**, decided on 13.09.2019; ***Godrej & Boyce Mfg. Co. Ltd. Through its Branch Commercial Manager vs Union of India,*** **W.P.(C) 8075/2019**, decided on 15.10.2019. The decision of this Court in ***Krish Automotors Pvt. Ltd. v UOI*** 2019-TIOL-2153-HC-DEL-GST has also been followed by the Punjab & Haryana High Court in ***Adfert Technologies Pvt Ltd v Union of India*** in CWP No. 30949/2018 (O&M) decided on 04.11.2019. The relevant paragraphs of ***Blue Bird*** (supra) read as under:

“10. Having carefully examined those decisions, the Court is unable to find any distinguishing feature that should deny the Petitioner a relief similar to the one granted in those cases. In those cases also, there was some error committed by the Petitioners which they were unable to rectify in the TRAN-1 Form and as a result of which, they could not file the returns in TRAN-2 Form and avail of the credit which they were entitled to. In both the said decisions, the Court noticed that GST system is still in the 'trial and error phase' insofar as its implementation is concerned. It was observed in Bhargava Motors (supra) as under:

> *"10. The GST System is still in a 'trial and error phase' as far as its implementation is concerned. Ever since the date the GSTN became operational, this Court has been approached by dealers facing genuine difficulties in filing returns, claiming input tax credit through the GST portal. The Court's attention has been drawn to a decision of the Madurai Bench of the Madras High Court dated 10th September, 2018 in W.P. (MD) No. 18532/2018 (Tara Exports vs. Union of India) where after acknowledging the procedural difficulties in claiming input tax credit in the TRAN-1 form that Court directed the respondents "either to open the portal, so as to enable the petitioner to file the TRAN1 electronically for claiming the transitional credit or accept the manually filed TRAN1" and to allow the input credit claimed "after processing the same, if it is otherwise eligible in law".*
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> *11. In the present case also the Court is satisfied that the Petitioner's difficulty in filling up a correct credit amount in the TRAN-1 form is a genuine one which should not preclude him from having its claim examined by the authorities in accordance with law. A direction is accordingly issued to the Respondents to either open the portal so as to enable the Petitioner to*

again file TRAN-1 electronically or to accept a manually filed TRAN-1 on or before 31st May, 2019. The Petitioner's claims will thereafter be processed in accordance with law.

12. In the present case, the Court is satisfied that, although the failure was on the part of the Petitioner to fill up the data concerning its stock in Column 7(d) of Form TRAN-1instead of Column 7(a), the error was inadvertent. The Respondents ought to have provided in the system itself a facility for rectification of such errors which are clearly bona fide. It should be noted at this stage that although the system provided for revision of a return, the deadline for making the revision coincided with the last date for filing the return i.e. 27th December, 2017. Thus, such facility was rendered impractical and meaningless."

9. The factual position in the present case is not any different. At this juncture, it may be noted that as per Notification No. 49/2019 dated 09.10.2019 issued by CBIC, the date prescribed for filing of Form GST TRAN-1 under Rule 117 (1A) of the CGST Rules has been extended to 31.12.2019. This itself demonstrates that the Respondents recognise the fact that the registered persons were not able to upload the Form GST TRAN-1 due to the glitches in the system. It is not fair to expect that each person who may not have been able to upload the Form GST TRAN-1 should have preserved some evidence of it – such as, by taking a screen shot. Many of the registered dealers/traders come from rural/semiliterate background. They may not have had the presence of mind to create any record of their having tried, and failed, to upload the Form GST TRAN-1. They cannot be made to suffer in this background, particularly, when the systems of the Repsondents were not efficient. From the documents placed on record, it emanates that the Respondents

have no cogent ground to deny the benefit of the Notification No. 49/2019 dated 09.10.2019 issued specifically to grant relief to taxpayers who faced difficulty in filing Form GST TRAN-1 due to technical glitches. Thereafter when he engaged in communication with the respondent, there was no genuine ground forthcoming except for stating that the due date for filing of Form GST TRAN-1 was over.

10. We may further add that the credit standing in favour of an assessee is "property" and the assessee could not be deprived of the said property save by authority of law in terms of Article 300 (A) of the Constitution of India. There is no law brought to our notice which extinguishes the said right to property of the assessee in the credit standing in their favour.

11. Thus, we allow the present petition and direct the respondents to either open the online portal so as to enable the petitioner to file the Form TRAN-1 electronically, or to accept the same manually on or before 31.12.2019. Respondents shall process the petitioner's claim in accordance with law once the Form GST TRAN–1 is filed. The petition is allowed in the aforesaid terms.

SANJEEV NARULA, J

VIPIN SANGHI, J

DECEMBER 17, 2019/*nk*