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

+ **W.P.(C) 3798/2019**

M/S BLUE BIRD PURE PVT. LTD. Petitioner

Through: Mrs. Anjali J. Manish and
Mr. Priyadarshi Manish, Advocates

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Anil Dabas and Mr. Praveen
Kumar, Advocates for Respondent
No. 1

Mr. Harpreet Singh, Senior Standing
Counsel for Respondent Nos. 2 and 3
with Ms. Suhani Mathur, Advocate
Mr. Satyakam, ASC, Govt. Of NCT
of Delhi/ Respondent Nos. 4 and 5

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
22.07.2019

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Dr. S. Muralidhar, J.:

1. Notice. Notice is accepted by learned counsel for the Respondents.
2. Counter-affidavit filed on behalf of Respondent Nos. 2 and 3 is already on record.
3. The Petitioner is a company having its registered office in New Delhi, engaged in the manufacturing and trading of water purifiers. It is duly

registered with the Excise Department and under the Central Excise Act, 1944 and the Rules under which it is entitled to take the CENVAT credit on input used for manufacturing of the finished goods. After the enactment of Central Goods and Services Act, 2017 (CGST Act), the Petitioner got itself registered with the Goods and Service Tax Department. A registration number was issued to it on 26th September, 2017.

4. The Central Government in exercise of the powers under Section 140(5) read with Section 164 of CGST Act read with Rule 117 of the CGST Rules prescribed the GST TRAN- 1 Form which was required to be filed online as a condition precedent for allowing the Petitioner to carry forward the CENVAT credit that was available to it as on the date of coming into force of the CGST Act. The Petitioner states that it filled and filed online the GST TRAN-1 Form on 27th December, 2017. The specific averment is that it committed an inadvertent error in showing the available stock of goods as on 30th June, 2017 in column 7(d) of the Form instead of column 7(a) of the Form. It is stated that as a result of this error, the Petitioner has been unable to avail of the Central GST Credit in respect thereof.

5. It is further averred in the petition that after the due date for filing of the TRAN-1 Form was crossed, the system got locked down at the portal and no tax payer was able to view/mend their TRAN-1 forms. The portal opened up on 15th March, 2018 for filing the TRAN- 2 Returns. It was at that stage that the Petitioner realised that it had committed an inadvertent error in the TRAN-1 Form. The system, however, did not permit the Petitioner to revise the TRAN-1 Form.

6. On 23rd April, 2018, the Petitioner addressed a representation to Officer, Single Point of Contact (SPOC) Delhi, GST-ITO (Respondent No. 5), admitting to having committed the abovementioned inadvertent error and seeking permission to rectify the mistake. The credit amount involved was Rs.20,34,807/-. It is pointed out that on account of inability to avail of the above credit amount, the Petitioner was not in a position to file the GSTR-3B returns.

7. The Petitioner further states that on the said representation, the GSTO stated that it will be forwarded to the GST Council for further action. However, nothing happened. The Petitioner addressed further letters on 19th September, 2018 to SPOC and 24th September, 2018 to the Commissioner, Delhi GST, but was not permitted to rectify the TRAN-1 Form already filed online. An e-mail was addressed to the GSTN Nodal Officer on 22nd October, 2018 explaining the Petitioner's difficulty. After several reminders bore no results, the present petition was filed.

8. Learned counsel for the Petitioner has referred to the two decisions of this Court, namely, ***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***, where in similar circumstances, the Court issued directions to the Respondents to either open the portal to enable the Petitioner to rectify the TRAN-1 Form electronically or permit the Petitioner to do it manually.

9. Learned counsel for Respondents sought to distinguish the applicability

of the above decisions on the ground that in those cases there was a glitch in the system which prevented those Petitioners from correcting the credit amount in the TRAN-1 Form, whereas in the present case the mistake was by the Petitioner in filling up the stock quantity in the wrong column.

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".

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. With a view to ensure that in future such glitches can be overcome, the Court directs the Respondents to consider providing in the software itself a facility of the trader/dealer being able to save onto his/her system the filled up form and also a facility for reviewing the form that has been filled up before its submission. It should also permit the dealer to print out the filled up form which will contain the date/time of its submission online. The Respondents will also consider whether there can be a message that pops up by way of an acknowledgement that the Form with the credit claimed has been correctly uploaded.'

11. Similar directions were issued by this Court in *Kusum Enterprises Pvt. Ltd.(supra)*.

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-1 instead 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.

13. The Court also notes with some concern that the representations repeatedly made by the Petitioner were not attended to by the Respondents which resulted in the Petitioner having to approach this Court for relief. The apprehension of the Respondents that orders of the kind in ***Bhargava Motors (supra)*** and ***Kusum Enterprises(supra)*** can open the ‘flood gates’ can easily be allayed by the Respondents themselves if they provide a robust Grievance Redressal Mechanism that can address such genuine grievances of the traders instead of compelling every trader to approach this Court for relief.

14. Mr. Harpreet Singh, learned counsel for the Respondents 2 and 3 informs the Court that there is in fact, an Information Technology Grievances Redressal Committee (ITGRC) to address the technical glitches encountered by the traders and to enable them to avail of the input tax and other credit which they are entitled to under the law. When enquired why the said ITGRC was unable to redress the Petitioner’s complaint, Mr. Harpreet Singh speculated that the Petitioner’s case perhaps did not fall within the ‘parameters’ for consideration of the grievance by the said ITGRC. There is nothing on record to suggest that the Petitioner’s repeated representations were ever placed before the ITGRC for its consideration. Even the counter affidavit filed in the present case does not suggest so.

15. Accordingly, this Court directs the Respondents to either open the online portal so as to enable the Petitioner to again file the rectified TRAN-I

Form electronically or accept the manually filed TRAN-I Form with the correction on or before 31st July, 2019.

16. The Petitioner will correspondingly be permitted to thereafter file the return in TRAN-2. The penalty and interest for the late filing of GSTR-3B will be waived off in view of the above directions, subject, of course, to the Petitioner being permitted to and in fact filing the rectified TRAN-1 Form as directed.

17. The writ petition is disposed of in the above terms.

18. A copy of this order be given *dasti* to the parties under the signatures of the Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 22, 2019

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