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

Date of Decision: 17.12.2019

\+ W.P.(C) 6537/2019

A.B. PAL ELECTRICALS PVT. LTD. ..... Petitioner

Through: Mr. Raj K. Batra, Mr. Sumit K. Batra and Ms. Neetika Khanna, Advs.

versus

UNION OF INDIA & ORS. ..... Respondent

Through: Mr. Asheesh Jain, CGSC with Mr. Adarsh Kumar Gupta, Advs. for R-1. Mr. Harpreet Singh with Mr Arunesh Sharma, Ms. Suhani Mathur and Mr. Ankit Singh, Advs. for R-2 and R-3 Mr. Satyakam, ASC (GNCTD) with Mr. Akhil Dehlan, Adv.

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

SANJEEV NARULA, J. (Oral):

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

> "(a) Issue a Writ of mandamus or any other Writ, order or direction in the nature thereof thereby declaring Rule 117 of CGST Rules providing time limit for filing TRAN-1 as ultravires, contrary and in violation to Section 140 and 17 4 of the CGST Act, 2017.
> (b) Issue a Writ of mandamus or any other Writ, order or directions declaring that the Petitioner is entitled to tax credit on account of Input Tax Credit of Excise Duty of Rs. 4,07,63,917.55/- and that being a onetime entitlement, the

> Petitioner 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 Petitioner to claim legitimate Input Tax Credit by directing Respondent to accept TRAN-1 of Petitioner.
> (c) pass any other order(s) as this Hon'be Court may deem fit and proper in the facts and circumstances of the present case.."

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

3. The case of the petitioner as stated in the petition is that it was registered as a "Registered Dealer" under Delhi Value Added Tax Act, 2004 and under Central Tax Act, 1956. Upon coming into force of the GST regime the Petitioner migrated to the same w.e.f. 01.07.2017 and was allotted Registration No. 07AABCA1608G1Z7. Under the GST regime, Dealers wishing to claim input tax credit in respect of the transitional tax paid on opening stock as held by them on 01.07.2017, were required under Section 140(3), (4) & (5) of Central GST Act to file their claim for said amount in form TRAN-1 within the time as prescribed. Petitioner company held an opening stock worth Rs. 24,61,87,846/- as on 01.07.2017 and was entitled to claim a tax credit of Rs.4,07,63,917.55/- and in order to claim the same, the Petitioner was required to file TRAN-1. The Managing Director of the company was not keeping well and was unable to attend to the business affairs of the company for a long time. The personnel responsible for dealing with compliances required to be made by the company were consistently reporting to him that the GST portal was not working properly, and

therefore, they were unable to access the portal and file requisite details. Therefore, the requisite information could not be filed in the prescribed form TRAN-1. Further, it is alleged that during illness, whenever the Managing Director enquired about the compliances required to be made under the GST regime, he was informed that the GST portal was not working properly and data was being collated to complete the necessary compliances. On recovery, the Managing Director followed up with the company personnel and the tax authorities and was apprised of the fact that as per CBIC order 1/2019 dated 31.01.2019, the time to file TRAN-1 has been extended upto 31.03.2019, for taxpayers who could not submit the said declaration by the due date on account of technical difficulties on the common portal and whose cases have been recommended by the Council. The case of the petitioner neither falls under the category of technical glitches nor has been recommended by the Council. Therefore, the Petitioner Company filed a representation dated 28.03.2019 before the GST Council requesting them to consider the case of the Petitioner Company on compassionate grounds owing to reasons which were beyond the control of the Petitioner Company, as substantial amount of credit which is a substantive right would otherwise go waste. Aggrieved by no response to the said representation and claiming that the time limit prescribed to avail input tax credit under the GST regime is an unrealistic and unreasonable condition, the Petitioner has filed present Writ Petition.

4. Petitioner 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 ***Sare Realty Projects Private Limited vs Union Of India,*** **W.P. (C) NO.**

1300/2018, decided on 01.08.2018 to urge that the Court has granted reliefs to several other parties who were in similar situation.

5. 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 ***M/s 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 v. 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.*
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> *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-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."*

6. The factual position in the present case is not any different. Though, the case of the petitioner cannot be strictly categorized as covered by "technical glitches", however, as held in ***M/s Blue Bird (supra)***, the GST System is still in a 'trial and error phase' as far as its implementation is concerned and although the failure was on the part of the Petitioner, the error was inadvertent. The petitioner does not have any evidence or proof in support of his submission that the personnel responsible for dealing with the compliances was unable to file the requisite Form due to non-functioning of GST Portal. However, we have noticed that in large number of matters, the petitioner have similarly complained that before the deadline, they were not able to access the GST Portal. This could be presumably because of low bandwith, given the fact that before the deadline, a large number of tax

payers all over the country, were trying to submit the declaration in form TRAN-1. In these circumstances, we would thus give the benefit of doubt to the petitioner.

7. 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.

8. 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.

9. 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
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