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

Date of Decision: 17.12.2019

\+ W.P.(C) 12167/2019

SRC AVIATION (P) LTD ..... Petitioner

Through: Mr. Rajat Mittal with Ms. Ishita Jindal, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms. K. Enatoli Sema and Mr. Gaurav Prakash, Advs. for R-1 to R-3.
Mr. Sushil Kumar Pandey , Adv. for UOI.

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

SANJEEV NARULA, J. (Oral):

1. Despite giving an opportunity, no counter affidavit has been filed. We, therefore, close the right of the respondents to file the counter affidavits and proceed to disposed of the writ petition.

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

> "i) To issue writ of mandamus and/ or a writ in the nature of mandamus and/or any other appropriate writ(s) directing the Respondent Authorities to either reopen the GST portal for one time revision of Form TRAN -1 or to accept the Revised TRAN -1 to be filed manually by the Petitioner to enable the

> Petitioner to claim transitional credit of service tax paid on Advance in terms of Section 142(11) (c) of the Central Goods
>
> and Services Tax Act, 2017;
> ii) to award for costs of this Petition; and
> iii) to grant such further and other reliefs as the nature and circumstances of the case may require."

3. The case of the petitioner as stated in the petition is that it is engaged in the business of offering flight management services in respect of certain inbound and outbound flights at the airports and is registered under the Central Goods and Service Tax Act, 2017 (hereinafter referred as 'CGST Act'). During the month of December 2016, the Petitioner had received certain advance amount from its customers on which service tax to the tune of Rs. 14,30,884/- was paid by it in accordance with the provisions of the Finance Act, 1994. Petitioner was entitled to transition of credit of Input Tax Credit in terms of Section 142(11)(c) of the CGST Act, 2017.

4. Learned Counsel for the petitioner points out that in the present case, the eligibility of the Petitioner to claim the Input Tax 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. The Petitioner filed the Form GST TRAN-1 on the common portal on

13.11.2017 and claimed Rs. 64,70,407/- as transitional credit tax paid on input services. However, inadvertently, Petitioner missed the transitioning of the Input Tax Credit to the tune of Rs. 14,30,884/-, which was the unadjusted service tax paid on advances received by it. Petitioner was eligible to transition of the Input Tax Credit in the GST regime in terms of Section 142(11)(c) of the CGST Act, 2017.

5. Faced with the situation, petitioner submitted its grievance to the GST Helpdesk on 26.12.2017. On the same day, the GST helpdesk confirmed the receipt of service request and informed the status of the same as 'open'. Thereafter, on 18.01.2018, Petitioner received an email from the GSTN stating that the service request of the petitioner had been resolved but with respect to the stated issue, it stated that the due date for filing Form GST TRAN-1 as notified by the Central/State Government is over and the Form GST TRAN-1 could not be revised or re filed again. A copy of the reply has been annexed with the present petition.

6. Thereafter on 09.08.2018 and 21.08.2018, Petitioner made representations before Respondent No.2, reiterating its request for a one-time permission to revise Form GST TRAN-1 on account of inadvertent mistake at the time of initial filing. Pursuant to this, Respondent no.2 wrote to the Nodal officer, GST Delhi South Commissionerate on 13.09.2018 to look into the request of the Petitioner. Petitioner made another representation to the Respondent No.3 vide a letter dated 17.09.2018, requesting for revision of Form GST TRAN-1. Subsequently, Petitioner received a letter dated 20.09.2018 from the Assistant Commissioner (Systems), informing the Petitioner that as per

Circular dated 03.04.2018, an IT Grievance Redressal Mechanism was set up for the taxpayers facing the technical glitches on GST portal. Accordingly, recommendations in respect of the taxpayers, who could not complete filing of Form GST TRAN-1 due to technical glitches, were sent by the nodal officers to the GSTN based on the taxpayer's request /report filed before the jurisdictional officer by 30th April 2018. It was further informed that as per the Notification No. 48/2018-Central Tax issued on 10.09.2018, the taxpayer in respect of whom the recommendation had been made were entitled to extension of date for reopening of TRAN-1 till 31st March 2019. Thereafter, on 11.10.2018, the Petitioner once again wrote to Respondent No.2 requesting it to allow the Petitioner to file a revised Form GST TRAN-1 in light of the letter of the Respondent No.2 dated 20.09.2018. The petitioner also visited the office of Respondent No.2 and 3 numerous times in pursuance of the request made in the letters. However, till date the portal for filing Form GST TRAN-1 has not been opened in case of the Petitioner.

7. 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 ***Lease Plan India Private Limited vs Govt of Delhi***, **W.P. (C) 3309/2019**, decided on 13.09.2019 to submit that the Court has granted reliefs to several other parties who were in similar situation.

8. We have considered the submissions of the parties. Petitioner has placed a copy of the screenshot evidencing that he was unable to file Form GST TRAN-1 on the GST Portal. 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. 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 and petitioner is also entitled to similar relief. 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.

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*