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

Date of Decision: - 21.11.2019

\+ **W.P.(C) 2697/2018**

GILLETTE INDIA LIMITED & ANR. ..... Petitioners

Through: Mr. Tarun Gulati, Sr. Adv. with Mr.Shashi Mathews, Mr.Vasu Nigam and Mr. Ankit Sachdeva, Advs.

Versus

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

Through: Mr. Anurag Ahluwalia, CGSC with Mr.Abhgyan Siddhant, Adv. for R-1. Mr. Harpreet Singh, Sr. Standing counsel for R-2 to 5 with Ms. Suhani Mathur, Adv.

\+ **W.P.(C) 2698/2018**

PROCTER & GAMBLE HYGIENE & HEALTH CARE LIMITED & ANR. ..... Petitioners

Through: Mr. Tarun Gulati, Sr. Adv. with Mr.Shashi Mathews, Mr.Vasu Nigam and Mr. Ankit Sacdeva, Advs.

Versus

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

Through: Mr. Anurag Ahluwalia, CGSC with Mr.Abhgyan Siddhant, Adv. for R-1. Mr. Harpreet Singh, Sr. Standing Counsel for R-2 to 5 with Ms.Suhani Mathur, Adv.

\+ **W.P.(C) 2699/2018**

PROCTER & GAMBLE HOME PRODUCTS PRIVATE LIMITED & ANR. ..... Petitioners

Through: Mr. Tarun Gulati, Sr. Adv. with Mr.Shashi Mathews, Mr.Vasu Nigam and Mr. Ankit Sacdeva, Advs.

Versus

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

Through: Mr. Anurag Ahluwalia, CGSC with Mr.Abhgyan Siddhant, Adv. for R-1. Mr. Harpreet Singh, Sr. Standing Counsel for R-2 to 5 with Ms.Suhani Mathur, Adv.

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

SANJEEV NARULA, J. (Oral):

1. At the outset, it is pointed out that in the above noted petitions, Sanjeev Narula, J. appeared as Central Government Standing Counsel (CGSC) at the initial stage on 21.03.2018, 09.04.2018 and thereafter till 15.05.2018. However, the matters were not heard during that period. Learned counsel for the parties state that they have no objection if this Bench takes up these matters. Accordingly, we proceed and deal with the same.

2. The Petitioners' grievance in all the petitions is with respect to their inability to claim input tax credit on various eligible goods under Section 140 of the Central Goods and Service Tax Act, 2017 (hereinafter referred as "CGST Act") read with Rule 117 of the Central Goods and Services Tax

Rules, 2017 (hereinafter referred to as "CGST Rules"). Since the facts narrated in all the Petitions are similar and common grounds of challenge have been urged, it is considered appropriate to decide the same of by way of a common order. The factual matrix of WP(C) 2697/2018 is being averted to for the sake of convenience and disposal.

3. The petition [WP(C) 2697/2018] under Article 226 of the Constitution of India seeks the following reliefs:

> *"(a) issue an appropriate writ, order or direction holding and declaring that the Impugned Conditions under Rule120A of the CGST Rules are liable to be struck down as ultra vires the CGST Act insofar as it restricts the power of revision of GST TRAN-1;*
>
> *(b) issue an appropriate writ, order or direction in the nature of mandamus directing the Respondent No. 3, in exercise of its powers under Rule 120A of the CGST Rules, to exercise its discretion vested in Rule 120A to extend the time period for submitting the revised declaration under Form GST TRAN-1 so as to enable the Petitioners to claim input tax credit on goods held in stock at their sales depots in relation to which invoices / duty paying documents are not available and details whereof in Form GST TRAN-1 has not been filed till 27.12.2017;*
>
> *(c) issue an appropriate writ, order or direction in the nature of mandamus directing the Respondents to allow the Petitioners to claim input tax credit on goods held in stock at their sales depots in relation to which invoices / duty paying documents are not available and details of which were not included in the Form GST TRAN-1;*
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> *(d) issue an appropriate writ, order or direction in the nature of mandamus directing the Respondents to allow the Petitioners to file Form GST TRAN-2 to enable the Petitioner to claim input tax credit on goods held in stock at their sales depots in relation to which invoices / duty paying documents are not available;*

(e) Pass any orders as this Hon'ble Court may deem fit in the given facts and circumstances of the present case;"

The reliefs sought in WP(C) 2698/2018 and WP(C) 2699/2018 are identical to the aforenoted prayers.

4. During the hearing, learned Senior Counsel appearing in all the petitions, on instruction submits that if the respective petitioners are permitted to re-file their Form GST TRAN-1 & TRAN- 2, the Petitioners would drop the challenge to the statutory provisions and schemes and confine their relief to that extent. The said statement is taken on record.

5. The case of the Petitioners is that they are registered under the CGST Act. The Petitioners were entitled to claim input tax credit on various eligible goods under Section 140 of the CGST Act read with Rule 117 of the CGST Rules. 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 GST Council, it was extended up to 27.12.2017.

6. Learned counsel for the Petitioners submits that in the erstwhile regime Petitioners were registered as a manufacturer and not as a trader and therefore their depots were not required to be registered. They were under the impression that in case of goods held in stock at their sales depots, where the invoices/ duty paying documents were not available, they were required to submit a declaration under Form GST TRAN-2 to avail Input Tax Credit.

This understanding, according to the Petitioners, was based on the language used in Form GST TRAN-1 and TRAN-2 and the Frequently Asked Questions (FAQs) issued by the CBEC, including the description given at S. No. 4 in Form GST TRAN 2 which reads as*"Details of inputs held on stock on appointed date* ***in respect of which he is not in possession of any invoice/document*** *evidencing payment of tax carried forward to Electronic Credit ledger"*. Therefore, with regard to the goods held in stock as on 01.07.2017, where the invoices / duty paying documents were available, the Petitioners claimed input tax credit under Form GST TRAN-l filed on 20.09.2017. However, when Petitioners attempted to submit a declaration under form GST TRAN-2 after 27.12.2017 in order to avail input tax credit of eligible duties in respect of goods where the invoices / duty paying documents were not available, the online GST portal displayed two (2) errors with the descriptions, namely, "*You have not declared anything in part 7B of table 7(a) of TRAN-1, so you are not permitted to fill any details in table 4 of TRAN-2*" and "*You have not declared anything in table 7(d) of TRAN-1, so you are not permitted to fill any details in table 5 of TRAN-2*".

7. The Petitioners submitted a representation vide letters dated 23.01.2018 to CGST Assistant Commissioners across the country including Assistant Commissioner CGST Delhi, requesting for an extension of time period beyond what is prescribed for filing of revised GST TRAN-I and requesting that they be allowed to manually file a revised GST TRAN-l under Rule 120A of the CGST Rules for cases where invoices are not available.

8. Petitioners also rely upon on 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. Besides, the Petitioners also strongly rely 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.

9. Mr. Harpreet Singh, learned Senior Standing counsel for GST submits that since filing of form GST TRAN-2 is linked to filing of part 7B of table 7(a) of form GST TRAN-1, and the last date of filing of TRAN-1 is over, the petitioner cannot file form GST TRAN-2 and claim credit in respect of inputs for which duty paying documents were not available. Part 7B of table 7(b) specifically deals with situations where the registered person, other than a manufacturer or service provider, is not in possession of duty paying documents. Therefore, it is clear that this part applies to entities such as dealers, traders, depots etc and Petitioner should have exercised sue care and caution while submitting the declarations.

10. In the rejoinder, the Petitioners submit that though S. No. 7A provides space for details of input where duty paid invoices are available and S. No. 7B provides space for details of inputs where such invoices are not available, it is specifically mentioned in brackets that S. No. 7B is only applicable for persons other than manufacturers and service providers. Further, S. No.4 of Form GST TRAN-2 provides space for details of inputs held in stock on appointment date in respect of which he is not in possession

of any invoice/ document evidencing payment of tax carried forward to Electronic Credit Ledger. In the said S. No.4 (unlike S. No. 7B of Form GST TRAN-1), there is no restriction specified as to with respect to whom the entry is applicable.

11. On 21.03.2018, this court directed the respondents to allow the petitioners to submit the particulars along with TRAN-2 application, either manually or through a separate enabling annexure for future use. The said order reads as under:

> *"Issue notice. Mr. Sanjeev Narula, CGSC and Mr. Harpreet Singh, Sr. Standing Counsel accept notice on behalf of respondent Nos. 1 and 2 to 4, respectively.*
>
> *The petitioners' collective grievance is that the entitlement conferred by the combined effect of Rule 117(4)(a)(ii) of the Central Goods and Services Tax Rules, 2017 enabling them to claim 60% input tax credit, in respect of the goods, as dealers (having regard to the circumstances that there was no requirement under the Central Excise provisions previously) has been, in effect, negated and nullified on the part of the Revenue. They highlight that part 7B in TRAN-1 especially excludes its application to them whereas, TRAN2, when applied, was not accepted.*
>
> *Having regard to the materials on record, the Court hereby directs that the applicants may be allowed to furnish the particulars which shall be taken on the record, along with TRAN-2 application, either manually or through a separate enabling annexure for future use, if required.*
>
> *List on 9th April, 2018.*
>
> *Order dasti."*

12. We have given due consideration to the submissions advanced by the learned counsels. The facility of revision of form GST TRAN-1 was provided by insertion of Rule 120A in the CGST Rules, 2017 vide notification No. 34/2017-Central Tax dated 15.09.2017. Rule 120A of the CGST Rules makes it clear that the revision of declaration in form GST TRAN-1 can only be made once, which was to be exercised within the period stipulated for submitting the original declaration in form GST TRAN-1. The last date for revision of form GST TRAN-1 had also been extended from time to time, as noted above. Finally, vide order No. 10/2017-GST dated 15.11.2017, Respondent No.3 exercised its power under Rule 117 and Rule 120A of CGST Rules to extend the time to submit the original declaration as well as the revised declaration in form GST TRAN-1 till 27.12.2017. This effectively made the provision for revision ineffective and redundant. Any error/omission that could have been noticed by the tax payers after the filing of form GST TRAN-1, could not be revised, since the last date of filing of revised declaration coincided with the last date of filing of original declaration. In order to give a meaningful interpretation to Rule 120A, a provision incorporated to enable the registered persons to revise the declaration, it was necessary that the last date for allowing revision should have been stipulated beyond the last date prescribed for filing the original form. The very purpose of the provision introduced to enable correction of errors, would be defeated if there is no time left for detection of errors in the original filing. Having regard to the aforesaid facts, we are of the view that the Respondents ought to have provided a date for revision of Form GST

TRAN-1 beyond the date of filing of the original form. Petitioners deserve to be given the benefit of this error on the part of the Respondents.

13. Now let us also examine the contention of the Petitioners qua the confusion created by the language of the two forms. The relevant clause of the Form GST TRAN-1 reads as under:

7. Details of the inputs held in stock in terms of sections 140(3), 140(4)(b), 140(5) and 140(6).

(a) Amount of duties and taxes on inputs claimed as credit excluding the credit claimed under Table 5(a) (under sections 140(3), 140(4)(b), 140(6) and 140(7))

Sr. no.	Details of inputs held in stock or inputs contained in semi-finished or finished goods held in stock				
	HSN as applicable	Unit	Qty.	Value	Eligible Duties paid on such inputs
1	2	3	4	5	6
7A Where duty paid invoices (including Credit Transfer Document (CTD)) are available					
Inputs					
Inputs contained in semi-finished and finished goods					
7B Where duty paid invoices are not available (Applicable only for person other than manufacturer or service provider) – Credit in terms of Rule 117 (4)					
Inputs					

Form GST TRAN-2 at serial No. 4 clearly specified "*Details of inputs held on stock on appointed date in respect of which he is not in possession of any invoice/document evidencing payment of tax carried forward to the Electronic Credit Ledger*". The relevant clause of the Form is reproduced under:

4. Details of inputs held on stock on appointed date in respect of which he is not in possession of any invoice/document evidencing payment of tax carried forward to Electronic Credit ledger.

Opening stock for the tax period			Outward supply made					Closing balance
HSN as applicable	Unit	Qty.	Qty	Value	Central Tax	Integrated Tax	ITC allowed	Qty
1	2	3	4	5	6	7	8	9

5. Credit of State Tax on the stock mentioned in 4 above *(To be there only in States having VAT at single point)*

Opening stock for the tax period			Outward supply made					Closing balance
HSN as applicable	Unit	Qty.	Qty	Value	State Tax	Integrated tax	ITC allowed	Qty
1	2	3	4	5	6	7	8	9

14. Since the Petitioners did not fill column 7B in Form GST TRAN-1, they have not been allowed to fill in Form GST TRAN-2. On a reading of Form GST TRAN-1, it cannot be ruled out that the Petitioners were conceivably misled that column 7B was not to be filled by them and that they were required to give in the details in Form GST TRAN-2. In the erstwhile regime, the Petitioners were registered as manufacturer and not as a trader and their depots were not required to be registered. Petitioners declared only those goods for which the invoices/duty paying documents were readily available. This was perhaps for the reason that Petitioners were under the impression that as per Form GST TRAN-1, column 7B was made applicable only for persons other than manufacturer or service provider. For this reason, Petitioners, as manufacturers, made an attempt to submit a declaration subsequently under Form GST TRAN-2, to take the input tax credit on goods that were held in stock at their sales depots for which the invoices/duty paying documents were not available. However, having not entered the requisite details in Form GST TRAN-1 by 27.12.2017, the Petitioners were unable to make the declaration under form GST TRAN-2 in

order to avail input tax credit of eligible duties.

15. We, find merit in the submission advanced by Mr. Tarun Gulati, that the Petitioners remained under the confusion created by the misleading language in Form GST TRAN-1 & TRAN-2. We have to be mindful of the fact that the introduction of GST has revamped the entire taxation regime in the country. GST seeks to consolidate multiple taxes into one. GST legislations have incorporated transitional provisions to ensure that the transition to the GST regime is smooth and that the input tax credit/ benefits earned in the erstwhile taxation regime are not lost. Input tax credit is a property within the meaning of Article 300A of the Constitution of India. The taxpayers could not be deprived of the same, without authority of law. In terms of the transitional provisions, there was ambiguity and confusion amongst taxpayers. This was accentuated with technical glitches, which resulted in several tax payers not being able to file the requisite Form GST TRAN-1 within time. This was the precise reason the last date was extended from time to time. However, despite extension, several tax payers could not meet the extended deadline. This Court has, in a series of cases, allowed the petitions filed by such tax payers who could not file form GST TRAN-1 and were unable to take benefit of the transitional provisions with regard to the unutilized tax credit that they were not able to carry forward from the earlier regime to the present GST regime. We have given relief to Petitioners taking into consideration human errors and the mistakes made by them either in filing up of the form GST TRAN-1 or for not having been able to file the same within the stipulated deadline on account of the technical glitches faced on the portal or for such similar reasons, where credit was

irretrievable.

16. In ***M/s Blue Bird Pure Pvt. Ltd*** (supra) also, the court accepted the error in filling up of the requisite information to be inadvertent and directed the Respondents to either open the online portal or to enable the petitioner to file the rectified Form GST TRAN-1 electronically or accept the same manually. The relevant portion of the said judgment is extracted 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".*
>
> *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."

17. The said decision has also been followed by us 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.

18. The factual position in the present case is not any different and thus, we

allow all petitions and direct the respondents to either open the online portal so as to enable the respective petitioners to file the Form TRAN-1 and TRAN-2 electronically, or to accept the same manually on or before 06.01.2020, if not already, filed pursuant to the interim order dated 01.05.2019.

19. Respondents shall proceed to process petitioners' claim in accordance with law once the Form GST TRAN–1 and TRAN-2 are filed. The petitions are allowed in the aforesaid terms.

SANJEEV NARULA, J

VIPIN SANGHI, J

NOVEMBER 21, 2019
Pallavi/nk