$~42

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

\+ **W.P.(C) 13772/2018**

UNINAV DEVELOPERS PVT LTD. ..... Petitioner

Through: Mr. Vineet Bhatia and Mr. Puneet Rai, Advocates

versus

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

Through: Mr. Jasmeet Singh, CGSC with Mr. Srivats Kaushal, Advocate for UOI
Mr. Amit Bansal and Mr. Aman Rewaria, Advocates for R-3
Mr. Shadan Farasat, Assessee, GNCTD with Ms. Hafsa Khan, Advocate for R-4

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

<u>O R D E R</u>

% **29.07.2019**

<u>CM APPL. 53809/2018 (Exemption)</u>

1. Allowed, subject to all just exceptions.

<u>W.P.(C) 13772/2018</u>

2. This is one other case, where on account of technical glitches, a registered dealer is unable to claim CENVAT Credit which works out to Rs.36,28,099/- in Form TRAN–1.

3. The Respondents have in their counter affidavit stated that by circular

dated 3rd April, 2018 issued by the Central Board of Indirect Taxes and Customs (CBIC), an IT Grievance Redressal Committee (ITGRC) had been formed to address the grievance of tax payers due to the technical glitches of GST Portal. It is stated that the Petitioner's case was placed before the ITGRC on 12th February, 2019. The ITGRC concluded that the present case falls under the category of B2 i.e. 'Cases in which TRAN-1 filing attempted for the first time or revision was attempted but no error/no valid error reported'. Mr. Amit Bansal, learned counsel appearing for the Respondents points out that in several of the cases, where there was evidence of a failure of a system, re-filing was permitted but in as many as 127 cases, in the absence of such evidence, re-filing was not allowed.

4. Learned counsel for the Petitioner points out that in the present case, the eligibility of the Petitioner to claim the CENVAT Credit has not been doubted by the Respondents. He points out that this was a service tax refund which was appearing in the Petitioner's returns even for the earlier period i.e. prior to the coming into force of the new GST Regime with effect from 1st July, 2017. All that had to be done was to carry forward the said CENVAT Credit under the new GST regime. However, for no fault of the Petitioner, despite repeated attempts, it could not file the form GST TRAN–1 claiming the tax credit. Learned counsel for the Petitioner points out that Respondents will get a report of technical error, only if the person trying to upload TRAN-1 comes in contact with the system, whereas in the present case, the Petitioner was unable to connect to the portal to submit the return in the first place. The portal reflected the message: 'error occurred in submit'.

5. As pointed out in earlier orders of this Court, there appear to be technical errors or technical glitches of various kinds in the GST system, which is still in the 'trial and error' phase. There is merit in the contention of the Petitioner that in its case, if it was not able to even connect with the server, then at the end of the Respondents, the fact of a failed attempt at filing a return may not even be registered on the system. Added to this is the fact that the Petitioner's eligibility to claim CENVAT Credit in the sum of Rs.36,28,099/- has not been disputed by the Respondents in their reply.

6. As observed by this Court in several orders i.e. in ***Bhargava Motors v. Union of India 2019 SCC OnLine Del 8474***, ***Kusum Enterprises Pvt. Ltd. v. Union of India*** [WP(C) 7423/2019] and ***Sanko Gosei Technology India Pvt. Ltd. v. Union of India & Ors. [WP(C) 7335/2019]***, the entire GST system is still in a trial and error phase and it will be too much of a burden to place on the Assessees to expect them to comply with the requirement of the law where they are unable to even connect with the system on account of network failures or other failures.

7. The Court would urge the ITGRC to review the policy it has adopted in such cases, and acknowledge instances like the present one, where the Petitioners are not able to link with the Portal and therefore, the fact of a technical glitch is not able to be accounted for in the system.

8. The Court therefore, directs that the Respondents to either open the Portal to enable the Petitioner to again file the TRAN- 1 Form electronically,

failing which they will accept the manually typed TRAN – 1 Form on or before 31st August, 2019. The Petitioner's claim shall thereafter be processed in accordance with law.

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

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 29, 2019
PB