NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (T) No. 70 of 2019

M/s Dhamtari Krishi Kendra Infront of old Krishi Upaj Mandi, Dhamtari (A Proprietorship Firm) Through Sole Proprietor Mr. Amit Rathi, S/o Shri Laxmi Narayan Rathi, Aged About 39 Years, (UID - 7591 4757 3005), R/o 35, Matri Vihar Colony, Dhamtari, Tahsil and District - Dhamtari Chhattisgarh.

---Petitioner(s)

Versus

1. Union of India Through Its Secretary, Finance, Department of Revenue, Room No. 46, North Block, New Delhi – 110001.
2. Goods and Service Tax Council Through Its Chairman / Secretary, Office of the GST Council Secretariat, 5th Floor Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi - 110001.
3. State of Chhattisgarh Through Its Secretary, Finance, Central Secretariat, Naya Raipur Chhattisgarh.
4. Principal Commissioner, Central Excise Customs and Service Tax (Central GST and Central Excise), Central Excise Building Tikrapara, Dhamtari Road, Raipur Chhattisgarh.
5. Commissioner, Commercial Tax Behind Rajbhawan, Civil Lines, Raipur Chhattisgarh.
6. GST Officer Dhamtari Commercial Tax/ GST Office, Dhamtari, Tahsil and District Dhamtari Chhattisgarh.

---Respondents

For Petitioner	:	Shri Rajkamal Singh, Advocate.
For Respondent 1&2		Shri Himanshu Pandey on behalf of Shri B. Gopa Kumar, Asst. Solicitor General.
For State	:	Shri Sidharth Dubey, Dy. Govt. Advocate.
For Respondent 4	:	Shri Maneesh Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17.07.2020

1. The present is a second round of litigation. The grievance of the petitioner is in respect of his unable to upload GST TRAN-1 and TRAN-2 returns on the GST web portal by the last date prescribed i.e. 27.12.2017.

2. According to the petitioner, after the new tax regime i.e. the GST law came into force, the last date for submission of GST Tran-1 and Tran-2 returns was extended by the government up till 27.12.2017. The petitioner tried to submit returns, however, because of the technical glitch faced by the

petitioner it could not be submitted. The petitioner immediately reported this matter to the authorities in the department on 26.12.2017 itself. The petitioner has filed a document Annexure P/7 dated 26.12.2017 in this regard and the said document also bears the seal and signature of the Commercial Tax Department having received the same.

3. Further, the counsel for the petitioner also submitted that the petitioner had tried to submit TRAN-1 and TRAN-2 returns manually on 18.01.2018 by approaching the GST Officers in the GST office at District Dhamtari. On the same day the petitioner also has sent the GST TRAN-1 form by post to the department. The receipt of registered post sent also is enclosed along with the present writ petition, which too was not accepted by the department which led to the petitioner filing a writ petition in the High Court on 26.02.2018 which was registered as WPT No.68 of 2018 which came up for hearing before this Court on 14.05.2018 and considering all the aforesaid aspects submitted by the petitioner, the High Court disposed of the writ petition directing the petitioner to approach the Nodal Officer at Dhamtari within 4 days by filing a detailed representation with all necessary records and documents and the authority, in turn, were directed to consider and dispose of the same in terms of the circular dated 03.04.2018. It was also pointed out by this Court that the authorities while deciding the claim shall bear in mind that the writ petition is pending before the High Court since 26.02.2018.

4. Pursuant to which the petitioner filed his representation before the concerned authorities as directed by this court. The authority i.e. the Commissioner, State Commercial Tax, in turn, took a decision on 14.09.2018 (Annexure P/3) and has refused grant of permission to the petitioner to submit TRAN-1 and TRAN-2. The rejection has been categorically on the ground of the petitioner failing to produce any material/evidence to show that he had tried to submit the TRAN-1 and TRAN-2 within the stipulated period, the petitioner faced technical glitch. In Annexure P/3 there is no reference whatsoever by the Commissioner in respect of Annexure P/7 dated 26.02.2017 submitted by the petitioner in respect of his complaint regarding the technical glitch that was faced by him. There is also no reference of the attempt made by the petitioner to submit TRAN-1 form manually as well as having sent it by post through registered AD. In the light of the document Annexure P/7, so also the documents by which the petitioner claims to have submitted TRAN-1 manually on 18.01.2018, the finding of the Commissioner in Annexure P/3 dated 14.09.2018 prima facie seems to be incorrect. This refusal of granting permission to submit TRAN-1 form on 14.09.2018 has led to the filing of the present writ petition.

5. The counsel for the petitioner submits that the finding given by the Commissioner is totally erroneous as also perverse as it is without proper verification of the factual matrix from the records. The petitioner referred to a judgment passed by the **Madurai Bench of the Madras High Court in case of Tara Exports Vs. Union of India, decided on 10.09.2018**, wherein the Division Bench of the Madurai Bench under similar circumstances had granted permission to the petitioner to submit TRAN-1. The respondents therein were directed to open the portal so that the petitioner could file the TRAN-1 electronically or in alternative it was directed to accept the manually filled TRAN-1 and allow input credits.

6. Likewise, the counsel for the petitioner also referred to a judgment of the **Division Bench of Punjab & Haryana High Court deciding a bunch of about more than 100 writ petitions decided on 04.11.2019,** the lead case being **Adfert Technologies Pvt. Ltd. Vs. Union of India & Others**. In all these cases also the petitioners, for one reason or the other could not load the prescribed from electronically or they were facing some technical glitch in submitting the forms electronically and the High Court of Punjab & Haryana considering all the submissions made by the petitioners, so also by the counsel for the respondents, vide order dated 04.11.2019 allowed the writ petitions permitting them to submit TRAN-1 form.

7. Taking into consideration the aforesaid two judgments of the Madras High Court as well as the Punjab & Haryana High Court, this court is of the opinion that the respondent State authorities on the matter being referred to it by the High Court in the earlier round of litigation in WPT No.68 of 2018 should have considered the contentions of the petitioner raised by him in the said writ petition wherein itself he had categorically submitted that he has faced certain technical glitches while submitting TRAN-1 forms and the report in this regard was lodged on 26.12.2017and he has lodged complaint in this regard to the authorities well before the last date. In addition, he has also manually submitted the same on 18.01.2018 and had also sent it by registered post on the same day. All these aspects have not been considered or decided by the Commissioner in his order dated 14.09.2018 in the absence of any reasons and discussion by the Commissioner to the contentions and submissions of the petitioner, this court is of the view that the said order dated 14.09.2018 needs to be reconsidered.

8. Accordingly, this court remits the matter back to the Commissioner, Commercial Tax for a reconsideration and for passing of a fresh order.

9. While remitting the matter, this court would like to bring to the notice of the Commissioner that he should keep in mind that the petitioner has produced certain documents of his being unable to submit his TRAN-1 form electronically; the complaint of which was submitted in the department; a document is there which shows the receipt of the complaint by the department before the last date i.e. 27.12.2017. In addition, there is also a document which shows that he had manually submitted it and had also sent it by registered post to the department within a period of less than three weeks from the last date of 27.12.2017.

10. Under the GST Law, Section 117(1)A, the GST Council has been empowered to extend the date for submission of the declaration electronically in Form GST TRAN-1 in respect of those persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension. If required, the Commissioner can refer the matter to the GST Council with its report for taking appropriate sanction/recommendations from the GST Council.

11. Keeping in view the fact that the petitioner had timely intimated the department in respect of the technical glitch, in addition he had also promptly submitted his forms manually as well as had sent it by registered post; he had also approached the High Court immediately in the year 2018 itself which was refused by the Commissioner on 14.09.2018 thereafter again the petitioner has filed this present writ petition also immediately, thus, the petitioner has been promptly pursuing his claim all along thereafter on the basis of the recommendation, ireferred by the Commissioner to the GST council, appropriate decision may be taken at the earliest.

12. Considering the element of time which has consumed in the course of litigation, it is expected that the Commissioner, Commercial Tax shall take a decision at the earliest preferably within an outer limit of 60 days from the date of receipt of copy of this order.

13. In the event, if the Commissioner, Commercial Tax makes a reference to the GST Council, it is expected that the Council also, in turn, takes an early decision on the reference made by the Commissioner preferably within a period of 90 days from the date of receipt of reference by the Commissioner.

Sd/-
(P. Sam Koshy)
Judge

inder