

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.35714 of 2019 and

WMP.No.36635 of 2019

M/s.Samrajyaa and Company,
43 (Old No.62), Balasundaram Road,
Coimbatore - 641 018.

Represented by its Partner,
N.Ranganayaki

.. Petitioner

Vs.

The Deputy Commissioner of GST & Central Excise,
Office of the Principal Commissioner of GST & Central Excise,
6/7, ATD Street, Race Course,
Coimbatore- 641 018.

.. Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the Respondent bearing C.No.IV/16/08/2018 GST Pol. Part-IV dated 19.09.2019 passed by the Respondent, quash the same and direct the Respondent to permit the Petitioner to file Form GST Tran-1, either electronically or manually, to claim the transitional input tax credit.

For Petitioner : Mr.J.Shankarraman

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The petitioner has approached this Court assailing an order of the respondent dated 19.09.2019 conveying to him the decision of the IT Grievances Redressal Committee not to permit it to file a Tran-1 in the absence of any evidence of technical/system error. However before me, learned counsel for the petitioner would maintain the statement in affidavit to the effect that there were glitches in the GSTN portal and petitioner was thus unable to file/upload GST Tran-1. Admittedly, and as required, the petitioner has not taken screen shots of the alleged glitches as evidence of the same.

2. Though the time limit for uploading of Tran-1 has been extended till 31.12.2019, sub rule 1A of Rule 117 extends this benefit only to those registered persons who could not upload the form in time on account of technical difficulties on the common portal and in respect of whom, the GST Council forwards a recommendation for extension. In this case, the request of the petitioner has been rejected by the respondent and hence the benefit of such extension is unavailable. In my view, the request of the petitioner before the authorities coupled with the averments in affidavit to the effect that it faced technical glitches are itself sufficient to establish this position. One cannot lose sight of the difficulties faced by assessee in transitioning into the new medium/procedure set out under the GST regime as this is common and public knowledge.

3. A Division Bench of the Gujarat High Court in Siddarth Enterprises vs. Nodal Officer has considered the question as to whether a claim for transition of credit is only a procedural requirement or a mandatory one. After an exhaustive discussion of the matter, the prayer of the petitioner therein was acceded to, the Bench holding as follows:

'42. Article 300A provides that no person shall be deprived of property saved by authority of law. While right to the property is no longer a fundamental right but it is still a constitutional right. Cenvat credit earned under the erstwhile Central Excise Law is the property of the writ-applicants and it cannot be appropriated for merely failing to file a declaration in the absence of Law in this respect. It could have been appropriated by the government by providing for the same in the CGST Act but it cannot be taken away by virtue of merely framing Rules in this regard.'

The respondents were directed to permit the petitioner to file the Declaration in Form Tran-1 so as to enable them to claim transitional credit of eligible duties as prayed for. The same view has been taken by both the Punjab and Haryana High Court in Adfert Technologies Pvt. Ltd. vs. Union of India & Ors. in CWP.No.30949 of 2018 (O&M) and the Division Bench of the Delhi High Court in WP(C).No.8970 of 2019 in The Tyre Plaza vs. Union of India.

4. A learned Single Judge of this Court in the case of Tara Exports vs. Union of India has, considering certain special circumstances put forth by the petitioner/assessee therein, also directed the respondent to open the portal and permit filing/uploading of the Declaration/Form.

5.All in all, what appears clear to me is this: (i) the era of GST is in a nascent stage and both the Department as well as assesseees are still learning the ropes (ii) a rigid view should thus not be taken in matters involving procedural requirements such as availment of credit; (iii) it is common knowledge that assesseees pan India are facing difficulties in accessing the system and uploading Forms to seek transition of credit, and (iv) three Division Benches have taken the view that the time lines set out for transition of credit cannot be very firmly enforced in so far as they are not mandatory.

6.Taking into account the aforesaid, I am of the view that the petitioner in this case, without it being a precedent in other cases, should be permitted to upload Tran-1 declaration and avail of transition of credit.

7.This is also for the reason that the availment of credit by an assessee is distinct from utilization of the same, the latter being a matter of assessment.

8.This writ petition is disposed directing the respondent to permit the petitioner to access the portal for uploading of Tran-I, forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

vs

To

The Deputy Commissioner of GST & Central Excise,
Office of the Principal Commissioner of GST & Central Excise,
6/7, ATD Street, Race Course, Coimbatore- 641 018.

+1cc to Mr.A.P.Srinivas, Advocate, SR.No.4628.

+1cc to Mr.J.Shankarraman, Advocate, SR.No.3863.

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MR(CO)

CSR: 10.03.2020