



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.10.2021
PRONOUNCED ON : 18.11.2021

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THE HONOURABLE TMT.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.NO.2203 OF 2021
AGAINST
W.P.NO.2937 OF 2019
AND
C.M.P.NO.13948 OF 2021

1. Commissioner of GST and Central Excise,
Chennai South Commissionerate,
Newry Towers, Anna Salai,
Chennai-600 040.
2. Assistant Commissioner of GST and Central Excise,
Porur Range V, Chennai South Commissionerate,
Newry Towers, Anna Salai,
Chennai-600 040.
3. Central Board of Excise and Customs,
Department of Revenue, Ministry of Finance,
Government of India, New Delhi-110 001.
4. Principal Commissioner,
Chennai North Commissionerate,
151, Nungambakkam High Road,
Chennai-600 034.

...Appellants/Respondents

Vs.

M/s.Bharat Electronics Limited,
Rep.by its General Manager,
Nandambakkam, Chennai-600 089.

... Respondent/Petitioner

PRAYER: This Writ Appeal is filed under Clause 15 of the Letters Patent to allow the above writ appeal by setting aside the impugned order dated 21.06.2021 passed in W.P.No.2937 of 2019.

Prayer in W.P.No.2937 of 2019:

Writ Petition filed under Article 226 of the Constitution of India, praying to Writ of Certiorari/Mandamus calling for the



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letter in O.C.No.62 of 2018 dated 09.08.2018 issued by the 2nd respondent and quash the same and further direct the 2nd respondent to allow the credit amounting to Rs.14,97,28,201/-.

For Appellants : Mr.V.Sundareswaran,
Standing Counsel

For Respondent : Mr.G.Shivadas
Senior Counsel
Ms.P.Jayalakshmi

JUDGMENT

MOHAMMED SHAFFIQ, J.

1. The petitioner/respondent herein aggrieved by the action of the Revenue / appellant herein in not permitting them to revise the Form TRAN-1 resulting in deprivation of the Input Tax Credit filed a Writ Petition in W.P.No.2937 of 2019.

2. This Hon'ble Court on hearing the above matter was pleased to direct the respondent/appellant herein to enable the petitioner/respondent herein to file a revised Form TRAN-1, by opening of the portal and that such exercise was to be completed within a period of 8 weeks from the date of issue of the impugned order. The Revenue, aggrieved by the above order of the Learned Single Judge has preferred this intra Court appeal.

3. The respondent had lodged a claim for Input Tax / CENVAT Credit by filing form TRAN-1, admittedly, within time and disclosed a credit of Rs.14,97,28,201/- as Balance Credit in Column 5(a) of form TRAN-1, while showing a sum of Rs.80,98,936/- in Column 6 of form TRAN-I, though the respondent ought to have disclosed the sum of Rs.14,97,28,201/- in Column 6 of form TRAN-1 as well, on an erroneous / mis-construction as to the purpose of the said column in form TRAN-1.

4. It is relevant to note that Input Tax / CENVAT Credit was available under the existing / prior indirect Tax laws such as VAT, Entry tax and Central Excise and Service Tax, both the State and Union intended to provide a mechanism for transition of credit that was legitimately earned and remained unutilised under various fiscal laws existing at the time of introduction of GST. With this avowed objective, the GST law permitted the registered / taxable persons under GST law to transition the credit that was earned and lying to the credit of such registered / Taxable person under the existing / prior laws to GST.



5. It may be relevant to note the Statement of Objects and
 ons with respect to Goods and Service Tax (GST):

"The Constitution is proposed to be amended to introduce the goods and services tax for conferring concurrent taxing powers on the Union as well as the States including Union territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both. The goods and services tax shall replace a number of indirect taxes being levied by the Union and the State Governments and is intended to remove cascading effect of taxes and provide for a common national market for goods and services. The proposed Central and State goods and services tax will be levied on all transactions involving supply of goods and services, except those which are kept out of the purview of the goods and services tax." (Emphasis supplied)

6. Section 140 of the GST Act provided for the transitional arrangement for Input Tax Credit while also imposing certain limitations / exclusion in respect of certain class of credit under the proviso to sub-section(1) of Sec 140 of CGST Act, 2017. Sec 140 of the CGST Act, 2017 also provided that the transition of credit may be made in accordance with the manner prescribed. Rule 117 of the CGST Act, 2017 prescribed the method and the manner for availing input tax credit. The relevant portions of the said rule reads as under:

"117.Tax or Duty Credit Carried Forward under any Existing Law or on Goods Held in Stock on the Appointed Day (Chapter-XIV: Transitional Provisions)

(1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in Form GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit to which he is entitled under the provisions of the said section:

Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days.

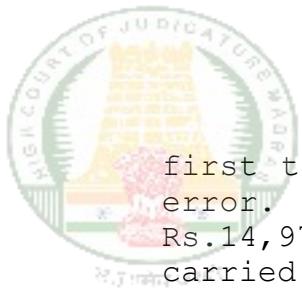
Provided further that where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004.



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the Electronic Credit Ledger, enquiries were made with the department by the respondent. On such enquiry, it was informed by the department that the amount of Rs.14,97,98,201/-, would not be transitioned in view of the mistake in not reflecting the correct amount in Column 6 of Form TRAN-1.

9. It is submitted by the appellant that Rule 120A of the CGST Act 2017, does not enable an assessee / taxable person to rectify more than once and the respondent / assessee having already carried out a rectification, it is impermissible for the respondent / assessee to carry out one more correction, more so, when such attempt to correction is made after the expiry of the extended time limit on 27.12.2017. In this regard, reliance was sought to be placed on the judgment of the Hon'ble Supreme Court in the case of ALD Automotive Private Limited v. Commercial Tax Officer, (2019) 13 SCC 225 (ALD Automotive) and the decision of the Division Bench of the Hon'ble High Court of Bombay in the case of Nelco Limited v. Union of India [2020 SCC Online Bom 437] (Nelco), to support their contention, that Input Tax Credit is in the nature of the concession and any conditions attached thereto ought to be strictly construed including limitation, if any, prescribed for claiming such credit. There are no two views with regard to the above proposition. However, in the present case, admittedly, Form TRAN-1 has been filed by the respondent/assessee within the period prescribed and thus the above judgment holding the time limits are mandatory to lodge a claim may not advance the case of the Revenue / appellant. Reliance was placed on the decision of the Hon'ble High Court of Allahabad in the case of M/s.Ingersoll-Rand Technologies & Services Pvt.Ltd. Vs. Union of India & 3 others reported in 2019-TIOL-2740-HC-ALL-GST to submit that similar issue has been decided by the Allahabad High Court wherein it has been held that revision of Form TRAN-1 declaration cannot be permitted more than once. There appears to be distinction between the kind of rectification which was sought for by the assessee / petitioner before the Allahabad High Court in the matter of M/s.Ingersoll-Rand Technologies & Services Pvt.Ltd. Vs. Union of India & 3 others and in the case on hand inasmuch as the assessee before the Allahabad High Court was claiming transition of higher amount of credit for the first time after the expiry of the period prescribed through their rectification of form TRAN-1. However, in the present case, the respondent had filed form TRAN-1 declaring that the Balance Cenvat Credit is to the extent of Rs.14,97,28,201/- and only in Column 6 of form TRAN-1 due to an inadvertent mistake on a mis-construction of the purpose of Column 6 of form TRAN-1, the respondent has shown a different figure viz., Rs.80,98,936/-. The decision of the Allahabad High Court turned on the facts that claim to transition to certain Input Tax Credit was being made for the



first time, while in the present case, there is only a clerical error. Form TRAN-1 reflects the entire figure of Rs.14,97,28,201/-, however, inadvertently the same has not been carried over in column 6 of Form TRAN-1 due to a misinterpretation or misunderstanding of the purpose of the said column of Form TRAN-1. Thus, the decision of the Allahabad High may not apply to the facts of the present case.

10. We concur with the order of the learned Single Judge directing the respondent to enable filing of revised Form TRAN-1 by the respondent by opening the portal for the following reasons:-

(a) It is admitted that the respondent had filed their Form TRAN-1 in time and had also shown the correct amount in Column 5 (b) of form TRAN-1. The only error is that in Column 6 of Form TRAN-1, the respondent had erroneously shown a sum of Rs.80,98,936/- instead of Rs.14,97,28,201/-.

(b) The respondent / assessee have complied with the requirement of filing Form TRAN-1 within time, to transition credit of Rs.14,97,28,201/- stated to be legitimately earned under the erstwhile regime. Thus, there is substantial compliance with the requirements of Section 140 of the GST Act which provides for transition of credit under the erstwhile regime to GST. In this regard, it may be useful to refer to the decision of the Constitutional Bench of the Hon'ble Supreme Court in the case Commissioner of Customs vs. Dilipkumar and Co. (2018) 9 SCC 1: 2018 SCC Online SC 747, wherein the "Doctrine of Substantial compliance was held to be applicable even while considering a claim of exemption, thus, the above doctrine would afortiori apply to a claim of Input Tax Credit. The relevant portion of the judgment is extracted under :-

"51.The Constitution Bench then considered the doctrine of substantial compliance and "intended use". The relevant portions of the observations in Paras 31 to 34 are in the following terms : (Hari Chand case [CCE vs. Hari Chand Shri Gopal, (2011) 1 SCC 236], SCC pp.247-48)

"31. Of course, some of the provisions of an exemption notification may be directory in nature and some are of mandatory in nature. A distinction between provisions of statute which are of substantive character and were built in with certain specific objectives of policy, on the one hand, and those which are merely procedural and technical in their nature, on the other, must be kept clearly distinguished..... Doctrine of substantial compliance and 'intended use':



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32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequential aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.

33. A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either



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unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.

34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance of those factors which are considered as essential."

(c) The submission of the appellant that the inadvertent mistake in filling in the wrong figures in Column 6 of Form TRAN-1 would prove fatal to the respondent's claim of ITC, even if they are otherwise entitled to, appears to be an objection which is technical and more importantly, could frustrate the very objective of extending the benefit of transition of Input Tax Credit from the erstwhile regime of GST. In this regard, it may be relevant to refer to the decision of the Division Bench of the High Court of Bombay in the case of Heritage Lifestyles and Developers Private Limited vs. Union of India reported in 2020 SCC 43 GSTL 33 : (2021) 1 Bom CR 345: (2021) 86 GSTR 321, wherein after finding that the respondent could not file the Form TRAN-1 by 27.12.2017 due to lack of awareness of the procedures, technical glitches, GST being new and a complex system to operate and after recording that the denial was only in view of the fact that the taxpayer has neither tried for saving/submitting or filing form TRAN-1, had proceeded to hold that undue emphasis on technicality is unwarranted and extended the benefit to the assessee / petitioner therein. While doing so, reliance was placed on the decision of the Supreme Court in the case of Mangalore Chemicals and Fertilizers Ltd., vs. Deputy Commissioner [(1991) 55 ELT 437 (SC)] and proceeded to hold as under:-

"23. In this context, we would like to refer to the Supreme Court decision in the case of Mangalore



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Chemicals and Fertilizers Ltd. Vs. Deputy Commissioner (Supra). That was a case where there was no dispute that the appellant was entitled to the benefit of an exemption under notification dated 30.06.1969 nor there was a dispute that the refunds were eligible to the adjusted against sales tax payable for respective years, but the only controversy was whether the appellant not having actually secured "prior permission" would be entitled to adjustment having regard to the words of notification of 11 th August 1975, that until permission of renewal is granted by the Deputy Commissioner of Commercial Taxes, the new industry should not be allowed to adjust the refunds. Hon'ble Supreme Court aptly summarized the contention as under :-

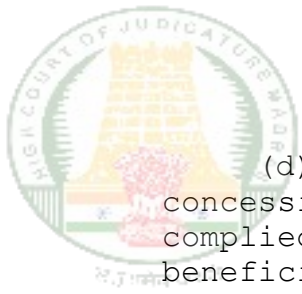
"The contention virtually means this : "No doubt you were eligible and entitled to make the adjustments. There was also no impediment in law to grant you such permission. But see language of Clause 5. Since we did not give you the permission you cannot be permitted to adjust" Is this the effect of the law?"

24. After considering the arguments of the counsel and after considering its own decisions in various cases including the decision in the case of Kedarnath Jute Manufacturing Co. V/s. Commissioner of Income Tax, Supreme Court allowed the appeal while quoting Lord Denning [in the case of Wells Vs. Minister of Housing and Local Government: 1967 (1) WLR 1000] as under :

"Now I know that a Public Authority cannot be stopped from doing its public duty, but I do think it can be stopped from relying upon a technicality and this is a technicality".

It may also be relevant to quote Francis Bennion in his "Statutory Interpretation", 1984 edition at page 683 which reads as under:

"Unnecessary technicality : Modern Courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfillment of the purposes of the legislation."



(d) While there is no doubt that Input tax credit is a concession, and conditions attached thereto ought to be strictly complied, it is equally true that the Input Tax Credit is a beneficial scheme which is framed in larger public interest to bring down the cascading effect of multiple taxes / multi-point taxes. One cannot lose sight of the larger objective behind the Input Tax Scheme. Keeping the above objective in mind and also the fact that GST was a new law and there were a number of initial hiccups which was taken cognizance of, by the Legislature and Executive and remedial actions were duly taken, including extending timelines for statutory compliance to ameliorate the difficulties faced by the trade, thus, denial to transition of credit for a clerical mistake may not be warranted.

11. It may also be relevant to refer to the decision of the High Court of Punjab and Haryana at Chandigarh in the case of Heritage Lifestyle and Developers and Private Limited vs. Union of India reported in 2016 SCC Online P&H 6549 while dealing with the claim of Input Tax Credit, reliance was placed on the judgment of Division Bench of the High Court of Punjab and Haryana in the case of Commissioner of Central Excise, Ludhiana Vs. Ralson India Ltd., 2006 (202) ELT 759, wherein it was held that while dealing with the Cenvat Credit that it may be inappropriate to deny the benefit by taking a hyper-technical view of the rules. The relevant portion is extracted under:

"It is to prevent the misuse of the modvat claims and any fraud being played by a manufacturer. Being a beneficial legislation, its object of input duty relief to a manufacture should not be defeated on a technical and strict interpretation of the Rules governing modvat. In fact, in order to obviate any difficulty on account of loss of duplicate copy of the invoices, Notification No.23/9-C.E. (N.T.), dated 20-05-1994 has been issued by the Board enabling a manufacturer to take Modvat credit on the basis of original copy of the invoice, provided the loss of duplicate copy of the invoice had occurred only in transit and the Assistant Commissioner is satisfied about its loss."

12. Thus, there seems to be a consistent view that if there is substantial compliance, denial of benefit of Input Tax Credit which is a beneficial scheme and framed with the larger public interest of bringing down the cascading effect of multiple taxes ought not to be frustrated on the ground of technicalities. In view of the above, we are inclined to affirm the order of the learned Single Judge in directing the petitioner/ respondent to enable the respondent herein to file a revised Form TRAN-1, by



opening of the portal and that such exercise is to be completed within a period of 8 weeks from the date of issue this order.

13. Needless to state, it is open for the Revenue to thereafter examine the legality / correctness or otherwise of the claim of credit stated to be earned under erstwhile regime and transitioned to GST by the respondent / assessee in accordance with law.

14. Thus, the writ appeal stands disposed of. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1. The Commissioner of GST and Central Excise,
Chennai South Commissionerate,
Newry Towers, Anna Salai, Chennai-600 040.
2. The Assistant Commissioner of GST and Central Excise,
Porur Range V, Chennai South Commissionerate,
Newry Towers, Anna Salai, Chennai-600 040.
3. Central Board of Excise and Customs,
Department of Revenue, Ministry of Finance,
Government of India, New Delhi-110 001.
4. The Principal Commissioner,
Chennai North Commissionerate,
151, Nungambakkam High Road, Chennai-600 034.

+1cc to Mr.S.Muthu Venkataraman, Advocate, S.R.No.59705

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.59296

W.A.No.2203 of 2021
against
W.P.No.2937 of 2019
and
C.M.P.No.13948 of 2021

AK-II(CO)
RLP(09/12/2021)