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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.23107 of 2021

(Through Video Conferencing)

Vikas Elastochem Agencies Private Limited,
Represented by its Director,
No.29, C.V.Raman Road,
1st Floor, Alwarpet,
Chennai - 600 018.

... Petitioner

Vs

1.The Deputy Commissioner Central Excise & GST,
Mylapore Division,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Salai,
Nungambakkam, Chennai - 600 034.

2.The Principal Commissioner of GST and Central Excise,
Office of the Principal Commissioner of GST and Central
Excise, Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 1st Respondent to allow the petitioner to transition the amount of Rs.3328,709/- into GST.

For Petitioner : Mr.Joseph Prabakar

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

ORDER

The petitioner was registered as a first stage dealer under the provisions of erstwhile Central Excise Rules 2002. The petitioner attempted to transition the credit of the input tax



credit of the goods lying in stock in by filing Tran 1 on 10.11.2017. It is the case of the petitioner that instead of making a proper entry against 7(a) of Tran 1, the petitioner has made an entry in 7(d).

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2. Since there was a mistake, the petitioner had sent a representation to the Principal Chief Commissioner, GST and Central Excise, the second respondent herein to permit the petitioner to make an appropriate corrections in Tran-1 Form filed electronically by the petitioner on 10.11.2017.

3. This application was made by the petitioner long after the time had expired for filing Tran-1 for making amendment in Tran-1 on 31.12.2017. Since the petitioner was unable to elicit any favourable response from the second respondent herein, the petitioner had filed W.P.No.8966 of 2019 for a mandamus to direct the first respondent herein to dispose of the representation dated 07.12.2018 of the petitioner submitted by the petitioner's Chartered Accountant to process the GST Tran Credit amounting to Rs.33,28,709/-.

4. Initially, an interim order was passed by this Court on 20.03.2019 by directing the petitioner to appear before the second respondent on 27.03.2019 with the consequential direction to the second respondent to pass appropriate orders on the application dated 07.12.2018.

5. It appears that the second respondent in turn referred the matter to the IT Grievance Redressal in terms of goods Circular No.39/13/2018 dated 03.04.2018 and Standard Operating Procedure (SOP) for further examination by them for placing it before the IT Grievance Redressal Committee (IT-GRC) of GST Council for appropriate decision.

6. The learned counsel for the petitioner submits that the matter was considered at the 6th meeting of the IT Grievance Redressal Committee(IT-GRC) on 27.05.2019 at the GST Council Secretariat, New Delhi, of which the petitioner was unaware.

7. Under these circumstances, the petitioner proceeded to withdraw the writ petition filed by filing a memo under a bonafide relief that the petitioner will have given the appropriate relief when indeed the IT Grievance Redressal Committee(IT-GRC) in its 6th meeting held on 27th May 2019 had already decided to not to recommend the case favourably in its 32nd GST Council decision. The relevant portion of the decision of the IT Grievance Redressal Committee(IT-GRC) dated 27.05.2019 which is filed in the minutes of the 6th meeting is reproduced below:-



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3	Receive d from GSTN, Vikas Elastoc hem Agencie s Pvt. Ltd.	W.P.No.8966 /2019 of M/s Vikas Elastochem Agencies Pvt. Ltd. Forwarded to GSTC Secretariat vide email dated 09.04.2019	The petitioner (GSTIN 33AAACV1560FIZR) in the Writ Petition has not alleged any technical glitch in the matter. In paragraph 3(II) of the writ petition the petitioner has admitted that the consultants of the company had inadvertently entered the wrong column in the GST TRAN-1 while filing ITC amount of Rs.33,28,709/-. The Consultant staff entered the above amount in Column No. 7(d) instead Column No.7(a) of GST TRAN-1, with the above incorrect columnts on originally on 10.11.2017. Thereafterthey filed the amended GST TRAN-1 from on 27.12.2017. The petitioner has submitted with the same mistake. Further, in paragraph 3 (III) the petitioner has submitted that the reason for columns 7(a) & 7(d) in GST TRAN-1 by the consultant staff of the company were genuine and bonafide. This is a new system of levy and the consultant staffs of the company were not well versed with the technicalities and also lack of experience resulted in entering the wrong column no.7(d) instead of 7(a) of GST TRAN-1. The error is human and condonable. No specific order passed.	No Recommen ndation	HC Order not forwarded ,and NO recommen dation made as per 32 GST Council decisoin .
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8. Meanwhile, the petitioner appears to have also filed a fresh application for further correction in the GST TRANS FORM on 27.12.2017 stating that there was another mistake also.

9. The learned counsel for the petitioner further submits that the petitioner has sent several representations thereafter which has not evoked any response from the second respondent. He has also placed reliance on the decision of the Hon'ble Division Bench of Delhi High Court in Blue Bird case law [M/s.Blue Bird Pure Pvt Ltd., Vs. Union of India & Ors. reported in 2019-VIL-347-DEL], wherein while dealing with an identical situation, the Hon'ble Division Bench of the Delhi High granted the relief to the petitioner therein by directing the respondents therein to either open the online portal so as to enable the petitioner to again file the rectified TRAN-1 Form electronically or accept the manually filed TRAN-1 Form with the correction on or before 31.07.2019.

10. The learned counsel for the petitioner therefore submits that the said decision of the Hon'ble Division Bench of the Delhi High Court indeed followed its earlier decision in the case of Kusum Enterprises Private Limited Vs. Union of India 2019-VIL-341-Del.

11. The learned counsel for the petitioner further submits that the decision of the Hon'ble Delhi High Court in Bhargava Motors Vs. Union of India 2019-VIL-218-Del has noted the difficulties faced both by the Authorities and by the Assessee by observing that GST system is still at its trial and error phase insofar as its implementation is concerned and that the date of GSTN becoming operational, the Court was approached by dealers facing genuine difficulties in filing returns, claiming Input Tax Credit through the GST portal.

12. The learned counsel for the petitioner submits that the decision of the Hon'ble Delhi High Court in Bhargava Motors Vs. Union of India 2019-VIL-218-Del has also considered the decision of the Hon'ble Madurai Bench of this Court dated 10.09.2018 in W.P.(MD). No.18532 of 2018 in Tara Exports Vs. Union of India 2018-VIL-432-MAD, wherein the Court had directed the respondents either to open the portal, so as to enable the petitioner therein to file the TRAN-1 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.

13. The learned counsel for the petitioner has also placed reliance on the decision of the Hon'ble Madurai Bench of



this Court rendered in M/s.Ram Auto Vs. The Commissioner of Central Taxes and Central Excise and ors reported in 2021-VIL-192-Mad.

14. The learned Senior Standing Counsel for the respondent submits that the writ petition is devoid of merits and is liable to be dismissed. He submits that the petitioner had not only committed a mistake while filing GST TRAN-1 on 10.11.2017 but had also filed another application of rectification on 27.12.2017.

15. It is submitted that the petitioner had also filed writ petition in W.P.No.8966 of 2019 and withdrew the same on 19.06.2019 and that the issue regarding availability of TRAN-1 Credit should be construed as being settled against the petitioner with the withdrawal of the writ petition. He further submits that a specific time line has been prescribed under Section 140 of the CGST Act, 2017 and therefore there is no question of extension of limitation prescribed for amending the TRAN 1.

16. It is further submitted that if the petitioner had failed to make the correct entries or had failed to make suitable amendments in time. It cannot be rectified at a later point of time. He has also relied on the decision of the Hon'ble Division Bench of this High Court in PR Mani Electronics Vs. Union of India 2020(39) GSTL 3(Mad) wherein the Division Bench has emphasized with the time line prescribed which cannot be diluted or adopted. He therefore submits that the writ petition is liable to be dismissed.

17. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents and perused the copy of the Tran 1 filed by the petitioner on 10.11.2017.

18. In this case, the petitioner had filed the Tran 1 in time with certain mistakes and the petitioner had also made another attempt to rectify the mistake on 27.12.2017. Thereafter, the petitioner had also filed a writ petition before this Court but withdraw the same under bonafide relief with the issue would be resolved before the IT Grievance Redressal Committee (IT-GRC) constituted by the GST Council and pursuant to an interim order of this Court dated 26.03.2019.

19. The petitioner having made a mistake in filing the GST returns on 10.11.2017 was entitled to revise such declaration and submit a revised declaration in GST



electronically on the common portal within a time specified in the GST Rules, 2017 namely Rules 117, 118, 119 and 120.

20. No doubt, the petitioner was required to file GST Tran 1 with correct information. However, the Courts have taken note of the fact that there were difficulties in making proper declarations in Tran 1 at the initial phase of implementation of the GST which had resulted in the denial of transitional credit to assesses.

21. Ultimately, these are the amounts which have accumulated prior to the introduction of the respective GST Act, 2017 with effect from 01.07.2017. The amount lying in the respective rules as it prevailed under the provisions of the Central Excise Rules, 2002 and CENVAT Credit Rule 2004 and TNVAT Act, 2006 were meant for discharging the Tax liability.

22. The technical problem arose at the time of initial implementations of GST which resulted in difficulties both for the Assessee and the for the Department. Ultimately, the amounts which were available as input tax credit under the erstwhile Central Excise Rules, 2002 read with Cenvat Credit Rules were to be transited as their equivalent to cash to the extent and that they are available for being used for discharging the tax liability.

23. The procedure prescribed under the provisions of Central Goods and Service Tax Act, 2017 and the respective State Enactments and the Rules made there under should not come in the legitimate way of transitional credits as such credits were already available for being utilized for discharging the tax liability. These amounts cannot lapse. The difficulty in amending the Tran-1 is on account of the Architecture of the Web Portal which did not permitted the petitioner to make such amendments. The petitioner cannot be found fault of Architecture of the Web Portal did not have such facility. Input Tax Credit once availed are indefeasible and cannot lapse.

24. Considering the same, I am inclined to dispose this writ petition by directing the second respondent to take an independent decision by deputing a suitable officer from the Department to verify the petitioner indeed had un-utilized accumulated credit for a sum of Rs.33,28,709.60 (Central Excise Credits Rs.24,81,347.10 and Customs Duty credits Rs.8,47,362.50]. The second respondent or any other Nodal officer may examine the issue and call upon the petitioner to produce their records and thereafter come to a proper conclusion



as to whether the petitioner was indeed unable to transition the credit in time.

25. If the aforesaid amount of credit was available on 01.07.2017, the technical problem in the GST Portal may be internally resolved by the respondents by issuance of suitable directions in terms of decision of the Hon'ble Madurai Bench of this Court rendered in M/s.Ram Auto Vs. The Commissioner of Central Taxes and Central Excise and ors reported in 2021-VIL-192-Mad. This exercise shall be carried out by the second respondent within a period of six weeks from the date of receipt of a copy of this order.

26. Accordingly, this writ petition stands disposed of with the above observations. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Commissioner Central Excise & GST,
Mylapore Division,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Salai,
Nungambakkam, Chennai - 600 034.

2.The Principal Commissioner of GST and Central Excise,
Office of the Principal Commissioner of GST and Central
Excise,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

+1cc to Mr.A.P.Srinivas, Advocate SR.No.64129

W.P.No.23107 of 2021

BP(CO)
GN(25/01/2022)