BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.16323 of 2019

M/s.Sekar & Co.,
Represented by its
Proprietrix C.Vijayalakshmi
No.13/4, Gowripuram Extension,
3rd Cross, Karur,
Tamil Nadu-639 002. ... Petitioner

-Vs-

1.The Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam,
Chennai-600 005.

2.The Assistant Commissioner of Commercial Taxes,
Karur South,
Karur District.

3.The Superintendent,
GST Range South,
Karur. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents to either re-open and reinstate the facility of online submission of TRAN 1 to the petitioner or manually accept the hard copy of TRAN 1 of the petitioner and treat the same as filed in accordance with law within a time frame as fixed by this Court.

For Petitioner : Mr.K.Suresh
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2.The petitioner had registered herself as a dealer under TNVAT Act, 2006. Following the implementation of the Central Goods and Services Tax Act, 2017, the petitioner migrated into GST regime and got registered under the new Act.

3.The case of the petitioner is that Section 140(3) of the CGST Act, she can claim credit of eligible duties in respect of the inputs held in stock on the appointed day i.e., 30.06.2017. Of-course, the petitioner was obliged under Rule 117 of CGST Rules, 2017 to submit a declaration electronically in Form GST TRAN-1 on the common portal. The said Rule 117 also originally stipulated that the Form TRAN-1 must be filed within 90 days. The said period was subsequently extended on more than one occasion. The final extended date was 31.03.2020.

4.The case of the petitioner is that due to technical glitches, the petitioner could not file the said Form TRAN-1. The petitioner claims that she further approached the office of the second respondent in person on atleast two occasions ie., 08.01.2019 and 01.09.2018 to present the Form TRAN-1 manually. The petitioner also submitted representation in this regard. The petitioner had also taken a screen shot of the attempt to upload the Form TRAN-1 on 27.03.2019. Since there has been no response, the present writ petition came to be filed.

5.The stand of the Special Government Pleader is that the petitioner had already missed the bus and that, therefore, no relief can be granted in this writ proceedings.

6.I carefully considered the rival contentions and went through the materials on record.

7.The case on hand is squarely covered by the order dated 14.02.2020 made in W.P.No.3328 of 2020. A learned Judge of this Court, in the aforesaid decision, held as follows:-

> "3.Notwithstanding this, at paragraph-5, the Board places the onus upon the assessee to establish a demonstrable glitch in the portal. Such requirement does not figure in the Act prior to 03.04.2018 and thus an assessee has not been put to notice that he would have to collect evidence of difficulty/technical glitch in uploading forms.
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> 4.Rule 117 was amended by insertion of sub-rule (1A) on 10.09.2018, extending the due date for uploading of TRAN Declaration Form to 31.03.2019. This date has since been extended to 31.03.2020 by Notification issued by the Central Board of Excise Customs bearing No.02/2020. Rule 117(1A) reads as follows:
>
> '[(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond 31st March, 2019, in respect of registered 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.]'
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> 5.The requirement for an assessee to establish technical difficulty as expressed in Circular dated 03.04.2018, is reiterated in the provision. I am however, unable to understand as to how the assessee would have anticipated. W.P.No.3328 of 2020 this requirement in order that it collects

proof by way of screen shots and otherwise establish the factum of technical glitches.

6.Though Goods and Service Tax has been introduced to streamline multiple revenue enactments, the mass of litigation that Rule 117 has generated, has defeated the very object and purpose of the enactment. Transition, by itself, does not vest any right in the assessee. It is only utilisation of credit that does, and such utilisation is subject to verification and assessment by an Assessing Officer. It is thus vital that the distinction between transition of a credit and utilisation of such credit after verification by an Officer is taken note of in the proper perspective.

7. In fine, I allow this Writ Petition, drawing support from the following three decisions:-

i) Adfert Technologies Pvt. Ltd. V. Union of India (CWP No.30949 of 2018 (O&M) dated 04.11.2019 of the Punjab and Haryana High Court

ii) Avante Tablewares Throughs V. The Nodal Officer (C/SCA/5758/2019 dated 06.09.2019 of the Gujarat High Court and

iii) Siddharth Enterprises V. Nodal Officer (2019 (29) GSTL 664 of the Gujarat High Court".

8.The said order was taken on appeal by the department. But the Hon'ble Division Bench vide order dated 23.09.2020 in W.A.No.788 of 2020 (Commr. Of GST vs. M/s.Checkpoint Apparel) dismissed the writ appeal.

9.I am therefore satisfied that the petitioner has made out a clear case for grant of relief. The third respondent is said to be the nodal officer. The respondents 2 and 3 are directed to facilitate the uploading of Form TRAN-1 by the petitioner as originally prayed for by her. This exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. The Writ Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Principal Secretary/Commissioner of
Commercial Taxes, Ezhilagam,
Chennai-600 005.

2.The Assistant Commissioner of Commercial
Taxes,
Karur South,
Karur District.

3.The Superintendent,
GST Range South,
Karur.

+1 CC to M/s.K.SURESH, Advocate (SR-8560[F] dated 03/03/2021)

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