



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.25528 of 2019

and

W.M.P. (MD)No.22081 of 2019

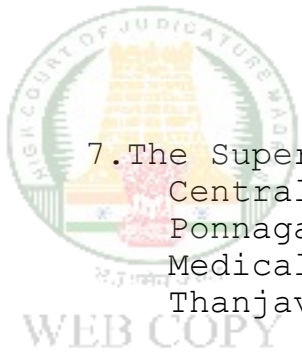
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M/s.Anand Distributors,
Rep. by its Proprietor,
D.Selvam,
S/o.Dhanapal,
No.10/1358/2,
Rajeev Nagar,
Nagai Road,
Thanjavur 613-007.

... Petitioner

-Vs-

- 1.The Union of India,
Rep. by the Principal Secretary Ministry of Finance,
Department of Revenue,
No.136-A, North Block,
New Delhi-110001.
- 2.Goods and Service Tax Council,
Through its Chairman, Goods and Service Tax Secretariat,
5th Floor, Tower-V, Jeevan Bharathi Building,
Janpath Road,
Connaught Place,
New Delhi.
- 3.PR Commissioner of CGST and Central Excise Chennai
Commissionerate,
No.26/1, Mahathma Gandhi Road,
Chennai-600034.
- 4.PR Secretary/Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-600 005.
- 5.The Commissioner,
GST & Central Exercise Commissionerate,
No.Williams Road,
Contonment, Trichirappalli.
- 6.The Assistant Commissioner,
GST & Central Exercise Division,
Ponnagar,
Medical College Road,
Thanjavur-613 007.



7.The Superintendent of Central Tax (GST) &
Central Exercise, Thanjavur-1 Range,
Ponnagar,
Medical College Road,
Thanjavur-613 007.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated Nil of the IT GRC Committee and communicate by the sixth respondent in his proceedings in C.No.IV/16/62/2017-GST POL Part-II, dated 28.08.2019, quash the same as illegal and consequently, directing the respondents either to re-open and reinstate the facility of online submission of TRAN-1 to the petitioner or manually accept the hard copy the TRAN-1 of the petitioner.

For Petitioner: Mr.S.M.Mohan Gandhi
For R1 : Mr.V.Malaiyendiran
For R2, R5
to R7 : Mrs.S.Ragaventhre
For R3 & R4 : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

Heard the learned counsel on either side.

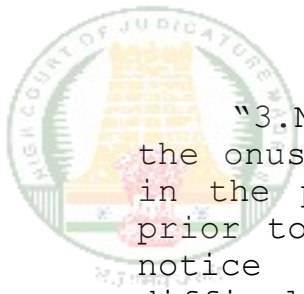
2.The petitioner had registered himself as a dealer under TNVAT Act, 2006. Following the implementation of the Central Goods and Services Tax Act, 2017, the petitioner migrated into GST regime and got registered under the new Act.

3.The case of the petitioner is that when CGST Act came into force on 01.07.2017, he was entitled to a credit of Rs.5,03,202/-. The petitioner would state that though he made several attempts to file form GST TRAN-1, he could not do so due to technical glitches. Therefore, the petitioner submitted a representation in this regard to the sixth respondent. The petitioner's request was rejected by the impugned order dated 28.08.2019. The sixth respondent had stated that in the impugned communication, there is no evidence to show that there was a system error in the log. Questioning the same, this writ petition has been filed.

4.The learned Standing Counsel would reiterate the stand set out in the impugned order and contend that no relief can be granted in the writ proceedings.

5.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:-

<https://hcservices.ecourts.gov.in/hcservices/>



"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.

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.]'

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".

6. The said order was taken on appeal by the department. But

<https://hcservices.hcprts.gov.in/hcservices/> 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.

7. There can be no doubt that the petitioner made effort to upload the details in the web portal. Even according to the respondents, though Rule 117 of CGST Rules, 2017, originally stipulates that Form TRAN-1 is filed within 90 days, there was a periodical extension and the final extended date was 31.03.2020. In the present case, the impugned order itself came to be passed on 28.08.2019. Therefore, applying the aforesaid decision made in W.P. (MD)No.3328 of 2020, dated 14.02.2020, the communication impugned in the writ petition is quashed. The Writ Petition is allowed. The respondents are directed to facilitate the uploading of Form TRAN-1 of the petitioner as original prayed for by him. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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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. PR Commissioner of CGST and Central Excise Chennai
Commissionerate,
No.26/1, Mahathma Gandhi Road,
Chennai-600034.

2. PR Secretary/Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-600 005.

+1 CC to M/s.V.MALAIYENDRAN, Advocate (SR-8329[F] dated
03/03/2021)

+1 CC to M/s.S.M.MOHAN GANDHI, Advocate (SR-8463[F] dated
03/03/2021)

W.P. (MD)No.25528 of 2019
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RK (27.04.2021) 4P 5C

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