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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 19.01.2021

\+ **W.P.(C) 10795/2020**

NATIONAL INTERNET EXCHANGE OF INDIA .... Petitioner

Through: Mr. Karan Sachdev and Mr. Kunal Kapoor, Advocates.

versus

UNION OF INDIA & ORS. .... Respondents

Through: Mr. Farman Ali, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral)

[VIA VIDEO CONFERENCING]

CM APPL. 33850/2020 (for exemption)

1. Exemption allowed, subject to just exceptions.

2. The application is disposed of.

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3. Respondents have not filed a counter affidavit despite opportunity granted to them. Today, Mr. Farman Ali, learned counsel appearing on behalf of the Respondents seeks further time for doing so. However, having

regard to the nature of controversy arising in the present petition, need is not felt to grant further time to the respondents to file the counter affidavit. Further, we may also note that in several other matters comprising of a batch, counter-affidavits had not been filed, and the coordinate Bench of this court, to which one of us (Sanjeev Narula J.) is a member, has already heard the arguments and reserved the judgment. Accordingly we are proceeding to decide the present petition on the basis of the available record and the submissions made by the counsels.

4. By way of the present petition, directions are sought to allow the petitioner to modify/revise Form GST TRAN-1 filed by it, either by opening the GST portal or by permitting submission of manual modified/rectified Form.

5. Briefly stated, the Petitioner is set up as a not-for-profit company under Section 25 of the Companies Act, having its registered office in Delhi, for peering of internet service providers amongst themselves and for routing the domestic traffic within India. The Petitioner was earlier registered as a service provider under the Finance Act, 1994 and availed the CENVAT credit of Central Excise Duty, Service Tax etc. paid on input services, procured for providing output services and was discharging its output tax liability by utilizing the said credit.

6. With the advent of the GST laws, the Petitioner migrated to the new regime and got registered under the CGST Act in the State of Delhi. Petitioner also availed the benefit of the transitional provisions and sought to migrate the CENVAT credit of Rs. 60,21,471/- by filing the prescribed Form TRAN-1 on 1st September, 2017, within the time prescribed under Rule 117

of the CGST Rules, 2017. It is the case of the Petitioner that due to unintentional and inadvertent error on its part, they failed to take into account certain invoices pertaining to inputs and/or input services on which service tax was paid under the erstwhile service tax regime. Realising this mistake in March, 2019, Petitioner approached Respondent No. 3 by way of a letter dated 29th March, 2019 requesting for the revision of the Form. Subsequently, the Petitioner also approached the Chief Executive Officer of Respondent No. 4 making a similar request vide letter dated 29th November, 2019. However, despite the above-noted and other representations given by the Petitioner, the Respondents took no action. Left with no other option, the petitioner has now approached this Court.

7. The learned counsel for the Petitioner submits that issue involved in the present case is covered by several decisions of this Court, and in particular the judgments rendered in ***Blue Bird Pure Pvt. Ltd. v. Union of India and Ors***., 2019 SCC OnLine Del 9250; ***Arvind Beauty Brands Retail Pvt. Ltd. v. Union of India & Ors***., [W.P.(C.) No. 4556/2019 dated 7th August, 2019]; ***A B Pal Electricals Pvt ltd v. Union of India & Ors.*** [W.P.(C.) No. 6537/2019 dated 17th December, 2019]; ***SRC Aviation (P) Ltd. v. Union of India and Ors***., [W.P.(C.) No. 12167/2019 dated 17th December, 2019]; and ***Adfert Technologies Pvt. Ltd. v. UOI,*** 2019 SCC OnLine P&H 5701.

8. On perusal of the record, it emerges that Petitioner has filed TRAN-1 form within the time prescribed by the Respondents under the rules. Petitioner is holding documents evidencing payment of tax by it on such inputs / input services received under the erstwhile tax regime. It is thus eligible to carry forward the credit from erstwhile tax regime to the GST

regime under Section 140 of the CGST Act read with Rule 117 of CGST Rules. Petitioner claims that this error has occurred because of the introduction of new and vastly different tax regime (GST) of which the Petitioner had no prior experience whatsoever, and thus it was new to the filing of Form GST TRAN-1 as well. For the aforesaid *bona fide* human error, inadvertently, it failed to take into account certain invoices, on which service tax amounting to Rs. 40,36,542/- was not reflected in TRAN-1 Form.

9. In nearly identical circumstances, this Court in numerous cases has taken a view that the Respondents ought to have provided in the system, a facility for rectification of *bona fide* errors. The Court had also taken note that though the system provided for revision of the return, it was impractical and meaningless, inasmuch as the deadline for making revision coincided with the last date for filing the original return i.e. 27th December, 2017. We may also note that the Supreme Court in ***Union of India & Ors. v. Adfert Technologies Pvt. Ltd.*** 2020 SCC OnLine SC 106, has dismissed the SLP filed by the department against the judgment rendered by the Punjab & Haryana High Court. We are satisfied that the difficulty faced by the Petitioner was a genuine one. Due to an inadvertent human error and oversight on the part of the Petitioner, its substantive right should not be denied. Petitioner should therefore not be precluded from having its claim examined by the authorities in accordance with law.

10. In view of the aforesaid decisions, we have no hesitation in allowing the request of the Petitioner and accordingly the present petition is allowed. The Respondents are directed to open the online portal so as to enable the Petitioner to re-file the rectified TRAN-1 form electronically, or, accept the same manually with the corrections within a period of three weeks from today. Petitioner's claim shall thereafter be processed in accordance with

law and Respondents shall be at liberty to verify the genuineness of the claim of the Petitioner. The Petitioner shall thereafter be permitted to correspondingly revise Form TRAN-2.

11. Accordingly, the writ petition is disposed of in the aforesaid terms.

SANJEEV NARULA, J

RAJIV SAHAI ENDLAW, J

JANUARY 19, 2021
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