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

\+ **W.P.(C) 1560/2021 & CM APPL. 4458/2021**

M/S TARUN ENTERPRISES PVT. LTD. ..... Petitioner

Through: Mr.Puneet Agrawal, Advocate with Mr.Yuvraj Singh and Ms.Hemlata Rawat, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr.Gaurav Varma, Advocate for R-1. Ms.Anushree Narain, Advocate for R-2to6.

% Date of Decision: 29th November, 2021

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **29.11.2021**

MANMOHAN, J. (Oral)

1. Present writ petition has been filed with the following prayers:

> "*i. To issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction, to direct the Respondents to open the common portal for the Petitioner to be able to file TRAN-1 electronically; or alternatively to allow the Petitioner to avail the said ITC by manually filing TRAN-1 or by furnishing the details in Form GSTR 3B or in any other manner so as to enable the Petitioner to avail the transitional credit of Rs.71,25,873/- for GSTIN 07AAACT4460C2ZO, and transitional credit of Rs. 27,30,375/- for the GSTIN 09AAACU0057C1ZR, in its respective electronic credit ledgers.*

ii. To pass an order declaring the impugned Rules 117 to 120A of the CGST Rules, 2017 ***(Annexure No. P/2 (Colly))*** *to be ultra vires the provisions of the CGST/ SGST Acts, 2017 and ultra vires the Constitution of India and to direct the respondents to allow the petitioner to avail the credit which is legally due and belongs to the petitioner;*
iii. To pass an order declaring the Circular No. 39/13/2018-GST dated 03.04.2018 ***(Annexure No. P /9)*** *as illegal, unconstitutional and bad in law;*
iv. Issue any other writ, order or direction in favour of the Petitioner, as this Hon'ble Court may deem fit and proper in the present facts and circumstances of the case, so as to ensure the ends of justice, or else the Petitioner shall suffer Irreparably;
v. to grant costs of this Petition; and
vi. to award such further and other reliefs as the nature and circumstances of the case may require.
Pass such other order(s) or further orders as this Hon'ble Court deems fit and proper in the facts and circumstances of the case, for which act of kindness the petitioner as is duty bound shall ever pray."

2. The petitioner faced technical glitches/errors while filing the TRAN-1, in respect of which he filed complaint applications dated 9th July, 2018 with the Nodal Officer and the Chief Commissioner. Likewise, another complaint dated 2nd August, 2018 was filed with the Nodal Officer, grievances cell of the GST department. These complaints were followed up with the representations dated 19th March, 2020 to the respondents.

3. Though, it is the case of the respondents that such a technical glitch/error cannot be considered as an error on the GST common portal, yet this Court in the case of "Super India Paper Products Vs. Union of India Through Ministry of Finance, Secretary & Ors." WP(C) 1150/2020 decided on 27th May, 2021 has held as under:-

"12. The first batch of cases is where the Petitioners have placed the screenshots and/or communication to support their stance of having attempted to file the TRAN-1 Form prior to the deadline i.e., 27th December, 2017.

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15. In all the aforesaid cases, all such Petitioners have genuinely attempted to file TRAN-1 Form within time and have also taken care to preserve some evidence which is now being relied upon in support of their contention. This proof of submission however has not been accepted by the Respondents. The stand of the Respondent is that in such matters there is no technical anomaly in filing of the TRAN1 Form on the GST portal. This Court in several decisions has given benefit to such taxpayers and even to those who did not have any evidence to support their filing of TRAN-1 Form within time. In SRC Aviation (P) Ltd. v. Union of India and Ors., 8 this Court, after recording the fact that Petitioner has placed a copy of the screenshot evidencing that it was unable to file the TRAN-1 Form on the GST Portal, allowed it to file the TRAN-1 Form electronically, or manually. The relevant portion of SRC Aviation (supra) reads as under:

> *"9. The factual position in the present case is not any different. At this juncture, it may be noted that as per Notification No. 49/2019: MANU/CGST/0051/2019 dated 09.10.2019 issued by CBIC, the date prescribed for filing of Form GST TRAN-1 under Rule 117 (1A) of the CGST Rules has been extended to 31.12.2019. This itself demonstrates that the Respondents recognise the fact that the registered persons were not able to upload the Form GST TRAN-1 due to the glitches in the system. It is not fair to expect that each person who may not have been able to upload the Form GST TRAN-1 should have preserved some evidence of it-such as, by taking a screen*

shot. Many of the registered dealers/traders come from rural/semiliterate background. They may not have had the presence of mind to create any record of their having tried, and failed, to upload the Form GST TRAN-1. They cannot be made to suffer in this background, particularly, when the systems of the Respondents were not efficient. From the documents placed on record, it emanates that the Respondents have no cogent ground to deny the benefit of the Notification No. 49/2019: MANU/CGST/0051/2019 dated 09.10.2019 issued specifically to grant relief to taxpayers who faced difficulty in filing Form GST TRAN-1 due to technical glitches. Thereafter when he engaged in communication with the respondent, there was no genuine ground forthcoming except for stating that the due date for filing of Form GST TRAN-1 was over.

10. We may further add that the credit standing in favour of an assessee is "property" and the assessee could not be deprived of the said property save by authority of law in terms of Article 300 (A) of the Constitution of India. There is no law brought to our notice which extinguishes the said right to property of the assessee in the credit standing in their favour.

11. Thus, we allow the present petition and direct the respondents to either open the online portal so as to enable the petitioner to file the Form TRAN1 electronically, or to accept the same manually on or before 31.12.2019. Respondents shall process the petitioner's claim in accordance with law once the Form GST TRAN-1 is filed. The petition is allowed in the aforesaid terms."

<u>*In Triveni Needles Pvt. Ltd. v. Union of India and Ors.,9 this Court had extended the benefit to taxpayers who did*</u>

not have some electronic record. Therefore, we see no reason to deny the same to these Petitioners who are on a much better footing.

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_28. All the petitions in the first, second and third batch are allowed, and all the pending applications also stand disposed of.

29. Respondents are directed to either re-open the online portal so as to enable the Petitioners to file TRAN-1 Form electronically, or to accept the same manually on or before 30th June, 2021. The Respondents shall process the Petitioners' claims in accordance with law once the TRAN1 Form is filed."

(Emphasis supplied)

4. Accordingly, the present writ petition is allowed in accordance with paragraphs 28 and 29 of the judgment of this Court in Super India Paper Products (Supra). However, the date for accepting the TRAN-1 Form electronically or manually shall be read as 15th December, 2021.

5. Accordingly, the writ petition and pending application stand disposed of.

MANMOHAN, J

NAVIN CHAWLA, J

NOVEMBER 29, 2021

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