Item No.5.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 06.09.2022

DELIVERED ON:06.09.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA

M.A.T. No.351 of 2020
With
I.A. No.CAN 1 of 2020 (Old CAN 2392 of 2020) (not in file)
With
I.A. No.CAN 2 of 2020 (Old CAN 2393 of 2020) (not in file)

Commissioner, Central Goods and Services Tax, Kolkata Commissionerate.
Vs.
M/s. Paharpur Cooling Towers Limited & Ors.

Appearance:-
Mr. K. K. Maiti,
Ms. Ekta Sinha ..... for the appellant.

Mr. Deepro Sen ... for the respondent no.1.

Mr. Anirban Ray, Ld. G. P.,
Mr. T. M. Siddique,
Mr. Debasish Ghosh ... for the State.

Mr. Vipul Kundalia,
Mr. Tapan Bhanja ... for the Union of India.

<u>JUDGMENT</u>

(Judgment of the Court was delivered by* T.S. SIVAGNANAM*, J.)

Re: I.A. CAN 1 of 2020 (Old CAN 2392 of 2020) (not in file)

1. This application has been filed to condone the delay of 55 days in filing the instant appeal.

2. We have heard Mr. K. K. Maiti, learned counsel appearing for the appellant, Mr. Vipul Kundalia, learned counsel appearing for the Union of India, Mr. T. M. Siddique, learned Advocate for the State and Mr. Deepro Sen, learned Advocate for the first respondent.

3. We are satisfied with the reasons assigned in the affidavit filed in support of the application. Accordingly, the delay in filing the instant appeal is condoned.

4. The application being I.A. CAN 1 of 2020 (Old CAN 2392 of 2020) is allowed.

Re: M.A.T. No.351 of 2020

5. This intra Court appeal is directed against the order dated 5th December, 2019 in W.P. No.7131(W) of 2019. In the said writ

petition, the appellant had challenged the communication dated 26th March, 2019 issued by the Additional Commissioner of State Tax and also the vires of Rule 117 of the Central Goods and Services Tax Rules, 2017 and Rule 117 of the West Bengal GST Rules, 2017. Identical issue was dealt with by this Court in the case of ***Union of India Vs. Baljit Iron Private Limited & Ors.*** in ***MAT 16 of 2022*** by judgment and order dated 26th July, 2022. The appeal was disposed of. The operative portion of the said judgment and order reads as follows:-

> *"6. The Hon'ble Supreme Court in a recent decision in the case of Union of India & Anr. – Vs. – FILCO Trade Centre Pvt. Ltd. & Anr. in Special Leave Petition (C) No(s).32709-32710/2018 dated 22nd July, 2022 has issued comprehensive direction with regard to availing of transitional credit through TRAN 1 and TRAN 2. The order passed by the Hon'ble Supreme Court is as follows:-*
>
> > *"Having heard learned Additional Solicitor General, learned counsel appearing for different States and learned counsel appearing for different private parties*

and having perused the record, we are of the view that it is just and proper to issue the following directions in these cases:

1. *Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN – 1 and TRAN – 2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.*
2. *Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant from or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Rederssal Committee (ITGRC).*
3. *GSTN has to ensure that there are no technical glitch during the said time.*
4. *The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on*

merits after granting appropriate reasonable opportunity to the parties concerned.

5. *Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.*
6. *If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims.*

The Special Leave Petitions are disposed of accordingly.

Pending applications, if any, also stand disposed of. "

7. In the light of the above direction issued by the Hon'ble Supreme Court, no orders are required in this appeal. Accordingly, the appeal along with connected application (I.A. No.CAN 2 of 2022) stand disposed of in terms of the order passed by the Hon'ble Supreme Court.

8. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities."

6. In the light of the direction issued by the Hon'ble Supreme Court, no further orders are required to be passed in this appeal. Accordingly, the appeal and the connected application are disposed of in terms of the order passed by the Hon'ble Supreme Court.

7. Further, we note that the Hon'ble Supreme Court by an order dated ***2nd September, 2022*** as reported in ***2022-VIL-63-SC (Union of India Vs. FILCO Trade Centre Pvt. Ltd.)*** has extended time for a further period of four weeks from the said date for opening the GST common portal.

8. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(SUPRATIM BHATTACHARYA, J.)

NAREN/PALLAB(AR.C)