

Form J(2)
Item No. 30

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPA 1497 of 2022

**Sevoke Motors
VERSUS
State of West Bengal & Ors.**

Appearance:-

**Dr. Navin Barik,
Ms. Esha Acharya**

.....for the Petitioner

**Mr. Subir Kr. Saha, Ld. A.G.P.,
Mr. Bikramaditya Ghosh**

.. for the State.

HEARD ON : 07.07.2022

DELIVERED ON : 07.07.2022

JUDGMENT

HIRANMAY BHATTACHARYYA, J.:-

The writ petitioner has prayed for issuance of a writ of mandamus to command the authorities to allow revision and/or correction of Form GST TRAN-1 either on the portal or manually for the purpose of claiming transitional credit under Section 140 read with Rule 117 of the Central Goods and Services Tax Act, 2017 (for short “CGST Act”).

The petitioner claims to be an authorized Maruti Dealer and is duly registered with the CGST authorities as well as SGST authorities. The petitioner claims that post introduction of CGST Act with effect from July 1, 2017 the petitioner is entitled to carry forward Input Tax Credit in Form TRAN-1 for the period from July 1, 2016 to June 30, 2017 under Section 140 of CGST Act read with Rule 117 of CGST Rules. The petitioner claims that due to lack of awareness of the procedures, technical glitches and also that GST being a new and complex system to operate, the form relating to “Spares and Accessories” was incorrectly uploaded under Table 7(d) of TRAN-1 instead of 7(b). The petitioner claims that Input Tax Credit amounting to Rs.11,78,000/- was available upon eligible stock declared under the “Spares and Accessories” count. Petitioner further states that filing of TRAN-1 in the incorrect table was also brought to the notice of the concerned department but the department did not respond to such communication. The petitioner further claims that he has filed GSTR-3B form for the month of February 2018 on June 1, 2018 under IGST heading but the same was not taken into consideration by the concerned authority. On such grounds, the petitioner has filed the instant writ petition seeking the relief as mentioned hereinbefore.

Dr. Barik, learned advocate for the petitioner submits that the entitlement of the writ petitioner to the Input Tax Credit cannot be denied on account of procedural problems. He submits that a Division Bench of the Hon’ble High Court at Calcutta in a batch of appeals, being MAT 552 f 2020 with IA No.CAN 1 of 2020 and CAN 2 of 2020 (Nodal Officer, Jt.

Commissioner, IT Grievance, GST Bhawan vs. M/s. Das Auto Centre) and others, while considering an identical issue has passed a judgment on December 14, 2021 by giving liberty to the assessee to file individual tax credit in GSTR-3B Form with liberty to the Assessing Officer to verify the genuineness of such claim.

Mr. Saha, learned advocate assisted by Mr. Ghosh, learned advocate appears for the State and does not dispute the submissions of the learned advocate for the petitioner that the aforesaid judgment of the Hon'ble Division Bench in the case of M/s. Das Auto Centre (supra) is still holding the field. He, however, submits that the Input Tax Credit can be allowed only after proper verification by the concerned authority.

Heard the learned advocates for the parties and considered the materials on record.

A registered person is entitled to carry forward Input Tax Credit as provided under Section 140 of the CGST Act read with Rule 117 of the CGST Rules. However, the claim of the petitioner that he is eligible for Input Tax Credit is subject to verification by the Assessing Officer.

The principal grievance of the petitioner is that this entitlement to the Input Tax Credit is being denied on technical ground.

It is well settled that the entitlement of the petitioner to the Input Tax Credit, a vested right, cannot be denied on account of procedural problem.

After going through the materials on record this Court finds that the issue raised in this writ petition is squarely covered by the judgment dated

December 14, 2021 passed in the case of M/s. Das Auto Centre (supra). In the said decision the Hon'ble Division Bench after taking into consideration the decision of various High Courts as well as the decision of Hon'ble Supreme Court held as follows.

*“Be that as it may, we would wish to point out from the recent decision of the High Court of Madras in the case of **Commissioner of GST and Central Excise vs. Bharat Electronic Ltd.** in WA No. 2203 of 2021 it is seen that an identical issue was considered by the Division Bench of the Court and the appeal filed by the Department of Revenue was dismissed. The Court while dismissing the appeal concurred with the learned Single Judge and directed the authorities to facilitate the writ petitioners to file a revise Form TRAN-1. The Court took into consideration the decision of Hon'ble Supreme Court in the case of **Commissioner of Customs vs. Dilipkumar and Co.** reported in (2018) 9 SCC 1 wherein the doctrine of substantial compliance was held to be applicable even while considering a claim of exemption and the above doctrine would afortiori apply to a claim of Input Tax Credit. The Court noted it in paragraph 51 of the judgment of the Hon'ble Supreme Court. Further, the Court also took into consideration the decision of the High Court of Bombay in the case of **Heritage Lifestyles and Developers Pvt. Ltd. vs. Union of India** reported in 2020 SCC 43 GSTL 33 (Bombay). The Court after taking note of the decision rendered by other Hon'ble High Courts had dismissed the appeal filed by the State and directed the revenue to enable the writ petitioners to file revise Form TRAN-1 by opening the portal within the time frame. Further time was granted to examine the legality or correctness or 7 otherwise of the claim of Input Tax Credit under the erstwhile regime and transition to GST of the revenue.*

*The other recent decision is that of the High Court of Allahabad in the case of **Ratek Pheon Friction Technologies Pvt. Ltd. vs. Principal Commissioner** reported in (2021) 130*

Taxmen.com 367. In a batch of writ petitions filed before the High Court of Allahabad the writ petitioners sought for issuance of mandamus to command the authorities to allow them to submit revise/ re-revise electronically, their respective declarations on Form GST TRAN-1 and TRAN-2 in the GST portal under the provisions of Central Goods Services Tax Act, 2017 and Uttar Pradesh Goods and Services Tax Act, 2017. The Division Bench after elaborately considering the factual matrix, notifications/circulars issued by the CBIC, noted that the CBEC itself recognized existence of technical difficulties in working of the GST portal for a long period of time and that too immediately upon introduction of GST regime. The Court noted the decision of the High Court of Delhi in **Blue Bird Pure Pvt. Ltd. vs. Union of India** reported in (2019) 108 Taxman.com 218 (Del) in WP(C) 3798 of 2019 which relied upon the earlier decision in **Bhargava Motors vs. Union of India** in WPC No. 7423 of 2019 dated 12.07.2019 and the decision of the High Court of the Madras and The decision of the Punjab and Haryana High court in **Adfert Technologies (P) Ltd. vs. Union of India** reported in (2020) 32 GSTL 726 (Punj.and Har.) and granted relief in favour of the writ petitioners. In fact, several directions have been issued by the Court and the authorities are to comply with such directions. The decision in the case of **Adfert Technologies Pvt. Ltd. (Supra)** rendered by the High Court of Punjab and Haryana was challenged by the Union of India before the Hon'ble Supreme Court and the Special Leave Petition was dismissed.

Thus, we are fully convinced that the decision which were rendered above have clearly brought out the difficulties faced by the assesses and also as to how the assesses having substantially complied with the requirement under law and having been entitled to credit on account of transition to the GST regime which is beyond the purview of the assessee and the assessee cannot be put to prejudice on account of technicalities. Thus, keeping the underlying

*principle in mind if the matter is examined then we are inclined to lean in favour of the writ petitioners and affirm the directions issued by the learned Single Judge. We note from the directions issued by the learned Single Judge that the authorities have been directed to open the portal so that the assessee may be able to file their respective TRAN-1 return or revise return or re-revise return. In our considered view, this would be a difficult exercise and such cannot be run by the assessing Officer in whose jurisdiction the assessee is carrying business. It probably will have to be done at the very higher level and consequently direction, if any, issued to open the portal, would become unworkable qua prayer made by the writ petitioners. While pondering on the face of the issue, we refer the decision of the Punjab and Haryana High Court in the case of **Hans Raj Sons vs. Union of India** reported in 2020 (34) GSTL 58 (P & H). In the said decision the Court while allowing the writ petition had granted two options one by directing opening of the portal and in case of non-opening of portal the writ petitioner/assessee will be entitled to make unutilized credit in their GST 3B forms to be filed on the monthly basis. This in our considered view, will be a workable solution and the Assessing Officer will be entitled to examine the legality of the claim on such form being filed by the assessee.”*

Though the petitioner claims that he has filed GSTR-3B Form on June 1, 2018 but the admitted factual position is that the petitioner ultimately did not get any relief. Therefore, this Court is of the considered view that liberty is to be granted to the petitioner/assessee to file individual tax credit in GSTR-3B Form and if such Form is filed in terms of this order, the authorities shall act on the GSTR-3B Form filed pursuant to this order.

For the reasons as aforesaid, the writ petition stands allowed by giving liberty to the writ petitioner/assessee to file individual tax credit in GSTR-3B Forms for the month of August 2022 to be filed in the month of September 2022 and the concerned authority/Assessing Officer would be at liberty to verify the genuineness of the claim of the petitioner and pass orders accordingly.

Consequently the communication made by the Assistant Commissioner, SGST, Siliguri Charge, Siliguri dated May 17, 2022 which is annexed as Annexure P-6 to the writ petition is set aside and quashed.

Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of usual formalities.

(Hiranmay Bhattacharyya, J.)