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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT No. 40 OF 2022

IA NO:GA/2/2022

WPO No. 240 OF 2019

PRINCIPAL COMMISSIONER OF CGST & CX, HOWRAH COMMISSIONERATE
VS.

M/s. BENGAL HAMMER INDUSTRIES (P) LTD. & ORS.

BEFORE:

The Hon'ble JUSTICE T. S. SIVAGNANAM

AND

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 27th APRIL 2022.

Appearance:

Mr. Somnath Ganguly, Adv.

Mr. Abhradip Maity, Adv.

...for Appellant

Mr. Arijit Chakrabarti, Adv.

Mr. Nilotpall Chowdhury, Adv.

Mr. Prabir Bera, Adv.

...for respondents

The Court : - This intra Court appeal by the department of CGST and Central Excise is directed against the order dated 16th March, 2020 in WPO 240 of 2019. The respondents/writ petitioners approached this Court with a prayer to allow the writ petitioners to file/upload in GST TRAN-I form and intended to

file TRAN-I form and/or revised TRAN-I form. The learned Single Bench directed the GST and authorities to open the portal for the writ petitioners till March 31, 2020.

Aggrieved by such direction the revenue is before us by way of this appeal. Identical impugned order was subject matter of challenge at the instance of the revenue in MAT 552 OF 2020 etc. batch and by judgment dated 14.12.2021, the appeals were dismissed and directions were issued by slightly modifying the liberty granted to the respondents/writ petitioners. The operative portion of the judgment reads 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 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.*

*Thus, for the above reasons, we find that the substantial part of the order and the directions issued by the learned writ Court as well as reasoning given merits acceptance. However, we are of view that instead of directing the portal to be open, the direction issued in **Hans Raj Sons (supra)** is more assessee friendly. We also find identical directions have been issued in the case of **Amba Industrial Corporation vs. Union of India** reported in **(2020) 117 Taxman. Com 195 (P & H)**. For the above reasons, the miscellaneous appeals and the connected applications are dismissed and the order and directions issued by the learned Single Judge is slightly modified by granting liberty to the writ petitioner/assessee to file individual tax credit in GSTR-3B Forms for the month of January 2022 to be filed in the month of February, 2022 and the concerned authority/Assessing Officer would be at liberty to verify the genuineness of the claim.”*

Since the order impugned in this appeal is identically worded as that of the orders which were impugned in MAT 2 of 2022 etc. batch, the above order will squarely apply to the case on hand. Thus, by following the above decision, the appeals and connected applications are disposed of and the order and direction issued by the learned Single Bench is modified by granting liberty to the respondents/assesseees to file individual tax credit in GSTR-3B Forms for the month of April 2022 in the month of May 2022 and the concerned authorities/assessing officer would be at liberty to verify the genuineness of the claim and proceed in accordance with law.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)