IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.10541 & 10543 of 2019

(Through Video Conferencing)

1.M/s.Pragal Associates,
Represented by its Authorised Signatory
Anish C Badani
No.8, Raman Street,
Dhatchinamurthy Nagar,
Sokkanathanpet,
Pudhucherry. ... Petitioner in W.P.No.10541 of 2019

2.M/s.Pure Plastics,
Represented by Authorised Signatory
Asha V Mehta
No.24, Ramanapuram,
Thattanchavady,
Puducherry - 605 009. ... Petitioner in W.P.No.10543 of 2019

Vs.

1.The Additional Deputy Commercial Tax Officer GD-1,
100, Feet Road, Ellapillaichavadi,
Puducherry.

2.The Chairman,
GSTN World Mark 1, Aerocity
Indira Gandhi International Airport,
New Delhi - 110 037.

3.The Director General (Systems),
100 Feet Road, Ellapillaichavadi,
Puducherry. … Respondents in both W.Ps.

Prayer in W.P.No.10541 of 2019: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to quash the impugned notice bearing File No.34170024183/ADCTO-GDI/2017 dated 18.12.2017 on the file of the first respondent and direct the second and third respondents to pass the order to reopen the TRAN 1 filing option.

Prayer in W.P.No.10543 of 2019: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to quash the impugned notice bearing File No.34120012328/ADCTO-GDI/2017 dated 20.12.2017 on the file of the first respondent and direct the second and third respondents to pass the order to reopen the TRAN 1 filing option.

For Petitioner : Mr.N.V.Balaji
(in both W.Ps)
For Respondent : Mr.J.Kumaran
(in both W.Ps) Additional Government Pleader
(Pondicherry)

COMMON ORDER

By this common order, both these writ petitions are being disposed of.

2.The petitioner has challenged the impugned communication of the respondents dated 18.12.2017 and 20.12.2017 in the respective writ petitions. Both the impugned communications are almost identical which reads as under:-

> ''In W.P.No.10541 of 2019, impugned communication dated 18.12.2017:-
>
> Take notice that M/s.Pragal Associates is a registered dealer under VAT and GST vide TIN 334170024183 and GSTIN 34ABJPB5875A1ZZ having place of business at No.8,Raman Street, Dhatchinamurthy Nagar, Sokkanathanpet, Puducherry.
>
> On verification of the returns filed Form-I for the month of June 2016 under VAT, it is ascertained that the dealers had reported an excess tax credit of Rs.13,82,386/-. Hence, before availing this Excess credit under GST by filing TRAN 1, the dealer is directed to produce all the books of accounts along with purchase and sales invoices upto 2017-2018 (till June 2017) for verification.
>
> Further the dealer is hereby instructed not to avail any transitional credit under GST, without the approval of the undersigned being the

proper officer under GST, to pass necessary orders in this regard.

Accordingly, for production of books of accounts and other records the time is granted till 22.12.2017 failing which the excess ITC kept accrued in R-26 of Form-I filed for the month of June 2017 will be reversed without further intimation and despite this notice if the Excess Credit under VAT is adjusted under GST, the same will also be reversed.

In W.P.No.10543 of 2019, impugned communication dated 20.12.2017:-

Take notice that M/s.Pure Plastics is a registered dealer under VAT and GST vide TIN 34120012328 and GSTIN 34AFCPA157981Z4 having place of business at No.24,Ramanapuram Thattanchavady, Puducherry – 605 009 and dealing in plastic granules.

On verification of the returns filed Form-I for the month of June 2016 under VAT, it is ascertained that the dealers had reported an excess tax credit of Rs.2,62,650/-. Hence, before availing this Excess credit under GST by filing TRAN 1, the dealer is directed to produce all the books of accounts along with purchase and sales invoices upto 2017-2018 (till June 2017) for verification.

Further the dealer is hereby instructed not to avail any transitional credit under GST, without the approval of the undersigned being the proper officer under GST, to pass necessary orders in this regard.

Accordingly, for production of books of accounts and other records the time is granted till 22.12.2017 failing which the excess ITC kept accrued in R-26 of Form-I filed for the month of June 2017 will be reversed without further intimation and despite this notice if the Excess Credit under VAT is adjusted under GST, the same will also be reversed.''

3.It is the specific case of the petitioner that after the aforesaid notice was issued to the respective petitioner to produce the documents and the respondents had did not respond as a result of which, the petitioners were unable to transition the credit. Under these circumstances, these writ petitions have been filed by the petitioners for the above relief.

4.Opposing the prayer, the learned counsel for the respondents submits that the petitioners were asked to furnish documents and advised to not to file TRAN - I without getting approval from the respondent and since that the petitioners did not give the documents in time, no order was passed. It is further submitted that in any event nothing precluded the petitioner for filing TRAN - I in GSTIN portal by 27.12.2017 and since the petitioners failed to file the TRAN - I by the due date on 27.12.2017, the credit of the petitioners were blocked by the respondent by the impugned communication.

5.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader (Pondicherry) for the respondents.

6.The provisions of the Pondicherry GST Act did not prohibit the petitioner from transitioning the input tax credit available in the returns under Pondicherry Value Added Tax Act. However, in view of the impugned communications issued by the respondent, the petitioners failed to file TRAN-1 by the due date on 27.12.2017. Even it, the petitioner had filed TRAN-1 on time, the respondents were not without any power under the provisions of the respective GST enactments to ask the petitioner to reverse the order if it had been wrongly transitioned or utilized under Section 75 and 74 of the respective GST Act.

7.Since the petitioner cannot transition the credit under the provisions of the Act at this distant point of time, I am of the view that ends of justice will be made if the respondents decides the issue as to whether the petitioners were indeed entitled to the input tax credit during which could not be transitioned under the provisions of the respective GST enactments by 27.12.2017 in view of the impugned communications.

8.Under these circumstances, I direct the respondents to issue appropriate notice to the respective petitioners within a period of forty five days from the date of receipt of a copy of this order. The petitioner file a reply to the notice and if it is concluded that the petitioners were indeed entitled to transition the credit which could not be transitioned in TRAN-1 on account of the impugned communication, the respondent shall release the amount in cash or by allowing the petitioner to take suitable entry in the electronic ledger.

9.These writ petitions stand disposed of in terms of the above observations. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Deputy Commercial Tax Officer GD-1,
100, Feet Road, Ellapillaichavadi,
Puducherry.

2.The Chairman,
GSTN World Mark 1, Aerocity
Indira Gandhi International Airport,
New Delhi - 110 037.

3.The Director General (Systems),
100 Feet Road, Ellapillaichavadi,
Puducherry.

+1cc to Mr.N.V.Balaji, Advocate SR.No.943
+1cc to the Government Pleader Puducherry, SR.No.1256

W.P.Nos.10541 & 10543 of 2019

MT(CO)
GN(18/02/2022)