IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19698 of 2020
and
W.M.P.No.24339 of 2020

M/s.Meenakshi Steels
Represented by its Partner Mr.Jayesh Agarwal
Registered Office at No.3, 2nd Floor
Alsa Mall, Montieth Road, Egmore
Chennai – 600 008.

Having Factory at:

No.13/8-9, 14/5, Thetampakkam Village
P.O.Suthukeni, Via. Vazhudhavur
Puducherry – 605502.

....Petitioner

-Vs.-

The Assistant Commissioner of CGST & Central Excise
Puducherry – II Division
No.14, Municipal Street, Azeez Nagar,
Reddiarpalayam,
Puducherry – 605510.

.....Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the Respondent in Order-In-Original No.07/2020 (Refund) dt 28.05.2020 and quash the same as illegal and further direct the Respondent to permit the petitioner to amend/revise the Form GST TRAN-1 manually or online, by including the omitted amount CENVAT credit of eligible duties or grant refund of said duties.

For Petitioner	:	Mr.C.Rekha Kumari
For Respondents	:	Ms.M.Sheela, Sr.Standing Counsel

ORDER

The petitioner has challenged the Impugned Order dated 28.05.2020 passed by the respondent Assistant Commissioner of GST and Central Excise, Puducherry Division-II, whereby the petitioner's request for refund of the Input Tax Credit and Capital Goods Credit could not be successfully transitioned as the petitioner committed a mistake while uploading the TRAN-1 Form in time.

2.It is the case of the petitioner that the petitioner had successfully filed TRAN-1 Form within the prescribed time limit. However, by mistake the petitioner committed typographical error by claiming credit against inputs and capital goods to the extent of Rs.4,82,086/- and Rs.3,74,862/- respectively.

3.It is submitted that the petitioner had escalated the issue to the Nodal Officer, IT Redressal committee, GST Bhawan and by a communication dated 07.01.2020, the respondent had informed the petitioner that CBIC's Circular No.39/13/2018-GST dated 03.04.2018 and Standard Operating Procedure issued by the Board clearly says that the ITGRC mechanism is meant only for technical issues faced by tax payers at the time of filing of TRAN-1 Form and since the issue of the petitioner did not come within the purview of the above CBIC's Circular, the request of the petitioner cannot be forwarded.

4.The learned counsel for the petitioner submits that under these circumstances the petitioner had sent a representation for refund of the amount as the petitioner is unable to utilize the Input Tax Credit and Capital Goods Credit under the new regime.

5.The learned counsel for the petitioner submits that the respondent has not rejected the refund claim on the ground that the petitioner's case cannot be considered in the light of Section 142(11)(b) and Section 142 r/w Section 58(4) of CGST Act, 2017.

6.The learned counsel for the petitioner submits that though the petitioner has an alternative remedy, it is not efficacious in as much as the respondent is neither allowing the petitioner to transition the credit nor refunding the amount which was legitimately earned by the petitioner prior to GST implementation.

7.Opposing the prayer, learned counsel for the respondents submits that the petitioner had failed to correctly make declarations in Form GST TRAN-1 and therefore cannot ask for a revision. It is submitted that the Government has reached out to persons by issuing notification by extending time for filing the revised returns which was not availed of by the petitioner and therefore, the writ petition is devoid of merits.

8.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent and perused the provisions of the respective GST enactments of the year 2017 and the rules made thereunder.

9.The credit which was earned by a registered dealer or an assessee under the erstwhile Tamil Nadu Value Added Tax Act, 2006, Central Excise Act, 1944 and Finance Act, 1994 r/w CENVAT Credit Rules, 2004 are indefeasible in nature. The Hon'ble Supreme Court in Collector of Central Excise, Pune and others v Dai Ichi Karkaria Ltd. and others, (1999) 7 SCC 448, has held that credit availed under the provisions of the erstwhile Central Excise Act, 1944 and Central Excise Rules, 1944 are indefeasible and are intended to reduce the cascading effect of the tax to benefit the consumers. The Court held as follows:-

> 18. It is clear from these rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgment thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the rules which provides for a reversal of the credit by the Excise Authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no corelation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available.

10. In this case, the petitioner had admittedly filed Form GST TRAN-1 on time viz., 16.11.2017 but with mistakes. If the system which has been put in place to implement the provisions of GST and the Rules made thereunder does not facilitate rectification of mistakes in TRAN-1, such input tax credit has to be refunded back as retention of such amount by the department would be contrary to Article 265 of the Constitution of India. It would amount to collection of tax without authority of law. Ultimately the purpose of allowing an existing assessee to transition the credit was only a facilitation under the provisions of the respective GST Act and the Rules made thereunder. Therefore, I do not find any merits in the impugned order.

11. Input tax credit and/or capital goods credit which was validly availed under the provisions of the respective enactments which got subsumed into GST enactment cannot be denied. It has to be allowed to be carried forward for being adjusted towards tax liability under the GST regime, if indeed such credit was validly availed lying un-utilized in either the CENVAT account or VAT returns prior to the implementation of GST. As mentioned above, the system is only intended to facilitate the industry. Merely because the architecture of the Web Portal of GST has inherent limitation or does not allow a person to rectify a mistake in the TRAN-1 ipso facto would not mean that such indefeasible rights which were earned accumulated can be denied.

12. Further, procedures are nothing but handmaids of Justice and not mistress of law as held by the Hon'ble Supreme Court in Commissioner of Sales Tax v. Auriya Chambers of Commerce, AIR 1956 SC 1556 and State of Gujarat v. Ramprakash P Puri, (1969) 3 SCC 156. Substantial benefit of such un-utilised credit cannot be denied as these credits were earned legitimately under the Tax Enactments which were in force prior to 01.07.2017.

13.My views are fortified by a Division Bench of this Court. While dealing with somewhat similar situation, in the case of Commissioner of GST and Central Excise, Assistant Commissioner of GST etc vs. Bharat Electronics Limited vide order dated 18 November 2021 in W.A.No.2203 of 2021 against the order made in W.P.No.2937 of 2019 [Authored by Hon'ble Mr.Justice Mohammed Shaffiq while sitting along with Hon'ble Mrs.Justice Pushpa Sathyanarayana], the Hon'ble Division Bench examined a large number of case laws and held as under:-

> “12.Thus, there seems to be a consistent view that if there is substantial compliance, denial of benefit of Input Tax Credit which is a beneficial scheme and framed with the larger

> public interest of bringing down the cascading effect of multiple taxes ought not to be frustrated on the ground of technicalities. In view of the above, we are inclined to affirm the order of the learned Single Judge in directing the petitioner/respondent to enable the respondent herein to file a revised Form TRAN-1, by opening of the portal and that such exercise is to be completed within a period of 8 weeks from the date of issue this order."

14.In these circumstances, I am inclined to allow the writ petition not withstanding the fact that the petitioner has got an alternate remedy before the Appellate Commissioner against the impugned order, as the officers acting under the provisions of the GST Act are bound by limitation under the Act.

15. The respondents are therefore directed to either allow the rectification of TRAN-1 or in the alternative accept manual filling of TRAN-1 or make a suitable credit entry in the Electronic Cash Register of the petitioner after satisfying that the amount sought to be transmitted was indeed lying unutilised in the respective accounts of the petitioner as on 30.06.2017. This exercise shall be completed by the respondents within a period of ninety (90) days from the date of receipt of a copy of this order.

16. In fine, the Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

pgp / jen
To.

The Assistant Commissioner of CGST & Central Excise
Puducherry – II Division
No.14, Municipal Street, Azeez Nagar,
Reddiarpalayam, Puducherry – 605510.

+2ccs to Ms.M.Sheela,, Advocate, S.R.No.7256

W.P.No.19698 of 2020

BP[co]
NSK 19/04/2022