



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.33124 of 2019

M/s.Golden Cashew Products Private Limited
Represented by its Director
No.69, Mailam Road
Sedarpet,
Puducherry - 605 111.

....Petitioner

-Vs.-

1. The Commercial Tax Officer
Office of the Commercial Taxes Department
Goods Division - I (Pondicherry Municipality) - I
No.35, III Floor, Commercial Taxes Complex
100 Ft Road, Ellapillai Chavady
Puducherry - 605005.
2. The Nodal Officer/Joint Commissioner of Commercial Taxes
Office of the Commercial Taxes Department
100 Ft Road, Ellapillai Chavady
Puducherry - 605005.
3. The Goods and Service Tax Network (GSTN)
East Wing, 4th Floor, Word Mark - I
Aerocity, New Delhi - 110 037.
4. The Nodal Officer
Commissioner
O/o.The Principal Commissioner of GST & Central Excise
GST Bhawan
No.26/1, Mahatma Gandhi Road
Chennai - 600 034.
5. Central Board of Indirect Taxes and Customs
47-B, North Block
New Delhi - 110001.

.....Respondents



Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the 3rd respondent to re-open the TRAN-1 and in the event of technical difficulties to do so, direct the 1st Respondent to accept manual return by allowing credit through entry in 3B under "Others".

For Petitioner : Mr.K.Senguttuvan

For Respondents : Mr.J.Kumaran, AGP(P),
for R1 & R2

Ms.Hema Muralikrishnan,
Sr.Standing Counsel,
for R3 to R5.

ORDER

This Writ Petition has been filed for the following reliefs:-

"Writ of Certiorarified Mandamus to call for the records of the Respondent in Order-In-Original No.07/2020 (Refund) dated 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."

2. It is noticed that the petitioner was required to file TRAN-1 in GST portal on or before 27.12.2017 which stood extended from time to time. However, petitioner did not file TRAN-1 in time. Instead, the petitioner sent a representation dated 15.03.2019 to the Commercial Tax Officer, GD-III and stated that the petitioner came to know that there was a technical error only through the findings of the order and decided to claim ITC of Rs.28,29,208/- by resubmitting TRAN-1 as per notification No.48/2018 - Central Tax. It is further case of the petitioner that the petitioner appeared before the Commercial Tax Officer GD-III who informed the petitioner that the last date for filing TRAN-1 had already expired and had been extended upto 31.03.2019 as per Order No.1/2019 dated 31st January 2019 and since it was applicable only for a certain class of registered persons who could not submit declaration in GST TRAN-1 within due date on account of technical difficulties in the common GST portal, the petitioner was not entitled to the benefit thereof.



3. The respondents on the other hand have stated that on verification of the GST portal, it was found that no such return was filed by the petitioner within the period or by 15.03.2019 and therefore, the petitioner was asked to resubmit the letter along with evidence for having entered TRAN-1 in GSTN portal as stipulated in the circular of the Government. The respondents have taken a categorical stand that the petitioner submitted another letter on 29.03.2019 enclosing the screen-shot of TRAN-1 in GSTN portal wherein the status clearly shows TRAN-1 not filed and therefore filing of declaration in TRAN-1 is not belatedly available now as the due date is over. It is therefore stated that the petitioner is not entitled to transition of credit.

4. It is further submitted on behalf of the respondents that without submitting any evidence on account of technical/system error faced by the petitioner while submitting TRAN-1 to the jurisdictional/proper officer, the petitioner has clandestinely claimed to reopen TRAN-1 and therefore, the jurisdictional/proper officer was not able to forward the petitioner's claim to the nodal officer so as to forward the same to the GSTN.

5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

6. The Division Bench of the Court in the said case of Commissioner of GST and Central Excise, Assistant Commissioner of GST etc vs. Bharat Electronics Limited, vide order dated 18.11.2021, 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] has 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."



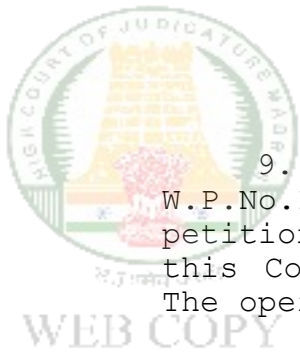
WEB COPY

7. In the order dated 06.01.2022 in W.P.Nos.4409 and 4411 of 2020, it has been held as follows:

"8. As a matter of fact, the Hon'ble Division Bench of this Court recently in the case of Commissioner of GST and Central Excise, Assistant Commissioner of GST and Central Excise, Central Board of Excise and Customs, Principal Commissioner Vs. M/s.Bharat Electronics Limited vide order dated 18.11.2021 has granted relief to the dealers who have transitioned credit under the provisions of the GST enactments. Therefore, the learned Single Judge vide order dated 21.06.2021 in W.P.No.2937 of 2019. The Hon'ble Division Bench upheld the order granted relief to the petitioner with the following observations:- '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-I, 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.'"

9.Considering the same, I am inclined to dispose this writ petition by directing the respondent to consider the petitioner's representation dated 26.11.2019 and dispose the same within a period of three months from the date of receipt of a copy of this order and in the light of the observations of the Hon'ble Division Bench of this Court in the above case."

8. Input Tax Credit on capital goods, Service Tax or Inputs availed under the provisions of the Central Excise Act, 1944, Finance Act, 1994 and Value Added Tax Act, 2006 which have been subsumed into the respective GST enactment can be allowed to be carried forward for being adjusted towards tax liability, if indeed such credit was lying un-utilized in the CENVAT account or VAT returns prior to the implementation of GST. Such amount cannot be denied for being utilized for discharging the tax liability under the respective GST enactments.



9. Today (03.02.2022), this Court while passing orders in W.P.No.19698 of 2020 had granted substantial relief to the petitioner therein relying on the decision of Division Bench of this Court in W.A.No.2203 of 2021 vide order dated 18.11.2021. The operative portion of the said order reads as under:-

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 correlation 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.



WEB COPY

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



WEB COPY

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 notwithstanding 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.



10. In these circumstances, I am inclined to dispose of this Writ Petition by directing the jurisdictional officer to examine the petitioner's CENVAT account or VAT returns and ascertain whether any such credit was lying un-utilized as on 30.06.2017 and if such credit existed in the CENVAT account or VAT returns of the petitioner, the amount shall be either refunded back by way of credit in the Electronic Cash Register of the petitioner or allowed to be transitioned notwithstanding the fact that the petitioner may have failed to file TRAN-1 in time. The said exercise shall be carried out by the respondents within a period of three months from the date of receipt of a copy of this order.

11. The Writ Petition is disposed of with the above directions. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

pgp / jen

To

1. The Commercial Tax Officer
Office of the Commercial Taxes Department
Goods Division - I (Pondicherry Municipality) - I
No.35, III Floor, Commercial Taxes Complex
100 Ft Road,
Ellapillai Chavady,
Puducherry - 605005.
2. The Nodal Officer/Joint Commissioner of Commercial Taxes
Office of the Commercial Taxes Department
100 Ft Road, Ellapillai Chavady
Puducherry - 605005.
3. The Goods and Service Tax Network (GSTN)
East Wing, 4th Floor,
Word Mark - I
Aerocity, New Delhi - 110 037.



4. The Nodal Officer
Commissioner
O/o.The Principal Commissioner of GST & Central Excise
GST Bhawan
No.26/1, Mahatma Gandhi Road
Chennai - 600 034.

5. The Central Board of Indirect Taxes and Customs
47-B, North Block
New Delhi - 110001.

+1cc to Ms.Hema Muralikrishnan,, Advocate, S.R.No.7449
+1cc to the Government Pleader, S.R.No.7536

W.P.No.33124 of 2019

BP[co]
NSK 19/04/2022