



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD) .No.7093 of 2020

M/S.Avatar Petro Chemicals Private Limited,
Represented by its Director K.Sathesh Raja,
15/5/8C, Veerapandi Main Road,
Opp to Velalar Makal Mandram,
Veerapandi,
Theni 625 534.

... Petitioner

Vs.

- 1.Goods and Service Tax Council,
Represented by its Chairman,
Department of Finance,
New Delhi.
- 2.The Principal Chief Commissioner,
Goods and Services Tax Act,
GST Bhavan, 26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.
3. Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi - 110 001.
4. The Chairman, Goods and Service Tax Network (GSTIN)
East Wing, World Mark-1,
4th Floor, Tower B, Aerocity,
Indira Gandhi International Airport,
New Delhi - 110 037.
5. Government of Tamil Nadu,
Represented by its Secretary,
State Tax Department, Fort St. George,
Chennai - 600 009.
6. The Nodal Officer/The Joint Commissioner,
Office of the Joint Commissioner of CGST & CE,
No.5, V.P.Rathinasamy Nadar Road,
B.B.Kulam, Madurai.



7. The Superintendent of CGST & IGST,
Office of the Superintendent of CGST & IGST
Theni-Range, Theni - 625 531.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 1st Respondent to enable the petitioner to file respondents to either open the portal so as to enable the Petitioner to again file TRAN-1 electronically or to accept a manually filed TRAN-1 within a time frame as fixed by this Court and treat it as filed in accordance with law.

For Petitioner	: Mr.S.Karunakar
For R1, R2, R4, R6, R7	: Mr. S.Ragaventhre
For R3	: Mr. P. Subbaiah, CGSC
For R5	: Mr. P.T.Thiraviam, Government Advocate

ORDER

The petitioner has filed this writ petition for a Mandamus to direct the first respondent to enable the petitioner to file respondents to either open the portal so as to enable the petitioner to again file TRAN-1 electronically or to accept manually.

2.The case of the petitioner in this writ petition is that the petitioner was a Central Excise Assessee. It is submitted that as on month of June 2017, the petitioner had an accumulated CENVAT credit of Rs.5,09,612/- under the provisions of Central Credit Rules, 2004. (3,66,215 on input + 50% 2,06,781/- of credit on capital good). It is submitted that the aforesaid credit amount remained un-utilised and therefore the petitioner attempted to transition the credit by filing TRAN-1 electronically in terms of Rule 117 of the Central Goods and Services Tax Rules, 2017 read with under Section 140 of Central Goods and Sales Tax Act, 2017 on the common portal specifying the details therein.

3.It is submitted that the attempt of the petitioner to upload TRAN-1 in the GST web portal was unsuccessful and whenever the petitioner attempted to open the portal, a pop up dialog box opened stating with a proxy error, as a result of which the petitioner could not transition the unutilized credit TRAN-1 within time. However, the petitioner has captured the screen shot of the pop up dialog.

4.The learned counsel for the petitioner further submits that on 19.04.2020 the petitioner received an e-mail from GST help desk that filing of declaration in TRAN-1 is not available now as the due

<https://hcservices.ecourts.gov.in/hcservices/>



date is over. It is further submitted that the petitioner is entitled to utilize the credit which existed credit prior to 11.07.2017 in terms of the Delhi High Court in **Chogori India Retail Limited Vs Union of India and others** in W.P.(C).No.762 of 2019 dated 09.08.2019. It is further submitted that the respondent department file before the Hon'ble Apex Court in Special Leave Petition(Civil) Diary No.7374/2020 was dismissed on 03.06.2020.

5.The learned counsel for the petitioner has relied on the following judgments:-

"In Kusum Enterprises Private Limited and another Vs. UOI and others reported in (2019) 68 GSTR 338 (Del).

In Siddharth Enterprises Vs. Nodal Officer reported in (2019) 71 GSTR 346 (Guj)

In Adfert Technologies Private Limited Vs. UOI and others reported in (2020) 73 GSTR 267 (P&H)

In Aman Motors Vs. UOI and others reported in (2020) 78 GSTR 421 (Del)

In Brand Equity Treaties Limited and others etc in SLP.Nos.7425 to 7428 of 2020

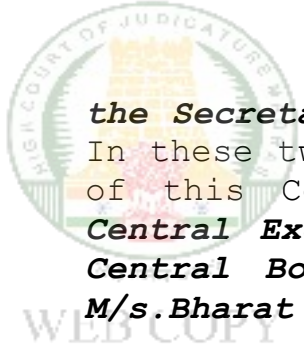
In Heritage Lifestyle and Developers and Private Limited Vs. Union of India and others reported in (2021) 86 GSTR 321 (Bom)."

6.A reference was also made to an interim order in SLP.Nos.7425 to 7428 of 2020, wherein the order passed by the Hon'ble Delhi High Court in WPC.Nos.11040 of 2018 and 196, 8496 and 13203 of 2019, dated 05.05.2020 has been stayed on 19.06.2020.

7.Opposing the prayer, the learned counsel for the 3rd respondent would submit that though a learned Single Judge of this Court in W.P.(MD).No. 7712 of 2018 had granted similar relief vide order dated 15.04.2019, the department has preferred an appeal before the Division Bench of this Court in W.A.(MD).N0.1749 of 2021 and a stay was granted by the Court on 30.07.2021 and therefore it is not open to the respondents to rely on the decision of the Delhi High Court referred supra.

8.I have considered the arguments advanced by the learned counsel for the petitioner, learned CGSC for the 3rd respondent, learned counsel for the respondents 1, 2, 4, 6 and 7 and the learned Government Advocate for the 5th respondent.

9.As a matter of fact I have considered the similar issues in W.P.Nos.4409 and 4411 of 2020 **(M/s.SS Bright Steels, represented by its Managing Director, Coimbatore Vs. M/s.Saro Steels, represented by its Proprietor, Coimbatore)** and in W.P.Nos.35841 of 2019 **(M/s.Mother Dairy Fruit and Vegetable Private Limited, represented by its DGM Corporate Taxation, Chennai Vs. Union of India, through**



the Secretary, New Delhi and another), vide order dated 06.01.2022. In these two cases, I have followed the order of the Division Bench of this Court in W.A.No.2203 of 2021 (**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.

10.This Court has already considered the very same issue under similar circumstances in W.P.No.19698 of 2020, wherein, vide order dated 03.02.2022, it has been observed 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."



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 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.

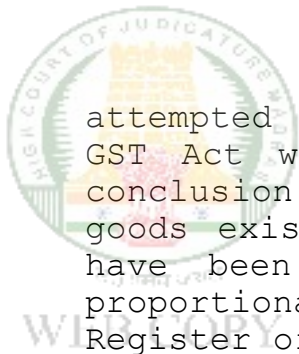
15. The respondents are therefore directed to either allow the rectification of TRAN-1 or in the alternative accept manual filling of TRAN-1 or make a suitable credit entry in the Electronic Cash Register of the petitioner after satisfying that the amount sought to be transmitted was indeed lying unutilised 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.

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

11. That apart, there is no provision under the provisions of the respective GST enactments for lapsing of the input tax credit and the credit availed on capital goods under the respective enactments. These credits are indefeasible. They were meant for being used for discharging the tax liability under the provisions of the erstwhile Central Excise Act, 1944, and under the provisions of Chapter V of the Finance Act, 1994.

12. I do not find any merits in the stand of the respondents to deny the credit, which may have been legitimately earned by an Assessee or a Dealer under the provisions of the respective enactments, which stood subsume into the respective GST enactments. Since uploading of TRAN-1 may be a challenge at this distant point of time due to technicality involved therein, the amount can be credited directly into the petitioner's GST Electronic Register, if such amounts were indeed available on the cut-off-date as of 30.06.2017 for being transitioned.

13. In view of the above, I remit the case back to the jurisdictional authorities to examine the credit in the respective returns of the petitioner which the petitioner claims to have



attempted to transition by uploading TRAN-1 after the enactment of GST Act with effect from 01.07.2017 and come to an independent conclusion on the same. In case, credit on such input and/or capital goods existed and had remained unutilized on 30.06.2017 and could have been transferred if TRAN-1 was filed properly, then the proportionate amount shall be credited into the Electronic Credit Register of the petitioner, within a period of 90 days from the date of receipt of a copy of this order.

14.The writ petition stands disposed of with the above observation. No costs.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To

The Secretary,
Government of Tamil Nadu,
State Tax Department, Fort St. George,
Chennai - 600 009.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-10027[F] dated 04/03/2022)

+1 CC to M/s.S.RAGAVENTHRE, Advocate (SR-10648[F] dated 08/03/2022)

+1 CC to M/s.SPL GP (SR-10286[F] dated 07/03/2022)

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IMS (CO)
GC (21.03.2022) 7P 5C