BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.02.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.7252 of 2020

and

W.M.P.(MD) No.6687 of 2020

M/s.Sri Desikanathar Textiles Private Limited,
represented by its Managing Director,
K.N.Kasi,
1/290, Uralipatti Road,
Velvarkottai 624 802,
Vedasandur Taluk,
Dindigul District. ... Petitioner

/vs./

1.Union of India,
represented by its Secretary to Government,
Ministry of Finance,
Department of Revenue, CBEC,
North Block, New Delhi 110 001.

2.The Commissioner of GST and Central Excise,
GST Bhawan, No.26/1,
Mahatma Gandhi Road,
Chennai 600 034.

3.The Nodal Officer/Assistant Commissioner,
Goods and Service Tax and Central Excise,
Dindigul I Division,
No.68, Nehruji Nagar,
R.M.Colony Road,
Dindigul 624 001.

4.The Superintendent,
Goods and Service Tax and Central Excise,
Vadamadurai Range,
No.5/112, NGO Colony,
Dindigul 624 005. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to consider the Rectified Manual TRAN-1 filed along with the representation dated 18.06.2020 for crediting the ITC on stock of goods for Rs.11,83,309/- to the electronic cash/credit ledger of the petitioner as per Section 140(3) of the GST Act.

For Petitioner : Mr.R.D.Ganesan

For R1 : Mr.R.Subbiah
Senior Panel Counsel

For R2 : Mr.K.Prabhu
Junior Standing Counsel

ORDER

The petitioner has filed this writ petition for a Mandamus to direct the respondents to consider the petitioner's rectified manual TRAN-1 filed along with the representation dated 18.06.2020 for crediting the ITC on stock of goods for Rs.11,83,309/- into the Electronic cash/Credit ledger of the petitioner.

2.It is the case of the petitioner that the petitioner is a manufacturer of Grey Woven Fabric. It is submitted that the petitioner purchased Cotton Grey Yarn from various parties in Tamil Nadu and that on the eve of implementation of GST, the petitioner had sufficient stock of raw materials and work-in-progress and therefore, the petitioner attempted to transition the proportionate input tax credit by filing TRAN-1 electronically under Section 140 of TNGST Act, 2017.

3.It is further submitted that by mistake, the petitioner filled up the details in part 7(d) of TRAN-1 filed under Section 140 of the TNGST Act/CGST Act, 2017 r/w Rules 117 (1), 118, 119 and 120 of the CGST Rules. It is submitted that the petitioner being new to the GST regime, which was implemented only with effect from 01.07.2017, the petitioner committed mistake. It is submitted that instead of giving the details in Part C, the petitioner filled up the details in Part D, as a result of which, the amount which attempted to be transition in TRAN-1 could not be transitioned to the petitioner's electronic ledger. It is submitted that the petitioner has sent a representation and since the petitioner was unable to elicit any favorable response from the respondents, the petitioner also filed a manual return dated 18.06.2020 with a request to the respondents to allow the petitioner to transition the above credit manually into the electronic ledger of the petitioner.

4.Opposing the prayer, the learned Senior Panel Counsel for the 1st respondent submits that if any mistake was committed, it was open for the petitioner to file suitable application under Rule 120A of the GST Rules, 2017. It is submitted that the Government had also issued various Government Orders from time to time and extended the date for rectifying the mistake in TRAN-1. In this connection a reference was made to the following Government Orders:-

Order No	Date	Issue
Order No.02/2017-GST	*18.09.2017*	*Last date of revision of TRAN-1 extended till 31.10.2017.*
Order No.08/2017-GST	*28.10.2017*	*Last date of revision of TRAN-1 extended till 31.10.2017.*
Order No.10/2017-GST	*15.11.2017*	*Last date of revision of TRAN-1 extended till 31.10.2017.*

5.It is submitted that the petitioner has approached only 18.06.2020 ie., long after the period of limitation. It is therefore submitted that there is no merits in this writ petition.

6.I have perused the records filed by the petitioner, which indicates that the petitioner has been regularly corresponding with the respondents and with the Help Desk of the GST web-portal. The Help Desk of the GST web-portal responded to the petitioner on 18.10.2018 and has informed the petitioner that the issue was resolved and the problem persist the petitioner should raise a web-ticket at http://selfservice.gstsystem.in/ or call at 0120-4888999.

7.A further communication of the Help Desk also indicates that the respondents have agreed to help the petitioner in this regard. The petitioner has also sent an e-mail dated 26.11.2018, wherein the petitioner has given the particulars and that the petitioner was unable to transition the credit. There are several other communications, which indicate that the petitioner was in continuous touch with the respondents to ensure that the credit, which was attempted to be transitioned by filing Form in TRAN-1, was successful. The respondents have finally responded on 09.06.2020, wherein it has been stated as follows:-

> *"Please refer to your copy of E-mail dated 06.06.2020 stating that you have uploaded/furnished the details of input held in stock in GST portal-TRAN-1 to the value of Rs.11,83,309/- in ITC; in GST portal the TRAN-1 status shows as filled & 7d stock of goods; but till date you did not get credit in your electronic credit ledger and not able to adjust the amount for your output.*
>
> *In this regard, it is found that you are manufacturer of goods and have filled TRAN-1 under part 7(d) which relates to stock of goods not supported by invoices/documents evidencing payment of tax (for only those states having VAT at single point)- This portion should be filled if you are trader or dealer who is unregistered under the old regime and where you do not have the invoice or other prescribed documents evidencing payment of VAT/Entry Tax which will be claimed as ITC of SGCT after filing FORM GST TRAN-2. This part is not applicable manufacturer or a service provider. Hence, the factual position may be informed.*

Further, you have stated that you have made several reminders and request, but so far this office has not received any letter or representation from you. Hence, copy of the same may be furnished to this office."

8.Subsequent to the aforesaid, the petitioner has sent a communication dated 18.06.2020 along with a copy of modified TRAN-1. The issue has been considered by this Court in W.P.(MD) No.15531 of 2020 ***(M/s.Ram Auto, represented by its Managing Partner, Dindigul, Vs. The Commissioner of Central Taxes and Central Excise, Madurai and another)***, vide order dated 16.02.2021.

9.The learned single Judge of this Court thereon has relied upon the decision of the Hon'ble Devision Bench of the Delhi High Court in W.P.(C) No.3798 of 2019 ***(M/s.Blue Bird Pure Private Limited Vs. Union of India and others)*** and granted the relief to the petitioner therein.

10.Dealing with somewhat identical situation, a Division Bench of this Court in its order dated 18.11.2021 in W.A.No.2203 of 2021 ***(Commissioner of GST and Central Excise and others Vs. M/S.Bharat Electronics Limited)***, uphold the order of the learned single Judge of this Court in W.P.No.2937 of 2019. The learned single Judge by order dated 21.06.2021 in W.P.No.2937 of 2019, was pleased to direct the respondents therein to enable the filing of revised From TRAN-1 by opening of the portal and that the said exercise was to be completed within a period of 8 weeks.

11.On appeal in W.A.No.2203 of 2021 ***(Commissioner of GST and Central Excise and others Vs. M/S.Bharat Electronics Limited)***, the Division Bench of this Court has considered the entire gamut of case laws and ultimately concluded as follows:-

"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.

13.Needless to state, it is open for the Revenue to thereafter examine the legality / correctness or otherwise of the claim of credit stated to be earned under erstwhile regime and transitioned to GST by the respondent / assessee in accordance with law."

12.The High Court of Gujarat in the case of Jakap Metind Private Limited Vs. Union of India and others reported in (2020) 76 GSTR 220 (Guj), after considering Section 140 of the CGST and the Rules 117 and 120A thereof, was also granted the relief by referring to the decision of the Delhi High Court *(M/s.Blue Bird's case referred supra).*

13.Incidentally, similar order came to be passed by this Court in W.P.No.23107 of 2021 ***(Vikas Elastochem Agencies Private Limited, represented by its Director, Chennai Vs. The Deputy Commissioner Central Excise and GST, Chennai and another)***, vide order dated 03.12.2021. The relevant portion of the same reads as under:-

> *"24.Considering the same, I am inclined to dispose this writ petition by directing the second respondent to take an independent decision by deputing a suitable officer from the Department to verify the petitioner indeed had un-ututilized accumulated credit for a sum of Rs.33,28,709.60 (Central Excise Credits Rs.24,81,347.10 and Customs Duty credits Rs.8,47,362.50]. The second respondent or any other Nodal officer may examine the issue and call upon the petitioner to produce their records and thereafter come to a proper conclusion as to whether the petitioner was indeed unable to transition the credit in time.*
>
> *25. If the aforesaid amount of credit was available on 01.07.2017, the technical problem in the GST Portal may be internally resolved by the respondents by issuance of suitable directions in terms of decision of the Hon'ble Madurai Bench of this Court rendered in M/s.Ram Auto Vs. The Commissioner of Central Taxes and Central Excise and ors reported in 2021-VIL-192-Mad. This exercise shall be carried out by the second respondent within a period of six weeks from the date of receipt of a copy of this order."*

14.Thus, there is a consistent in all these cases *(referred supra)* to facilitate the assessee to utilize the credit, which would have been available prior to GST regime. As a matter of fact, the provisions of GST Act also does not provide for lapsing of the credit, which could not be successfully transitioned under the new regime while filing form correctly in TRAN-1. If the credit, which was availed during the regime that existed prior to 01.07.2017, it gives the indefeasible right to utilize such credit, even to those assessees, who were not under the taxable regime under the old Act, have been allowed to transition credit, as they were liable to pay tax.

15.The Hon'ble Supreme Court in the case of ***Collector of Central Excise, Pune and others V Dai Ichi Karkaria Limited and others*** reported in ***(1999) 7 SCC 448***, has held that the credit availed under the provisions of the erstwhile Central Excise Act and Central Excise Rules, 1944 are indefeasible and are intended to reduce the cascading effect of the tax to benefit the consumers.

16.Thus, I am inclined to allow this writ petition subject to the condition that the credit, which was sought to be transitioned by the petitioner by filing a defective Form in GST TRAN-1 contains the correct details.

17.Under these circumstances, I direct the respondents to allow the input tax credit, after a scrutiny and verification by a competent officer that such credit could be transitioned but for wrong declaration in Form TRAN-1. The concerned jurisdictional officer is directed to examine the records and then come to an independent conclusion as to whether the petitioner was indeed entitled to transition credit by filing TRAN-1, in terms of Section 140 of the said Act r/w the Rules thereof but from the technical mistakes committed by the petitioner. If the credit was available to be transitioned, it cannot be denied. The respondents shall thereafter either allow the petitioner to file either a revised TRAN-1 or directly make a credit entry in teh electronic cash register of the petitioner. The petitioner is also directed to cooperate with the respondents by producing all the required documents to substantiate that the petitioner was indeed entitled to transition the credit within a period of 2 months from the date of receipt of a copy of this order. The entire exercise shall be completed within a period of 3 months from the date of receipt of a copy of this order.

18.With the foregoing observations and directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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TO:

1.The Secretary to Government,
Ministry of Finance,
Department of Revenue, CBEC,
North Block, New Delhi 110 001.

2.The Commissioner of GST and Central Excise,
GST Bhawan, No.26/1,
Mahatma Gandhi Road, Chennai 600 034.

3.The Nodal Officer/Assistant Commissioner,
Goods and Service Tax and Central Excise,
Dindigul I Division,
No.68, Nehruji Nagar,
R.M.Colony Road,
Dindigul 624 001.

4.The Superintendent,
Goods and Service Tax and Central Excise,
Vadamadurai Range,
No.5/112, NGO Colony,
Dindigul 624 005.

+1 CC to M/s.K.PRABHU, Advocate (SR-8854[F] dated 25/02/2022)

+1 CC to M/s.P.SUBBIAH, Advocate (SR-8853[F] dated 25/02/2022)

+1 CC to M/s.R.D.GANESAN, Advocate (SR-8895[F] dated 25/02/2022)

W.P.(MD)No.7252 of 2020
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RD(25.03.2022) 7P 8C