



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.7377 of 2020

WEB COPY

M/s. Suriya Engineering Works,
Rep.by its Managing Partner,
Thiru. Ravichelvam

... Petitioner

Vs.

The office of Superintendent of Control GST
and Central Exercise (Thiruverumbur Range)
'B' Wing, 1st Floor, Annex Building
No.1, Williams Road, Cantonment,
Tiruchirappalli 620 001.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to permit the petitioner/tax payer to file or revise form Tran-1 already filed either electronically or manually and consequently avail the benefits towards that.

For Petitioner	: Mr.R.Baskaran
For Respondent	: Mrs.S.Ragaventhre, Junior Standing Counsel

ORDER

The petitioner has filed this writ petition for a writ of Mandamus to direct the respondent to permit the petitioner/tax payer to file or revise form Tran-1 already filed either electronically or manually and consequently avail the benefits towards that.

2. The facts of the case are that the petitioner attempted to transition the unutilised input credit under the provisions of Central Goods and Service Tax Act, 2017 and the Tamil Nadu Goods and Service Tax Act, 2017. It is the case of the petitioner that the petitioner was unable to uphold the relevant Form in TRAN-1 under Section 140 of the Cental Goods and Service Tax Act, 2017, as a result of which, a sum of Rs.15,75,507/- lying unutilised in the petitioner's form ER1 (Exercise Returns) for the month of June 2017 could not be utilised by the petitioner for discharging the tax liability under the respective Goods and Service Tax Act, 2017. The writ petition is resisted primarily on the ground that there was Standard Operating Procedure (SOP) prescribed to redress the grievance vide IT Grievance Redressal Committee, circular No.39/13/2018, dated 03.04.2018. It is submitted that the petitioner



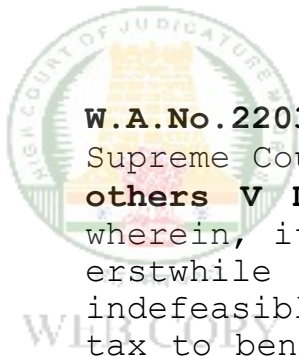
has not submitted any grievance as per the Standard Operating Procedure (SOP) in the above circular to substantiate that the petitioner facing any technical problem on account of the IT related issues and therefore the petitioner is not entitled for the relief. It is further submitted that the decision of the Delhi Court in W.P. (C) 11040/2018, W.P (C) 196/2019, W.P (C) 8496/2019 and W.P (C) 13203/2013, dated 05.05.2020, is of no relevance, as the issue has been escalated to the Supreme Court in SLP. It is further submitted that though the Madurai Bench of this High Court in W.P.(MD).No.4045 of 2021 passed an order in favour of a persons like the petitioner, the department has filed an appeal in W.A.(MD).No.469 of 2020 and that the said order has been stayed by the Division Bench on 06.07.2020 in C.M.P.(MD).No.3355 of 2020 in W.A.(MD).No.4045 of 2020.

3. The learned counsel for the respondent has placed reliance on the decision of the Bombay High Court in **Nelco Limited Vs Union of India** in W.P.No.6998 of 2018, wherein, it was held that input tax credit in the transition provision is the concession to be utilised in time bound manner and therefore extension is given that there was a technical difficulty as it ends. The learned counsel for the respondent, therefore, submits that there was no technical difficulty in the common portal for a registered user and therefore no concession can be extended to the petitioner. It is submitted that the writ petition is delayed and filed after a lapse of three years implying that the petitioner has given up the rights. Therefore, the writ petition deserves to be dismissed on account of laches. The learned counsel for the respondents also placed decision on the judgment of the Gujarat High Court in **Sree Motors Vs Union of India, 2020 SCC online Rajasthan 381**. In this Connection, reference was made to paragraph 29 from the said judgment, it reads as under:

"29. A perusal of the above communication dated 12.12.2019 reveals that the GST Council referred to the ITGRC meeting, wherein, cases of the petitioners were considered and indicated that their cases fell in B-1 category and B-1 category has been descibed 'as per GST system log, there are no evidences of error or submission/filing of Tran-1."

4. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents. I also perused the orders cited by the learned counsel for the respondents.

5. As a matter of fact, a detailed order was passed in W.P. (MD).Nos.7093 and 11614 of 2020, and the same was followed in W.P. (MD).No.11614 of 2020. These decisions are inspired from the decision of the Division Bench of this Court in the 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 and from the few decisions of the Hon'ble Supreme Court particularly in **Collector of Central Excise, Pune and others V Dai Ichi Karkaria Limited and others (1999) 7 SCC 448**, wherein, it has held that 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. There is no lapsing of such utilised credit. In the light of the above, I am inclined to allow this writ petition and accordingly the writ petition allowed in terms of the order in W.P.(MD).Nos.7093 and 11614 of 2020, and W.P.(MD).No.11614 of 2020

6. The respondents are directed to verify the records and returns of the petitioner under the Central Excise Act, 1944 and if the credit had been unutilised on the cut off date (i.e) 30.06.2017, the respondents shall suitably credit into the electronic credit register of the petitioner the amount which had remained unutilized and would not be transitioned under the GST regime. This exercise shall be carried by the respondents within a period of three months from the date of receipt of copy of this order. No costs.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The office of Superintendent of Control GST
and Central Exercise (Thiruverumbur Range)
'B' Wing, 1st Floor, Annex Building
No.1, Williams Road, Cantonment,
Tiruchirappalli 620 001.

+1 CC to M/s.S.RAGAVENTHRE, Advocate (SR-10647[F]
dated 08/03/2022)

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04.03.2022

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