



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.03.2022
CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

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Writ Petition (MD) No.11614 of 2020

P.Preetha,
Proprietrix, M/S.Deshini Yamaha,
Plot No.25, Lourdhu Nagar Extension,
R.S. College (PO),
Thanjavur,
Tamil Nadu, Pin Code - 613005.

.. Petitioner

Versus

1.The Goods and Service Tax Council
(GST Council),
The Secretary Office of the GST
Council Secretariat,
5th Floor, Tower II,
Jeevan Bharti Building,
Janpath Road,
Connaught Place,
New Delhi - 110 001.

2.The Commissioner of Central Tax,
GST Bhavan, No.1, Williams Road,
Cantonment,
Tiruchirappalli - 612 001.

3.The Assistant Commissioner Central Tax (GST),
Thanjavur Division,
Ponnagar, Medical College Road,
Thanjavur - 613007.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to allow filing of GST - Tran 1 by the petitioner to take credit on eligible duties of goods in electronic credit ledger in terms of Section 140(3) of the Central Goods and Services Tax Act, 2017 either by opening of GSTN portal or to allow it to be filed manually.

For Petitioner : Mr.T.Ramesh

For Respondents : Mrs.S.Ragaventhre
Standing Counsel



ORDER

This Writ Petition has been filed for a Mandamus to permit the petitioner to upload the GST - Tran-1 Form either by opening the GST portal or by allowing them to file manually.

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2.It is the specific case of the petitioner that they did not upload GST - Tran-1 in time on the input tax credit that was available on the date when the Tamil Nadu Value Added Tax Act, 2006 persists. The petitioner appears to have sent a representation on 26.06.2020 explaining the reasons for not filing Tran-1 form in time in terms of Section 140 of the C.G.S.T. Act read with the Rules framed thereunder and the relaxations of the Government announced from time to time.

3.The present Writ Petition is based on a decision of the Delhi High Court in Brand Equity Treaties Limited Vs. The Union of India and others [W.P.(C)No.11040 of 2018, dated 02.03.2020].

4.Though the above said decision of the Delhi High Court has been appealed before the Hon'ble Supreme Court in S.L.P.(C)Nos.7425 - 7428 of 2020, it is noticed that several orders have been passed by different High Courts including the Division Bench of this Court, which have been followed in several cases.

5.Today, a detailed order has been passed in W.P.(MD)No.7093 of 2020. The operative portion of the said order reads as under:-

'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.'

6.In view of the above, this Writ Petition stands disposed of by directing the respondents to verify whether indeed the petitioner had not utilized the input tax credit under TNVAT regime, which could not be transmitted by filing Tran-1 form in terms of Section 140 of the respective CGST Act. If such transition was permissible, but for the reasons given in the Writ Petition, the same should be allowed to be utilised by allowing the petitioner either to file a manual Tran-1 form or by making direct credit to the electronic credit register to the petitioner. The respondents shall examine the same and pass appropriate orders in terms of the above order of this Court.

7.This Writ Petition stands disposed of in terms of the above direction. No costs.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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To

1.The Goods and Service Tax Council
(GST Council),
The Secretary Office of the GST
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5th Floor, Tower II,
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Thanjavur - 613007.

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



+1 CC to M/s.T.RAMESH, Advocate (SR-10108[F] dated 04/03/2022)

+1 CC to M/s.S.RAGAVENTHRE, Advocate (SR-10646[F] dated
08/03/2022)

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