BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.26618 of 2022
and
W.M.P.(MD)Nos.20819 and 20820 of 2022

M/s.Priyanka Bullion Private Limited,
Represented by its Director,
R.Vasudevan,
130/1, South Avani Moola Street,
Madurai - 625 001. ... Petitioner

Vs.

1. The Union of India,
Represented by its Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi - 110 001.

2. The Superintendent of CGST and Central Excise,
City Range,
Madurai - I Division,
No.4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai - 600 002. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records pertaining to the impugned Show Cause Notice No.1/2020 in O.C.No.209/2020 dated 09.11.2020 issued by the 2nd Respondent and quash the same.

For Petitioner	:	Mr.Hari Radhakrishnan
For Respondents	:	Mr.P.Subbaraj Special Government Pleader for R1 Mr.R.Nandakumar Senior Standing Counsel Assisted by Mrs.S.Ragaventhree Junior Standing Counsel

O R D E R

This Writ Petition has been filed challenging the impugned show cause notice, dated 09.11.2020 which proposes levy of interest and penalty on the Input Tax Credit that was stated to be erroneously availed without filing form TRAN-1 on the basis of the GSTR 3B.

2. It is submitted by the learned counsel for the Petitioner that subsequent to the impugned show cause notice, the Hon'ble Supreme Court of India in the case of ***Union of India and another vs. FILCO Trade***

Centre Private Limited and another in ***SLA (C) No.32709 to 32710 of 2018*** has passed the order, permitting the assessee to file the fresh / revised form TRAN-1/TRAN-2 between the period 01.09.2022 to 31.10.2022. The learned Junior Standing Counsel for the 2nd Respondent submitted that the same has thereafter been extended until 30.11.2022. The relevant portion of the order is extracted hereunder:

> *"Having heard learned Additional Solicitor General, learned counsel appearing for different states and learned counsel appearing for different private parties and having perused the record, we are of the view that it is just and proper to issue the following directions in these cases:*
>
> *1. Goods and Service Tax Network (GSTN) is directed to open a common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.*
>
> *2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).*
>
> *3. GSTN has to ensure that there are no technical*

glitch during the said time.

4. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.

5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.

6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims."

3. The learned counsel for the Petitioner further submitted that form TRAN-1 was filed by the Petitioner on 11.10.2022 and the same is pending consideration before the Respondents. Despite the fact that form TRAN-1 has been filed on the strength of the directions/ orders of the Hon'ble Supreme Court, the 2nd Respondent issued a communication on 23.09.2022, thereafter, there has been oral communication requesting the Petitioner to appear for the purpose of adjudicating the show cause notice.

4. This Court finds that the show cause notice was issued on the premise that the transition of credit being invalid inasmuch as it was not

made through form TRAN-1. However, form TRAN-1 has now been filed on the strength / basis of the direction of the Hon'ble Supreme Court of India. In the circumstances, it is appropriate that impugned show cause notice be kept in abeyance until orders are passed on the claim of transition credit under form TRAN-1 that is now filed.

5. With the above observations, this Writ Petition is disposed of. This would not preclude the 2nd Respondent after deciding on the transition credit claimed in Form TRAN-1 to proceed with the show cause notice, if circumstances warrant and pass orders in compliance with the procedures contemplated / prescribed in law. Though normally this Court would not interfere in show cause notice, however to avoid multiplicity of proceedings, the present orders are passed as against the show cause notice. No costs. Consequently, connected Miscellaneous Petitions are closed.

25.11.2022

Index : Yes / No
Speaking Order : Yes / No
vji

To:

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   New Delhi - 110 001.

2. The Superintendent of CGST and Central Excise,
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MOHAMMED SHAFFIQ, J.

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