27.02.2024
Item No.9
gd/ssd

MAT/283/2024
IA NO: CAN/1/2024
CALCUTTA RADIO SERVICE PRIVATE LIMITED
(CALTRON) AND ANR.
VS
UNION OF INDIA AND ORS.

Mr. Rishi Raju,
Mr. Abhisek Tibrewal,
Mr. Suvranil Saha
..for the Appellants.

Mr. K.K. Maiti,
Mr. Tapan Bhanja
..for the CGST Authority.

1. This intra court appeal by the writ petitioners is challenging an order passed in WPA 1593 of 2024 by which the writ petitioners challenge to the adjudication order dated 13.11.2023 was rejected.

2. The issue involved in the instant appeal lies in a very narrow campus.

3. The appellants were registered dealer under the provisions of the erstwhile Value Added Tax Act and subsequently under the GST Act.

4. While filing the return in TRAN-1 it appears that the appellants entered the amount in a wrong table due to technical misunderstanding, as a result of which, the credit of Rs.46,91,982/- was credited to the CGST account.

5. The appellants having realised the mistake submitted a representation to the authority on

16.11.2022 requesting to provide them the facility of filing TRAN-1 and 2 which are available on the GST Portal till 30th November, 2022 and accordingly, submitted the same. Prayer was also made to defer the proceedings under Section 73(5) of the Act.

6. Admittedly, there was no response by the assessing officer to such a request.

7. The appellants once again by representation dated 29.11.2022 referred to the earlier letter dated 16.11.2022 regarding re-submission of TRAN-1 and TRAN-2 and brought to the notice of the assessee that they are unable to submit the TRAN-1 at the relevant date the GST Portal is neither showing the option submits nor showing the option download earlier filed a TRAN. The screenshot of the filing of TRAN-1 and TRAN-2 option were attached along with the letter 29.11.2022. The appellants requested the authority to allow them to submit TRAN-1 and TRAN-2 return in GST Portal or in the alternative to guide them to resolve the issue. The authority did not send any reply nor there was any advice rendered to the appellants as to how the inadvertent error could be rectified. The authority proceeded to issue show cause notice dated 23.01.2023 for which the appellants had submitted their reply reiterating the bona fide mistake and requested for relief at the hands of the department.

8. The consistent case of the appellants is that they would fall under Entry 7B and inadvertently the TRAN-1 was filed under Entry 7A and the appellants explained that since they are not registered under the Central Excise Act, they are required to file TRAN-1 under Entry 7B.

9. The adjudicating authority while passing the order impugned in the writ petition dated 13.11.2023 candidly accepts the fact that a mistake has occurred. The authority has gone to the extent of making an observation that the appellants are entitled to transitional credit to the extent of Rs.2,05,715/-. Further, the authority also records that the officers of the department did not advise the appellants at the appropriate time or provided them guidance to sort out the problem by lodging a complaint before the Nodal Officer of IT Grievance Redressal Mechanism, Kolkata CGST & CX Zone. Ultimately, the adjudicating authority has confirmed the demand.

10. The question would be as to whether on account of such a technical error which undoubtedly is an inadvertent error can the appellants be denied the transitional credit. This issue is no longer *res integra* and has been considered by several courts as well as this court in a batch of cases in MAT 552 of 2020. More or less an identical issue arose for consideration and the court considered the various orders passed by

the other High Courts and disposed of the appeals by permitting the writ petitioners therein to file individual tax credit in GSTR-3B Forms for the relevant months and the assessing officer was at liberty to verify the genuineness of the claim. We are informed that the judgment and order dated 14.12.2021 in MAT 552 of 2020 etc. batch has been given effect to. More recently in the case of *S.V. Halavagali and Sons v. Superintendent of Central Excise* reported in *(2023) 13 Centax 343 (Karnataka)* an identical issue arose for consideration before the court. In the said case also there was an inadvertent error and the credit was filed under wrong head i.e. 7(d) instead of 7(b). The court after taking into consideration the various orders passed by the other High Courts directed the authorities to consider the claim of the petitioners therein under Column 7(b) of the CGST Rules, 2017 and if there are supporting documents to make the claim and the claim is established, then consequential relief should be allowed. Earlier similar issue was considered in the case of *G & C Infra Innovations v. Union of India* reported in *2022 (65) G.S.T.L. 17 (Kerala)* wherein the court took note of the fact that after the GST regime came into force the period between 2017 and 2020 ought to be regarded as the nascent period of legislation and admittedly several glitches occurred even from the part of the department. Further, it was pointed out that the courts have repeatedly held that the said period as a trial and error phase as far as implementation of the statute was concerned and the taxpayers were also in a state of confusion, during the relevant period. The court also took note of the decision in the case of *Brand Equity Treaties Limited and Others v. Union of India and Others* reported in *2020 (38) G.S.T.L. 10 (Delhi)* where the problems could be attributed either to the failure of the system maintained by the department or on the inexperience of the assessees in the ways and means provided by the new regime. It was noted that the court went on to observe that the department which ought to have come to the rescue of the taxpayers, especially during the nascent stage of its legislation, has failed in respect of the petitioners therein to provide succor for the difficulty faced by it. The court also took note of the decision of the Division Bench in the case of *Blue Bird Pure (P) Ltd. v. Union of India and Others* reported in *(2019) 68 GSTR 340* and the decision in *Goods and Services Tax Network v. M/s. Leo Distributors* reported in *(2020) 117 taxmann.com 672 (Kerala).* Ultimately the court directed the competent authorities to facilitate revising of Form GST TRAN-1 submitted by the petitioners therein and to file Form GST TRAN-2 by making necessary arrangements on the web portal. As pointed out earlier, the adjudicating authority has also appreciated the plight faced by the assessee but nevertheless he had confirmed the demand made in the show cause notice. The adjudicating authority also observed that the officers should have advised the appellants at the appropriate time as to how to get the defect rectified.

11. Thus, taking note of the law and the subject as well as the facts of the case, it is a fit case where directions should be issued to the authorities to enable the appellants to rectify the mistake and submit GST TRAN-1 under heading 7B of Table 7(a) of Form GST TRAN-1 and the appellants are directed to comply with the same within three weeks from the date of receipt of the server copy of this order after which the adjudicating authority is directed to verify the same and if admissible, extend the transitional credit to the appellants.

12. It is pointed out by the learned senior standing counsel for the department that appropriate direction may also be issued to the Nodal Officer of IT Grievance Redressal Mechanism, Kolkata CGST & CX Zone.

13. In the light of the above direction, the Nodal Officer of IT Grievance Redressal Mechanism, Kolkata CGST & CX Zone is directed to take note of the direction issued in this judgment and order and

facilitate the filing of the TRAN-1 and TRAN-2 by the appellants by rectifying the mistake.

14. In the event such rectification is not possible electronically, the appellants shall be given an option to do so manually.

15. The appeal is disposed of accordingly.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)