(2019) 11 DEL CK 0550

In the Delhi High Court

Case No : Civil Writ Petition No. 1329 Of 2019

Aagman Services Private Limited — APPELLANT

Vs

Union Of India & Ors — RESPONDENT

Date of Decision : 21-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Central Goods and Service Tax Act, 2017 — Section 140

Citation : (2019) 11 DEL CK 0550

Hon'ble Judges : Vipin Sangh, J;Sanjeev Narula, J

Bench : Division Bench

Advocate : Puneet Rai, Amit Bansal, Aman Rewaria, Vipasha Mishra, Dhananjay Mishra

Final Decision : Disposed Of

Judgement

Sanjeev Narula, J

1. The present petition under Article 226 and 227 of the Constitution of India seeks the following reliefs:

"i. Issue a writ of mandamus or any other writ, order or direction in the nature thereof in the nature thereof thereby directing the Respondents to open the Portal to enable the Petitioner to file its claim of tax credit as on 30.6.2017 in Form Tran-1 and allow the Cenvat Credit of Rs 197459/-which the Petitioner could not do for reasons beyond its control due to glitches in the system of the Respondents as the online portal reflects as TRAN-1 processed with error;

ii. Issue the direction of like nature to the Respondents, directing them to allow the Revision of TRAN-1 or accept the manual submission of TRAN-1 by the Petitioner."

2. The case of the petitioner as stated in the petition is that it is engaged in the business of selling and construction of immovable properties and is registered under the Central Goods and Service Tax Act, 2017 (hereinafter referred as ?

CGST" Act). Before the introduction of the GST Act, as on 30.06.2017, the petitioner had a CENVAT credit of Rs. 2,04,513/- as a credit balance inclusive of Service Tax of Rs. 1,97,459/- and Rs.7,054/- as Krishi Kalyan Cess. Petitioner was entitled to transition of credit of the amount of CENVAT credit in terms of Section 140 of the CGST Act.

3. Learned Counsel for the petitioner points out that in the present case, the eligibility of the Petitioner to claim the CENVAT credit has not been doubted by the Respondents. In order to avail transition of credit, Petitioner was required to submit a declaration in Form GST TRAN-1 on the GST Portal within the stipulated period of 90 days. Since a large number of taxpayers could not complete the process within the aforesaid period on account of technical glitches and difficulties faced by them, government extended the time period for filing TRAN-1 several times and lastly on the recommendation of the GST Council, it was extended up to 31.12.2019. Petitioner tried filing Form TRAN-1 on the common portal on 23.08.2017, however, the TRAN-1 was not processed and error messages were displayed by the system. The petitioner could not avail transition of credit, presumably because of low bandwidth, given the fact that large number of assessees all over India were trying to submit the declaration in Form TRAN-1 before the last date.

4. Faced with the situation, petitioner submitted its grievance to the GST Helpdesk on 07.09.2017. Petitioner also wrote to the Nodal officer on 29.10.2018 with request to reopen the Form TRAN-1. Subsequently, Petitioner made representations to the respondents vide letters dated 22.11.2018 and 31.12.2018. However, it is submitted that petitioner has not received any reply from the respondents. The Commissioner of GST vide order no. 4/2018-GST extended the date of submitting of TRAN-1 upto 31st January 2019 in cases where the assessee could not submit the said Form due to technical difficulties. However, till date the portal for filing TRAN-1 has not been opened in case of the petitioner.

5. Petitioner relies upon CBIC Circular No.39/13/2018-GST dated 03.04.2018 issued by the government to address the grievances of the tax payers who could not file the declaration due to technical glitches on GST Portal. Petitioner also relies upon several decisions of this Court including M/s Blue Bird Pure Pvt. Ltd vs Union of India and Ors, 2019 SCC OnLine 9250 and Uninav Developers Pvt. Ltd vs Union of India, W.P. (C) 13772/2018, decided on 29.07.2019 to submit that the Court has granted reliefs to several other parties who were in similar situation.

6. Mr. Amit Bansal, learned senior standing counsel for GST submits that the petitioner had erroneously entered the GST input credit in the wrong column of the TRAN-1 (column 8 instead of the correct column 5) and therefore it cannot seek extension of time on account of its own mistake. It is also stated in the counter affidavit that the petitioner has wrongly claimed that the respondents have failed to act upon the request of the petitioner. It is submitted that the

petitioner"s email dated 07.09.2017 was duly responded to, whereby the petitioner was asked to contact Respondent no. 3"s helpdesk. However, petitioner took no steps before 27.12.2017 (deadline to file/ revise TRAN-1) to revise its TRAN -1 despite knowing that there was an error in filing TRAN-1. The request to open the portal has been made belatedly as more than a year has passed since the due date of filing Form TRAN-1.

7. The case of the petitioner came up for discussion in the 4th IT-GRC meeting held on 12.02.2019, wherein it was concluded that there was no evidence of error of submission/filing of TRAN-1 prior to the due date. The petitioner"s case fell in the Category B2: TRAN-1 First Time (Fresh)/Revision attempted with no error or valid report. Therefore its request has been rightly rejected by the Grievance Redressal Committee.

8. We have considered the submissions of the parties. The nature of reliefs sought in the present petition and the facts disclosed herein are fully covered by the decision of this Court in M/s Blue Bird Pure Pvt. Ltd (supra) decided on 22.07.2019, wherein the Court had directed the respondents to either open the online portal or to enable the petitioner to file the rectified TRAN-1 electronically or accept the same manually. It was observed as under:

"10. Having carefully examined those decisions, the Court is unable to find any distinguishing feature that should deny the Petitioner a relief similar to the one granted in those cases. In those cases also, there was some error committed by the Petitioners which they were unable to rectify in the TRAN-1 Form and as a result of which, they could not file the returns in TRAN-2 Form and avail of the credit which they were entitled to. In both the said decisions, the Court noticed that GST system is still in the 'trial and error phase' insofar as its implementation is concerned. It was observed in Bhargava Motors (supra) as under:

"10. The GST System is still in a 'trial and error phase' as far as its implementation is concerned. Ever since the date the GSTN became operational, this Court has been approached by dealers facing genuine difficulties in filing returns, claiming input tax credit through the GST portal. The Court's attention has been drawn to a decision of the Madurai Bench of the Madras High Court dated 10th September, 2018 in W.P. (MD) No. 18532/2018 (Tara Exports vs. Union of India) where after acknowledging the procedural difficulties in claiming input tax credit in the TRAN-1 form that Court directed the respondents "either to open the portal, so as to enable the petitioner to file the TRAN1 electronically for claiming the transitional credit or accept the manually filed TRAN1" and to allow the input credit claimed "after processing the same, if it is otherwise eligible in law".

11. In the present case also the Court is satisfied that the Petitioner's difficulty in filling up a correct credit amount in the TRAN-1 form is a genuine one which should not preclude him from having its claim examined by the authorities in accordance with law. A direction is accordingly issued to the Respondents to

either open the portal so as to enable the Petitioner to again file TRAN-1 electronically or to accept a manually filed TRAN-1 on or before 31st May, 2019. The Petitioner's claims will thereafter be processed in accordance with law.

12. In the present case, the Court is satisfied that, although the failure was on the part of the Petitioner to fill up the data concerning its stock in Column 7(d) of Form TRAN-1instead of Column 7(a), the error was inadvertent. The Respondents ought to have provided in the system itself a facility for rectification of such errors which are clearly bona fide. It should be noted at this stage that although the system provided for revision of a return, the deadline for making the revision coincided with the last date for filing the return i.e. 27th December, 2017. Thus, such facility was rendered impractical and meaningless."

9. The decision in M/s Blue Bird Pure Pvt. Ltd (supra) has also been followed by us in M/s Aadinath Industries & Anr vs Union of India, W.P. (C) 9775/2019, decided on 20.09.2019; Lease Plan India Private Limited vs Government of National Capital Territory of Delhi and Ors, W.P.(C) 3309/2019, decided on 13.09.2019; Godrej & Boyce Mfg. Co. Ltd (Supra).

10. The factual position in the present case is not any different and thus, we allow the present petition and direct the respondents to either open the online portal so as to enable the petitioner to file the Form TRAN-1 electronically, or to accept the same manually on or before 09.12.2019.

11. Respondents are directed to process the petitioner"s claim in accordance with law once the Form GST TRAN-I is filed. Accordingly, the petition stands disposed of in the aforesaid terms.

