(2019) 11 DEL CK 0551

In the Delhi High Court

Case No : Civil Writ Petition No. 2478 Of 2019

Aman Motors 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(3)

Citation : (2019) 11 DEL CK 0551

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

Bench : Division Bench

Advocate : Puneet Das, Amit Bansal, Aman Rewaria, Vipasha 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 on the stock held on 30.6.2017 in Form TRAN I and TRAN 2 and allow the Input Tax Credit which the Petitioner could not do for reasons beyond its control due to glitches in the system of the Respondents;

ii) direct for such further and other reliefs, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case."

2. The case of the petitioner as set out in the petition is that it is engaged in the business of trading and servicing of two-wheelers and is registered under the Central Goods and Service Tax Act, 2017 (hereinafter referred as "CGST Act"). Petitioner was entitled to transition of credit of the amount of Excise duty in

terms of Section 140 (3) of the CGST Act. The Input Tax Credit available to the Petitioner as on 30.06.2017 is Rs. 23,72,079/-. In order to avail transition of credit, petitioner was required to submit a declaration in Form 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 GST Council, it was extended up to 27.12. 2017.

3. Pursuant to the aforesaid extension, petitioner repeatedly tried to upload its Form TRAN-1 on the common portal, before the deadline. However, it was unable to do so, on account of failure of the system to accept the information on the common portal. Every time an attempt was made to upload the Form TRAN-1, the portal repeatedly showed the "Registration Window" instead of TRAN-1 option on the Menu Bar.

4. Faced with the situation, petitioner wrote to the Nodal officer on 21.05.2018 with the request to reopen Form TRAN-1. Petitioner further wrote to the respondent on 31.12.17 which was replied to vide e-mail dated 02.01.2018, wherein it was asked to await further notifications by GST Department. The copies of the letters and e-mails have been annexed along with the petition. It is averred that no action has been taken by the GST Department till date. The relevant portion of the letter dated 21.05.2018 is reproduced hereunder:

"Sub: Request to open the GST TRAN-I on the portal of above mentioned firm.

Respected Sir,

1. That the above mentioned firm M/s Aman Motors is my proprietorship concern and was unable to file TRAN-I by 27-12-2017 due to some technical glitch on the GST Portal and confusion in the last date of filing of TRAN l.

2. That we made several efforts to file the TRAN-I by 27-12-2017 however the registered person could not submit the TRAN-I by 27-12-2017. Last date to file TRAN -1 was reflecting as 31st Dec 2017 on the GST Website and we again logged in the portal on 28th Dec 2017 to file TRAN-l but the data could not be submitted as the window of TRAN l was blocked.

That the screen short of the GST Council website reflecting that the last date of TRAN l is 31.12.2017 is attached.

3. That the Email was also sent to GST helpdesk at helpdesk(s)gst.gov.inrequesting to open the TRAN I on 31st Dec 2017and the automated response to the same confirming the receipt of the request was sent by the Helpdesk on 31.12.2017 however there is no response from your end till date.

4. That thereafter circular number 39/13/2018 GST was issued by Ministry of Finance by which it was decided to appoint Nodal Officer to look after the

problem of Tax Payers who faced problems due to System Glitches.

5. That my firm was unable to file TRAN-I due to technical glitches on GST Portal; therefore this application has been moved to open the GST TRAN-I on the portal of the assessee."

[Emphasis Supplied]

5. Petitioner also relies upon on 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. Besides, Petitioner also refers to several decisions of this Court including M/s Blue Bird Pure Pvt. Ltd vs Union of India and Ors, 2019 SCC OnLine 9250 and Godrej & Boyce Mfg. Co. Ltd. Through its Branch Commercial Manager vs Union of India, W.P.(C) 8075/2019, decided on 15.10.2019, to urge that the Court has granted reliefs to several other similarly placed parties.

6. Mr. Harpreet Singh, learned senior standing counsel for GST submits that the case of the petitioner came up for discussion during the meeting held on 21.08.2018, wherein it was concluded that there was no evidence of error of submission/filing of TRAN-1 prior to the due date and therefore its request has been rightly rejected by the Grievance Redressal Committee.

7. We have considered the submissions of the parties. The nature of reliefs sought in the present petition and the facts disclosed hereinabove 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."

8. 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).

9. 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.

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

