

(2019) 11 DEL CK 0549

In the Delhi High Court

Case No : Civil Writ Petition No. 9886 Of 2019

A.P. Trading Co.

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 21-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Central Goods and Service Tax Rules, 2017 — Rule 117, 120A
Central Goods and Service Tax Act, 2017 — Section 140, 140(3), 170

Citation : (2019) 11 DEL CK 0549

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

Bench : Division Bench

Advocate : Vineet Bhatia, Sanjeev Sabharwal, Bushra Waseem, Anuj Aggarwal, Ankit Mongia

Final Decision : Disposed Of

Judgement

Vipin Sanghi, J

1. Despite, two opportunities, no counter affidavit has been filed. We, therefore, close the right of the respondents to file the counter affidavits and proceed to disposed of the writ petition.

2. The present petition under Article 226 of the Constitution of India seeks the following reliefs:

a) Issue a writ of mandamus or any other writ, order or direction of like nature to the Respondents, directing them to allow the the credit of eligible duties of IGST/ CGST of Rs.56,86,458/(Rupees Fifty Six lakhs Eighty Six thousands four hundred and fifty eight).

b) Issue a writ of mandamus or any other writ, order or direction in the nature thereof directing the Respondents to open the GST Portal to enable the Petitioner to file its claim of credit in Form GST Tran-1 which the Petitioner could not do for reasons beyond its control and due to technical glitches in the system of the

Respondents;

c) Issue a writ of a writ of declaration or any other writ, order or direction in the nature thereof declaring that the Rule 117 and Rule 120A of the COST Rules, 2017 ultra vires section 140 and 174 of the COST Act, 2017;

d) It is further prayed that during the pendency of the present petition, this Hon'ble Court may be pleased to allow the Petitioner to carry forward the eligible credit of Rs.56,86,458/-(Rupees Fifty Six lakhs Eighty Six thousands four hundred and fifty eight) in electronic credit ledger as input tax credit of COST through its regular monthly returns.

e) Pass such further and other orders, as this Hon 'ble Court may deem fit and proper in the nature and circumstances of the case.

3. The case of the Petitioner as set out in the petition is that it is engaged in the business of trading and import of coated and uncoated printing papers and is registered under the Central Goods and Service Tax Act, 2017 (hereinafter referred as "CGST Act"). Before the introduction of the CGST Act, as on 30.06.2017, the Petitioner had a credit of eligible duties of Rs.56,86,458/-(Rupees Fifty Six lakhs Eighty Six thousands four hundred and fifty eight). Petitioner was entitled to transition of credit of the amount of Excise duty in terms of Section 140 (3) of the CGST Act. 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 27.12.2017.

4. Pursuant to the aforesaid extension, Petitioner repeatedly tried to file Form TRAN-1, however, he could not furnish the details, on account of failure of system to accept the information on the common portal. Petitioner was logged out of the portal every time it attempted to save the Form and the portal repeatedly displayed either "Network Error" or "Site Can't be reached".

5. Faced with the situation, Petitioner wrote letters dated 21.12.2017 and 26.12.2017 to the Respondent expressing its grievance, copies whereof have been annexed alongwith the petition. Petitioner contends that despite his best efforts, he could not file its Form GST TRAN -1 by the due date i.e. 27.12.2017. On 10.05.2018, the Petitioner again filed a representation along with a physical copy of Form TRAN-1 for the redressal of grievance taking benefit of the 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 the GST Portal. In order to seek a quick redressal, Petitioner also contacted at the Helpline No. of the GST portal, however the problem persisted as it could not be resolved.

6. Petitioner 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 Sare Realty Projects Private Limited vs Union Of India, W.P. (C) No. 1300/2018, decided on 01.08.2018 to urge that the Court has granted reliefs to several other parties who were in similar situation.

7. 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 Form TRAN-1 electronically or accept the same manually. The said decision 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. Through its Branch Commercial Manager vs Union of India, W.P.(C) 8075/2019, decided on 15.10.2019.

8. 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.

9. Respondents are directed to process the petitioner's claim in accordance with law once the Form GST TRAN-1 is filed. Accordingly, the petition stands disposed of in the aforesaid terms.