(2019) 11 DEL CK 0553

In the Delhi High Court

Case No : Civil Writ Petition No. 4332 Of 2019

Asian Polymers 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
Central Goods and Service Tax Act, 2017 — Section 140, 140(3), 174

Citation : (2019) 11 DEL CK 0553

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

Bench : Division Bench

Advocate : Ruchir Bhatia, Harpreet Singh, Suhani Suhani, Gaurav Rohila

Final Decision : Disposed Of

Judgement

Sanjeev Narula, J

1. The present petition under Article 226 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 Trans-1 which the Petitioner could not do for reasons beyond its control due to glitches in the system of the Respondents;

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

iii) 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 sale and purchase of plastic granules 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. 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 GST Council, it was extended up to 27.12.2017.

3. Pursuant to the aforesaid extension, petitioner repeatedly tried to file Form TRAN-1, however, it could not furnish the details on account of failure of system to accept the information on the common portal.

4. Faced with this situation, Petitioner submitted a representation dated 28.12.2017 to the Respondent No. 3 requesting them to extend the date of filing of TRAN-1 or provide an opportunity to carry forward the credit for which the Petitioner is eligible. Petitioner contends that despite his best efforts, he could not file Form GST TRAN -1 within the due date i.e. 27.12.2017. In light 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, the Petitioner again on 24.05.2018 submitted a representation, requesting Respondent no. 3 to open the portal to allow them to file GST Form TRAN-1. Subsequently, Petitioner also submitted a reminder dated 31.08.2018 with the Respondent.

5. 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 submit that the Court has granted reliefs to several other similarly placed parties.

6. Respondent Nos. 2 and 3, in their common counter affidavit, state that a reasonable time period was provided for filing TRAN-1 as well as for revising the same and such limitation is a reasonable restriction. It is submitted that as per the official records, no representation has been received from the petitioner in the office of the respondents. It is further submitted that the present case is not one where the petitioner experienced any technical glitch while submitting its declaration in TRAN-1. Respondents issued Circular no. 39/13/2018-GST dated 03.04.2018 in order to redress the grievances of persons who could not upload TRAN-1 due to technical glitches in the system, however, this facility is only available in cases of identified taxpayers who made a bona fide attempt but could not file TRAN-1 before the due date due to technical glitches and it is alleged that the petitioner in the present case has not been able to establish the same.

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. 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."

[Emphasis Supplied]

8. 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.

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-1 is filed. Accordingly, the petition stands disposed of in the aforesaid terms.