(2021) 02 J&K CK 0025

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No. 513 Of 2019, Writ Petition (C) No. 1186 Of 2019

Jai Enterprises APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 05-02-2021

Acts Referred:
Central Goods And Services Tax Act, 2017 — Section 140

Citation : (2021) 02 J&K CK 0025

Hon'ble Judges : Pankaj Mithal, CJ;Rajnesh Oswal, J

Bench : Division Bench

Advocate : M. K. Bhardwaj, Gagan Kohli, Jagpaul Singh, D. C. Raina, K. D. S. Kotwal

Final Decision : Disposed Of

Judgement

1. Heard Sh. M. K. Bhardwaj, Senior Advocate assisted by Sh. Gagan Kohli, learned counsel for the petitioner and Sh. Jagpaul Singh, CGSC for

respondents No. 1 to 3 and 6 and Sh. D. C. Raina, learned Advocate General assisted by Sh. K. D. S. Kotwal, learned Dy. AG for the respondent

Nos. 4 and 5.

2. The issue in this petition is regarding carrying forward of Rs. 33,55,295/- lying in petitionerâ??s Cenvat account credit on 08.07.2017 when the

GST was introduced in the State of Jammu and Kashmir. It appears that the petitioner instead of submitting TRAN-1 form for claiming ITC submitted

GSTR-3B. The Assistance Commissioner State Taxes (Technical) Jammu vide letter/order dated 07.03.2019 informed that the reason for non-filing of

TRAN-1 was not due to technical glitch in filing TRAN-1, so the case of the petitioner could not be considered.

3. Sh. Jagpaul Singh, learned counsel submits that as the petitioner was required to submit TRAN-1 within the time prescribed though, has submitted

GSTR-3B and now the petitioner may reverse the same and proceed for submitting of TRAN-1 for claiming the said benefit.

4. It is stated that because of the lack of awareness about the procedure to claim the benefit, the petitioner could not submit TRAN-1 within

prescribed time but the respondents are denying the same to the petitioner though the petitioner had mentioned about the credit sought to be claimed, in

GSTR-3B return submitted by the petitioner within the prescribed period. The respondents have neither disputed that the petitioner is not entitled to

carry forward the said credit nor they have disputed the correctness of the amount. Even they have not disputed that the petitioner has not reflected

the said credit in GSTR-3B filed within the stipulated time. Only objection that has been raised by the respondents is that TRAN-1 form was required

to be submitted within the prescribed period but was not submitted by the petitioner. Learned counsel for the petitioner at this stage informs that the

portal for submitting TRAN-1 is lying closed and it is not possible for the petitioner to submit the claim in TRAN-1. Reliance has been upon the

decision in the case of Adfert Technologies Pvt. Ltd. and ors. v Union of India and Ors, [2019] SCC Online P&H 5701. We are of the view that the

petitioner cannot be deprived of the benefit of claiming the credit lying in its account on the stipulated date only on the basis of procedural or technical

wrangles that one form TRAN-1 was not filled by the petitioner particularly when the petitioner has reflected the said credit in its return GSTR-3B. It

would be apt to note the paragraph No. 14 of the judgment in Adfert Technologies Pvt. Ltd.â??s case (supra) and the same is reproduced as under:

â??Having scrutinized record of the case(s) and heard arguments of both sides, we find that on the introduction of GST regime, Government granted

opportunity to registered persons to carry forward unutilized credit of duties/ taxes paid under different erstwhile taxing statues. GST is an electronic

based tax regime and most of people of India are not well conversant with electronic mechanism. Most of us are not able to load simple forms

electronically whereas there were a number of steps and columns in TRAN-1 forms thus possibility of mistake cannot be ruled out. Various reasons

assigned by Petitioners seem to be plausible and we find ourselves in consonance with the argument of Petitioners that unutilized credit arising on account of duty/tax paid under erstwhile Acts is vested right which cannot be taken away on procedural or technical grounds. The Petitioners who

were registered under Central Excise Act or VAT Act must be filing their returns and it is one of the requirements of Section 140 of CGST Act, 2017

to carry forward unutilized credit. The Respondent authorities were having complete record of already registered persons and at present they are free

to verify fact and figures of any Petitioner thus inspite of being aware of complete facts and figures, the Respondent cannot deprive Petitioners from

their valuable right of credit.â??

5. The above judgment was not interfered with by the Apex Court in SLP preferred against the same.

6. In view of what has been stated above, we direct the respondents to permit the petitioner to submit the TRAN-1 either electronically or manually on

or before 15.03.2021 and the petitioner shall coordinate with the respondents for the submission of TRAN-1as directed.

7. Disposed of alongwith connected CMs.