

(2019) 11 DEL CK 0252

In the Delhi High Court

Case No : Civil Writ Petition No. 6331 Of 2019, Civil Miscellaneous No. 26983 Of 2019

M/S Arora & Co

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 06-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g), 226, 265
Central Goods And Service Tax Rules, 2017 — Rule 117, 117(1), 17(1A)
Central Goods And Services Tax Act, 2017 — Section 140(3), 140(iii), 164

Citation : (2019) 265 DLT 335

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

Bench : Division Bench

Advocate : Rajat Mittal, Kirtiman Singh, Waize Ali Noor, Harpreet Singh, Suhani Mathur, Ankit Singh

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) To issue writ of mandamus and/or any other appropriate writ(s) to allow the Petitioner to file declaration in form GST Tran 1, to enable it to claim transitional credit of excise duty in respect of inputs held in closing stock on the appointed day in terms of Section 140(3) of the Central Goods and Services Tax Act, 2017;

ii) To issue a writ, order or direction quashing the Impugned Notice dated 30.03.2019 and Impugned Notice dated 30.04.2019

iii) To issue a writ, order, or direction declaring that the time limit to file Form TRAN 1 specified in Rule 117(1) & (1A) of the Central Goods and Service Tax Rules, 2017 as being ultra vires Section 140(3) of the Central Goods and Service Tax Act, 2017 as also being arbitrary and unreasonable and violative of Article

14, 19(1)(g) and 265 of the Constitution of India.

iv) To issue writ, order or direction declaring that due date contemplated under the Rule 117 of the CGST Rules to claim the transitional credit within a specified period of time as being procedural in nature and thus merely directory and not a mandatory;

v) To issue a writ, order or direction declaring Section 164 of the Central Goods and Services Tax Act, 2017 as unconstitutional as it suffers from vice of excessive delegation

vi) to award for costs of this Petition; and

vii) to grant such further and other reliefs as the nature and circumstances of the case may require."

2. At the outset, learned counsel for the petitioner submits that if the Court were to issue directions as sought in prayers (ii) and (iii), he would not press the remaining prayers.

3. The case of the petitioner as stated in the petition is that it is engaged in the business of trading of steel pipes and is registered under the Central Goods and Service Tax Act, 2017 (hereinafter referred as "GST" Act). Before the introduction of the GST Act, as on 30.06.2017, the petitioner had a closing stock of pipes purchased from M/s Avon Steel Industries Private Limited of Rs. 71,35,431/- inclusive of excise duty of Rs.7,92,826/-. Petitioner was entitled to transition of credit of the amount of Excise duty in terms of Section 140 (iii) of the GST Act. 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.

4. Pursuant to the aforesaid extension, petitioner filed Form TRAN-1 on the common portal before the deadline. However, it was unable to log in to the common portal between 24.12.2017 to 27.12.2017 and avail transition of credit, presumably because of low bandwidth, given the fact that large number of assesseees all over India were trying to submit the declaration in Form TRAN-1 before the last date i.e. on 27.12.2017. Petitioner has annexed the screenshot of the Form TRAN-1, available on the common portal along with the petition.

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. Furthermore, petitioner also relies upon several communications exchanged with the respondents in the above context, including the e-mail received on 30.03.2019 from the respondent No. 2- Assistant Commissioner of Central Goods

and Services Tax Division, stating that as per the information received from GSTN, petitioner"s request for opening of portal had been approved, further requesting it to take immediate action for filing the declaration before the last date i.e. 31.03.2019. However, on the same date, respondents retracted the said approval.

6. Thereafter, petitioner engaged in further correspondence with respondent No. 2, but his representation was rejected vide letter dated 13.04.2019, to the following effect :

"Please refer to your letter dated 31.03.2019 and 05.04.2019 on the above mentioned subject wherein you have requested for reconsideration of your request to allow you to upload TRAN 1 on common portal.

In this regard, also refer to this office letter dated and email both dated 30.03.2019 wherein you were informed that your request was examined ITGRC of GSTN and the same was rejected by ITGRC with following remarks:-

'Cases in which TRAN 1 filing attempted for first time or revision was attempted but no error/ no valid error reported. As per GST system logs the taxpayer has tried for saving/ submitting for the first time or revision of TRAN 1 and there are no evidences of system error in the logs.'

Further, another opportunity was given to all such tax payers whose request for reopening of TRAN 1 window had been rejected by the competent authority to submit their representation latest by 31.03.2019 subject to the condition that they have some additional evidence to demonstrate the technical glitch. However, it is observed that vide your representation dated 31.03.2019, you did not provide any new evidence in this regard and therefore, your request was not reconsidered as the same had already been rejected by the Grievance Redressal Counsel on merit on the basis of evidence already on records."

7. 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.

8. Mr. Harpreet Singh, learned Senior Standing counsel for GST submits that petitioner was given an opportunity to submit evidence to demonstrate technical glitch for re-considering his request, however, he failed to do so and thus his representation was rejected. He submits that as per GST system logs, there was no evidence of system error in the log and since the petitioner did not provide any new evidence, his request has been rightly rejected by the Grievance Redressal Committee.

9. We have considered the submissions of the parties. The nature of reliefs sought in the present petition and the facts disclosed herein is 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. 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.

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 20.11.2019.

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