

(2019) 03 KAR CK 0019
In the Karnataka High Court
Case No : Writ Petition No. 55914 Of 2018

M/S Atria Convergence Technologies Ltd

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 28-03-2019

Acts Referred:

Telangana Goods and Services Tax Act, 2017 — Section 140, 140[8], 172
Central Goods and Services Tax (CGST) Rules, 2017 — Rule 117, 117(1A), 118, 119,
120A, 120, 120A

Citation : (2019) 03 KAR CK 0019

Hon'ble Judges : S. Sujatha, J

Bench : Single Bench

Advocate : Anil Kumar. B, Jeevan J. Neeralagi, Vikram A Huilgol

Final Decision : Disposed Off

Judgement

1. The petitioner is a public limited company registered under the Companies Act, 1956 and is registered under Central Goods and Service Tax Act, 2017 ['Act' for short]. Prior to introduction of GST, during the Central Excise and Service Tax regime, the petitioner was registered under the Finance Act, 1994. The petitioner while submitting his FORM GST TRAN-1 inter alia to enable the unreleased Cenvat Credit from the earlier credit to carry forward, inadvertently said to have been transferred a portion of the credit to their branch in Hyderabad [Telangana]. Subsequently realising that under Section 140[8] of the Act, credit could be transferred by a centralized registered person only to other persons having the same PAN number and should be a place in the centralized registration obtained under Finance Act, 1994, decided to file the revised FORM GST TRAN-1 and avail the credit amount inadvertently distributed to the Hyderabad branch. The petitioner attempted to revise his Form GST Tran-1 filed on 28.08.2017 within stipulated time on 27.12.2017. It is the grievance of the petitioner that revised option in the GST portal was disabled. The petitioner intimated the issue to the GST help desk vide e-mail dated 26.12.2017 and 27.12.2017 along with screenshots. No response being received to the concerned

problem faced, the petitioner attempted to file the revised return post 27.12.2017 but the common portal did not accept the same. Subsequently, the petitioner appears to have made four representations before the respondent Nos.4, 5 and 6 to set right the problems faced by it but in vain. Hence, this writ petition.

2. Learned counsel Sri. Anil Kumar.B, appearing for the petitioner would submit that in terms of Rule 120A of the CG & ST Rules 2017 ['Rules' for short], the petitioner is entitled to make revision of declaration in FORM GST TRAN-1. However, the respondent authorities are not permitting the petitioner to file a revised FORM GST TRAN-1 in order to avail eligible credit.

3. Learned counsel for the Revenue submits that Rule 120A can be invoked by the Commissioner for extension of the time period specified in Rules 117, 118, 119 and 120 to enable the assessee to revise such declaration once.

4. I have heard the learned counsel for the respective parties and perused the material on record.

5. To analyze the issue at hand, it is apt to refer to the relevant provisions of the Act and Rules to arrive at a decision as far as the relief sought in the writ petition is concerned.

6. Section 140 of the Act, 2017 deals with Transitional arrangements for input tax credit and the same reads thus:

"140. Transitional arrangements for input tax credit.

(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:-

(i) where the said amount of credit is not admissible as input tax credit under this Act; or

(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or

(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government."

7. Rule 117 of the Rules deals with the Transitional Provisions and the same reads as under:

"117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day

[1] Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in FORM GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit [of eligible duties and taxes, as defined in Explanation 2 to section 140] to which he is entitled under the provisions of the said section:

PROVIDED, that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days."

8. Rule 120A of the Rules runs as under:

"120A. Revision of declaration in FORM GST TRAN-1.

Every registered person who has submitted a declaration electronically in FORM GST TRAN-1 within the time period specified in rule 117, rule 118, rule 119 and rule 120 may revise such declaration once and submit the revised declaration in FORM GST TRAN-1 electronically on the common portal within the time period specified in the said rules or such further period as may be extended by the Commissioner in this behalf."

9. This Rule 120A has been inserted vide notification No.34/2017 - Central Tax, dated 15.09.2017 subsequent to the insertion of this Rule, sub-rule [1A] has been inserted to Rule 117 by notification dated 10.09.2018 and the same runs as under:

"[a] after sub-rule [1], the following sub-rule shall be inserted, namely:-

"[1A] Notwithstanding anything contained in sub-rule [1], the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond 31st March, 2019, in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.""

10. Section 172 of the Act contemplates regarding removal of difficulties and the same is quoted here under for ready reference:

"172. Removal of difficulties

[1] If any difficulty arises in giving effect to any provisions of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

PROVIDED that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

[2] Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament."

11. A comprehensive reading of these provisions harmoniously, would indicate that Rule 117 of the Rules provides for submitting a declaration electronically in FORM GST TRAN-1 within 90 days from the appointed day on the common portal specified therein, separately, the amount of input tax credit to which the registered person is entitled to take input tax credit under Section 140. The Commissioner is empowered to extend the period of 90 days by a further period not exceeding 90 days for submitting the declaration electronically in FORM GST TRAN-1 in terms of Rule 117[1A]. A reading of this Rule suggests that it relates to filing of the declaration electronically in FORM GST TRAN-1 for the first time. Subsequent to amendment to Rule 117 by inserting sub-rule 1A, the time period specified for filing FORM GST TRAN-1 has been extended for further period not beyond 31.03.2019, in respect of registered person who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom, the Council has made recommendations.

12. The Rule 120A provides for revision of declaration. In the event of the registered person who had submitted a declaration electronically in FORM GST TRAN-1, intends to revise such declaration once, this provision can be invoked. This provision makes it clear that the revision of the declaration in FORM GST TRAN-1 can be made only once not in perpetuity.

13. Regarding the IT grievance redressal mechanism to address the grievances due to technical glitches on GST Portal, circular instructions has been issued by the Government of India, Ministry of Finance [Department of Revenue] Central Board of Excise & Customs, New Delhi dated 03.04.2018.

14. Section 172 of the Act contemplates about the removal of difficulties wherein correction/rectification/revision of the FORM GST TRAN-1 can also be addressed on general or special basis, taking into account the ground realities qua effective implementation of Section 140 of the Act.

15. Considering these aspects, this Court is of the considered opinion that the petitioner is entitled to revise or rectify the errors in the FORM GST TRAN-1 in terms of Rule 120A wherein the Commissioner is empowered to extend the time period specified in Rule 117. As the petitioner is intending to revise the FORM GST TRAN-1 for the first time, the same squarely comes under Rule 120A. Hence, the respondent authorities ought to have considered the request/representation of the petitioner to permit or allow it to revise the declaration in FORM GST TRAN-1.

16. However, in view of the Nodal Officers being appointed to address the grievances of the tax payers due to technical glitches, it would be appropriate for this Court to direct the petitioner to approach the Nodal Officer appointed for the State of Karnataka in terms of the circular dated 03.04.2018. It is the specific case of the petitioner that the error could not be rectified only due to the

technical glitches. If so, It is incumbent on the Nodal Officer to address the grievances of the petitioner, considering the ground realities as discussed aforesaid.

Hence, the writ petition is disposed of with a direction to the petitioner to approach the jurisdictional Nodal Officer and the Nodal Officer is directed to consider the grievances of the petitioner in accordance with law in the light of the observations made herein above, in an expedite manner, in any event not later than four weeks from the date of the certified copy of the order, after providing an opportunity of hearing to the petitioner.

The assessee shall appear before the jurisdictional Nodal Officer on 08.04.2019. The Nodal Officer shall address the grievance of the petitioner in an expedite manner.

Writ petition stands disposed of in terms of the above.