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In the Delhi High Court

Case No : Civil Writ Petition No. 3798 Of 2019

M/S Blue Bird Pure Pvt. Ltd APPELLANT

Vs

Union Of India & Ors RESPONDENT

Date of Decision : 22-07-2019

Acts Referred:

Central Goods And Services Tax (CGST) Rules, 2017 — Rule 117
Central Goods And Services Act, 2017 — Section 140(5), 164

Citation : (2019) 29 GSTL 660

Hon'ble Judges : Dr. S. Muralidhar, J;Talwant Singh, J

Bench : Division Bench

Advocate : Anjali J. Manish, Priyadarshi Manish, Anil Dabas, Praveen Kumar, Harpreet Singh, Suhani Mathur, Satyakam

Final Decision : Disposed Off

Judgement

Dr. S. Muralidhar, J

1. Notice. Notice is accepted by learned counsel for the Respondents.

2. Counter-affidavit filed on behalf of Respondent Nos. 2 and 3 is already on record.

3. The Petitioner is a company having its registered office in New Delhi, engaged in the manufacturing and trading of water purifiers. It is duly

registered with the Excise Department and under the Central Excise Act, 1944 and the Rules under which it is entitled to take the CENVAT credit on

input used for manufacturing of the finished goods. After the enactment of Central Goods and Services Act, 2017 (CGST Act), the Petitioner got itself

registered with the Goods and Service Tax Department. A registration number was issued to it on 26th September, 2017.

4. The Central Government in exercise of the powers under Section 140(5) read

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with Section 164 of CGST Act read with Rule 117 of the CGST

Rules prescribed the GST TRAN- 1 Form which was required to be filed online as a condition precedent for allowing the Petitioner to carry forward

the CENVAT credit that was available to it as on the date of coming into force of the CGST Act. The Petitioner states that it filled and filed online the

GST TRAN-1 Form on 27th December, 2017. The specific averment is that it committed an inadvertent error in showing the available stock of goods

as on 30th June, 2017 in column 7(d) of the Form instead of column 7(a) of the Form. It is stated that as a result of this error, the Petitioner has been

unable to avail of the Central GST Credit in respect thereof.

5. It is further averred in the petition that after the due date for filing of the TRAN-1 Form was crossed, the system got locked down at the portal and

no tax payer was able to view/mend their TRAN-1 forms. The portal opened up on 15th March, 2018 for filing the TRAN- 2 Returns. It was at that

stage that the Petitioner realised that it had committed an inadvertent error in the TRAN-1 Form. The system, however, did not permit the Petitioner

to revise the TRAN-1 Form.

6. On 23rd April, 2018, the Petitioner addressed a representation to Officer, Single Point of Contact (SPOC) Delhi, GST-ITO (Respondent No. 5),

admitting to having committed the abovementioned inadvertent error and seeking permission to rectify the mistake. The credit amount involved was

Rs.20,34,807/-. It is pointed out that on account of inability to avail of the above credit amount, the Petitioner was not in a position to file the GSTR-3B

returns.

7. The Petitioner further states that on the said representation, the GSTO stated that it will be forwarded to the GST Council for further action.

However, nothing happened. The Petitioner addressed further letters on 19th September, 2018 to SPOC and 24th September, 2018 to the

Commissioner, Delhi GST, but was not permitted to rectify the TRAN-1 Form already filed online. An e-mail was addressed to the GSTN Nodal

Officer on 22nd October, 2018 explaining the Petitionerâ??s difficulty. After several reminders bore no results, the present petition was filed.

8. Learned counsel for the Petitioner has referred to the two decisions of this Court, namely, Bhargava Motors v. Union of India, decision dated 13th

May, 2019 in WP(C) 1280/2018 and Kusum Enterprises Pvt. Ltd v. Union of India,

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2019-TIOL-1509-HC-DEL-GST, where in similar circumstances,

the Court issued directions to the Respondents to either open the portal to enable the Petitioner to rectify the TRAN-1 Form electronically or permit

the Petitioner to do it manually.

9. Learned counsel for Respondents sought to distinguish the applicability of the above decisions on the ground that in those cases there was a glitch in

the system which prevented those Petitioners from correcting the credit amount in the TRAN-1 Form, whereas in the present case the mistake was

by the Petitioner in filling up the stock quantity in the wrong column.

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 TRANâ?"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 â??trial and error phaseâ?? insofar as its implementation is concerned. It was

observed in Bhargava Motors (supra) as under:

â??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

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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. With a view to ensure that in future such glitches can be overcome, the Court directs the Respondents to consider providing in the software itself a

facility of the trader/dealer being able to save onto his/her system the filled up form and also a facility for reviewing the form that has been filled up

before its submission. It should also permit the dealer to print out the filled up form which will contain the date/time of its submission online. The

Respondents will also consider whether there can be a message that pops up by way of an acknowledgement that the Form with the credit claimed

has been correctly uploaded.â??

11. Similar directions were issued by this Court in Kusum Enterprises Pvt. Ltd. (supra).

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.

13. The Court also notes with some concern that the representations repeatedly made by the Petitioner were not attended to by the Respondents

which resulted in the Petitioner having to approach this Court for relief. The apprehension of the Respondents that orders of the kind in Bhargava

Motors (supra) and Kusum Enterprises(supra) can open the â??flood gatesâ?? can easily be allayed by the Respondents themselves if they provide a

robust Grievance Redressal Mechanism that can address such genuine grievances of the traders instead of compelling every trader to approach this

Court for relief.

14. Mr. Harpreet Singh, learned counsel for the Respondents 2 and 3 informs the Court that there is in fact, an Information Technology Grievances

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Redressal Committee (ITGRC) to address the technical glitches encountered by the traders and to enable them to avail of the input tax and other

credit which they are entitled to under the law. When enquired why the said ITGRC was unable to redress the Petitionerâ??s complaint, Mr.

Harpreet Singh speculated that the Petitionerâ??s case perhaps did not fall within the â??parametersâ?? for consideration of the grievance by the

said ITGRC. There is nothing on record to suggest that the Petitionerâ??s repeated representations were ever placed before the ITGRC for its

consideration. Even the counter affidavit filed in the present case does not suggest so.

15. Accordingly, this Court directs the Respondents to either open the online portal so as to enable the Petitioner to again file the rectified TRAN-I

Form electronically or accept the manually filed TRAN-I Form with the correction on or before 31st July, 2019.

16. The Petitioner will correspondingly be permitted to thereafter file the return in TRAN-2. The penalty and interest for the late filing of GSTR-3B

will be waived off in view of the above directions, subject, of course, to the Petitioner being permitted to and in fact filing the rectified TRAN-1 Form

as directed.

17. The writ petition is disposed of in the above terms.

18. A copy of this order be given dasti to the parties under the signatures of the Court Master.

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