

(2022) 11 CHH CK 0085
In the Chhattisgarh High Court
Case No : Writ Petition (T) No. 252 Of 2022

M/S Jagdalpur Motors

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 28-11-2022

Acts Referred:

Central Goods And Services Tax Rules, 2017 — Rule 117, 118, 119, 120, 120A
Central Goods And Services Tax Act, 2017 — Section 140

Citation : (2022) 11 CHH CK 0085

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Prafull Bharat, Rahul Tamaskar, Hari Agrawal, Ramakant Mishra, Anmol Sharma, Maneesh Sharma, Akanksha Jain

Final Decision : Disposed Of

Judgement

1. The instant writ petition has been filed seeking for the following reliefs:

"10.1. The Hon'ble Court may kindly be pleased to allow the instant petition and direct the respondent authorities to reset/ reopen the GST portal filing the GST TRAN-1 form for the petitioner and in effect allow the petitioner to rectify the inadvertent of mistake its consultant or accept the physical copy of the Form GST TRAN-1 and allow eligible transitional credit to the petitioner as per Section 140 of CGST Act and credit such amount in the electronic credit ledger of the petitioner as Input Tax Credit of GST.

10.2 Any other relief, which this Hon'ble Court deems fit and proper, may also be awarded to the petitioner including the cost of the petition."

2. The facts of the case is that the petitioner's company on account of certain technical glitches that arose after the introduction of the GST Law were not able to submit their Tran-1 and Tran-2 forms within the stipulated period as was the case with many other similarly placed persons. Many of such persons had gone to the Supreme Court and finally the Supreme Court vide its order dated

22.07.2022 in Union of India Vs. Filco Trade Centre Pvt. Ltd. (SLP No.32709-32710/2018-22.07.2022) has made the following observations:

"Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.

2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).

3. GSTN has to ensure that there are no technical glitch during the said time.

4. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.

5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.

6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims. The Special Leave Petitions are disposed of accordingly."

3. It is said that subsequently the Supreme Court again vide order dated 02.09.2022 in case of Filco Trade Centre (Supra) have extended the submission of the Tran-1 and Tran-2 up till 30.11.2022. Meanwhile, the petitioner did submit their Tran-1 and Tran-2, however inadvertently when the said form was filled in the column showing total outstanding credit inputs the petitioner's consultant inadvertently filled it as NIL and immediately the form got frozen. Thereafter the petitioner tried his best for resetting the same and for revising the same but under the system it was not permissible, nor was it provided and therefore the petitioner has not filed the Tran-1 and Tran-2 forms.

4. The petitioner moved an application seeking permission to revise before the authorities concerned by way of an application dated 27.10.2022 which till date has not been considered and which led to the filing of the present writ petition.

5. The counsel for the Union of India however submits that the order of the Supreme Court was a one time measure that was allowed. That, there was a specific period of time provided by the Supreme Court and it was not to be considered as if that the whole system had to be done in accordance with Act and Rules, but was to be considered strictly in accordance with the subsequent notification issued by the Department on 09.09.2022 i.e. circular No.180/12/2022-GST issued by the Ministry of Finance, Govt. of India in the light of the judgment of the Supreme Court referred to in the preceding paragraph.

6. The stand taken by the Union of India is that in terms of the circular dated 09.09.2022, clause 4.6.2 which again for ready reference is being reproduced hereinudner-

"It is further clarified that pursuant to the order of the Hon'ble Apex Court, once the applicant files Tran-1/Tran-2 or receives the said forms filed earlier on the common portal, no further opportunity to again file or revise Tran-1/Tran-2, either during this period or subsequently, will be available to him".

does not permit any person to revise the Tran-1 and Tran-2 applications submitted by a person already submitted in terms of the forms issued by the Department. That, when the circular itself prohibits or restrains permission for grant of revising the Form Tran-1 and Tran-2, the respondents have rightly not permitted the petitioner or have taken any decision on his representation.

7. The counsel for the Union of India further submits that after this court had instructed the Department to seek instructions in respect of the applicability of Rule 120A of the GST Rules inspite of information being passed on to the authorities concerned, he has still not received any instructions in this regard. He confines his argument so far as clause-4.6.2 of the notification dated 09.09.2022 is concerned and prayed for writ petition to be decided.

8. Learned counsel appearing for the petitioner submits that the clause 4.6.2 of the notification would not be applicable in case of the petitioner for the reason that, that situation would be only after the forms are filed by the respective applicants whereas, in the instant case only at the stage of submission when the instructions got frozen, the applicant had made efforts for revising the same and that the filling part had not been completed and therefore the clause 4.6.2 would not be applicable.

9. It would be relevant at this juncture to take note of the provisions that are reflected in the Central GST Rules, 2017 i.e. the provision dealing with the submission of Tran-1 and Tran-2 as is available in Chapter (XIV) dealing with Transitional Provisions starting from Rule 117 up till Rule 120 of the said GST Rules. Rule 120A which was inserted subsequently w.e.f 15.09.2017 provides for every registered person who has submitted a declaration electronically in the form GST Tran-1 within the time period specified under Rule 117, 118, 119 and 120 may revise such a declaration once. It also empowers the registered person to revise the declaration within the time period specified in the rules or within such further period as may be extended by the Commissioner.

10. Referring to the aforesaid rules, the counsel for the petitioner submits that the statue itself provides for a permission to revise the declaration made by the party once. In the instant case, according to the counsel, a plain reading of the order of the Supreme Court does not anywhere reflect that the time extended by the Supreme Court was without applicability of Rule 120A. The Supreme Court has only extended the time so far as the opening of the portal is concerned making available the option to the registered persons to avail the said facilities.

That, under said circumstances the provision of Rule 120A would have been automatically available for every person for revising declaration made for once.

11. It was the further contention of the counsel that once when the statute provides for a provision for revising, such a provision could not have been taken away by issuance of a circular i.e. circular dated 09.09.2022. That, even if for any reason clause 4.6.2 is held applicable, it could not override the statutory provision i.e. Rule 120A. It is the further contention of the petitioner that since the portal is open up till 30.11.2022 as per order of the Supreme Court, no prejudice as such would be caused to the Department if the petitioner is permitted to revise the declaration that he has made so far as his credit input is concerned.

12. The counsel for the Union of India in this regard has submitted that the order of the Supreme Court followed by the subsequent notification dated 09.09.2022 are all under exceptional circumstances that were passed. Therefore it has to be accepted that it is applicable only as a one time measure and therefore the parties cannot be permitted to revise their declaration in the given factual backdrop.

13. Having heard contentions put for the on either side and on perusal of records, undoubtedly the petitioner became entitled for submitting of his Form Tran-1 and Tran-2 in terms of the order of the Supreme Court in case of Union of India Vs. Filco Trade Centre (Supra). It is also an admitted factual position that the period for submission of the form Tran-1 and Tran-2 or portal is open up till 30.11.2022. The petitioner having availed the said benefit and having attempted to submit his form Tran-1 and Tran-2 and where certain inadvertence took place. Under the said circumstances it cannot be said that the provision under Rule 120A would not be applicable. In the case of the petitioner or any other similarly placed person. The submission of the Union of India if at all if has to be accepted then the circular dated 09.09.2022 would have an overriding effect over the statute which otherwise may not be permissible under the law. All circulars and instructions issued by the respondents can be only of clarificatory in nature and it cannot have been diluting the statutory provision or for that matter making the statutory provision redundant.

14. In the instant case the circular dated 09.09.2022 is primarily a clarification instructions and the said clarificatory instructions cannot have an overriding effect over the Act or the Rules. When Rule 120A provides for revising of the declaration in form GST Tran-1 once, only because the portal has been opened as a one time measure by itself cannot be construed that the Rule 120A cannot be made applicable when the period for submission of Form Tran-1 is still open in terms of the order of the Supreme Court even as on date. The Supreme Court also has nowhere held that the applicability of Rule 120A would not be available to those persons who are to submit their Form Tran-1 and Tran-2 in terms of its order.

15. This court therefore is of the opinion that taking into consideration the Rule 120A, it is ordered that the respondents No.1 & 2 may instruct the respondent No.5 to open the portal so far as the petitioner is concerned for once in terms of Rule 120A permitting the petitioner to revise the declaration and thereafter permit him to submit the same and complete the filing.

16. The respondents No.1,2 and 5 are further directed to ensure that all necessary steps are taken as far as possible before the time limit provided by the Supreme Court i.e. by 30.11.2022 if not at the earliest. The petitioner also should take all necessary steps to submit the same within the said time period. It is made clear that there cannot be any further permission for revision granted to the petitioner.

17. The respondents are further directed to inform the authorities concerned in this regard telephonically.

18. The writ petition accordingly stands disposed of.

19. Certified copy today.