
(2019) 02 CAL CK 0023

In the Calcutta High Court

Case No : Writ Petitions (Wp) No. 18879 (W) Of 2018

Optival Health Solutions Private Limited & Anr.Vs Union Of India & Ors.

Date of Decision : 07-02-2019

Acts Referred:

Central Government Made The Central Goods and Services Tax, 2017 — Section 140, 164

Central Goods and Services Tax, 2017 — Rule 117, 120, 120A

Constitution Of India, 1950 — Article 14

Citation : (2019) 02 CAL CK 0023

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : S. Bagaria, I. Banerjee, P. Sharma, Amitabrata Roy, Sanjukta Gupta, Shatabdi Sen, Kausik Chanda Debashis Basu, Abhratosh Majumdar, T.M. Siddiqui, Debasish Ghosh

Final Decision : Disposed Off

Judgement

Debangsu Basak, J

The petitioners have sought for a direction upon the respondents to allow them to revise/rectify their Form GST TRAN 2 electronically or manually.

Learned Advocate for the petitioners has submitted that, the first petitioner had obtained registration under the Central Goods and Services Tax Act, 2017. It had filed the Tran 1 form within time. It had filed the Tran 2 form within time. However, the petitioners had noticed that, there were certain mistakes in the Tran 2 form. The first petitioner wanted to correct the same. However, the present scheme of things does not allow rectification or revision of the Tran 2 form. Such a lacuna violates Article 14 of the Constitution. An assessee must be allowed to revise or rectify the Tran 2 form particularly when Tran 1 forms are allowed to be revised or rectified. The authorities must have similar provisions as akin to Rule 120 A of the Central Goods and Services Tax and Rules, 2017 for rectification/revision of Tran 2 forms. In support of his contentions, learned Advocate for the petitioners has relied upon various provisions of the Act and the

Rules of 2017. He has also relied upon 2018 (10) GSTL 228 (Ker.) (Alwaye Sugar Agency v. Asst. Commr. (Assmnt.), Commercial Taxes Special Circle, Aluva) and 2018 (18) G.S.T.L. 28 (Ker.) (G.C. & Infra Innovations v. Union of India).

Learned Additional Advocate General has represented the State.

Learned Additional Solicitor General has represented the Union.

Learned Additional Advocate General has relied upon Section 140 of the Act of 2017 and submitted that, the transitional provisions are one time benefits given to persons who were entitled to avail of such benefits. A concessional provision is required to be strictly construed. The prescriptions provided in the concessional provisions are to be strictly applied. TRAN 2 is not a return. It is distinct and separate from TRAN 1. TRAN 1 is a vested right while TRAN 2 cannot be construed to be so. Therefore, an assessee cannot be allowed to revise TRAN 2 form on the same reasoning and standing as that of a TRAN 1 form.

Whether an assessee can rectify/revise GST TRAN 2 form subsequent to its uploading is the issue that has fallen for consideration in the present writ petition.

Various provisions of the Central Goods and Services Tax Act, 2017 came into effect from June 22, 2017. The remaining provisions of the act of 2017 came into force with effect from July 1, 2017. The first petitioner is a dealer/trader engaged in the business of operating retail pharmacy outlets. The first petitioner was registered under the West Bengal Value Added Tax Act, 2003 and Central Sales Tax Act, 1956. The first petitioner obtained Registration under the Act of 2017. The first petitioner claims transitional credit. It filed TRAN 1 form within time. It is required to file TRAN 2 which it did, again within time. It discovered certain mistakes in the TRAN 2 form and sought to rectify the same within the time prescribed for the filing of the TRAN 2 form. The authorities allow filing of the TRAN 1 and TRAN 2 forms electronically. There is no provision for filing the forms with hard copies. Although the Rules of 2017 were subsequently amended to provide for revision/rectification of TRAN 1 form by insertion of Rule 120 A, similar provisions have not been incorporated in the Rules of 2017 for rectification/revision of TRAN 2. An assessee is not entitled to either rectify or revise its TRAN 2 form as the present dispensation with regard to filing of the same in the electronic form stands.

Central Goods and Services Tax Act, 2017 was enacted to make provision for levy and collection of tax on intra-state supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto. Prior to the Act of 2017, there were various statutes under which, a registered person would be entitled to certain credits, as the case may be. Section 140 of the Act of 2017 made transition arrangements for Input Tax Credit. It provides that, a person registered under the Act of 2017 would be entitled to take the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day of the Act of 2017, furnished by him under the existing law in such manner as may be prescribed.

Section 164 of the Act of 2017 empowers the Central Government to make rules for carrying out the provisions of the Act of 2017. In exercise of powers conferred by Section 164 of the Act of 2017, the Central Government made the Central Goods and Services Tax Rules, 2017. Chapter XIV of the Rules of 2017 deals with transitional provision. Rule 117 of the Rules of 2017 deals with tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day. Essentially, it allows filing of Form GST TRAN 1 and Form GST TRAN 2 on the common portal. The Act and Rules of 2017 contemplate filing of returns in the electronic form. Rule 120 of the Rules of 2017 requires every person to submit details of goods sent on approval in Form GST TRAN 1. Rule 120 A of the Rules of 2017 was introduced subsequently to allow a person to revise a declaration submitted under Form GST TRAN 1. Similar provision however is not available with regard to Form GST TRAN 2. According to the petitioners, the first petitioner is entitled to revise Form GST TRAN 2. Since the Rules of 2017 do not contemplate revision of Form GST TRAN 2, the common portal available under the Act and Rules of 2017, does not provide for revision of Form GST TRAN 2 in the electronic manner. The petitioners are therefore unable to file a revised declaration under Form GST TRAN 2 electronically. There is no mechanism under the Act or Rules of 2017 to file any document manually.

Taxing statutes are to be strictly construed. However, such interpretation should not lead to a reckless or a mindless mechanical application of the statute as has been held in *Alwaye Sugar Agency (supra)*. *G.C. & Infra Innovations (supra)* has allowed a person under the Act of 2017 to take credit for the Input Tax available to them by rectifying a mistake while uploading Form GST TRAN 1. The time period to file Form GST TRAN 2 stands extended till April 20, 2019 by virtue of the notification dated September 10, 2018 issued by the Central Board of Indirect Taxes and Customs.

In the present case, the petitioners contend that, there are mistakes in Form GST TRAN 2 requiring revision. The Form GST TRAN 2, at best, is an admission of the person filing the same with regard to the contents of the document. Admission is a strong evidence against the person making it. However, law contemplates that, the person making such admission has the opportunity to explain the same. A person making an admission, is entitled to prove that, the admission was made by mistake or was untrue. If, a person making the admission, is able to substantiate with cogent evidence that, the admission was a mistake or was untrue, then, such facts have to be taken into consideration for the purpose of deciding the evidentiary value of the admission and the relevancy thereof. In other words, the law permits a person making an admission, the liberty of explaining the same, if he so chooses. The Form GST TRAN 2, at best can be an admission allowing the authorities to inform the state of affairs of the first petitioner in relation to the subject matter governed by such form. However, neither the Act of 2017 nor the Rules of 2017 can be read to mean that, the same excludes the right of a person making an admission, to forfeit the opportunity to explain it. Neither the Act of 2017 nor the Rules of 2017 forfeits

the right of a person making an admission to substantiate that, such admission was made by mistake or was untrue.

A person filing a Form GST TRAN 2 therefore, should be afforded an opportunity, to explain the Form GST TRAN 2, in the event, such person chooses to do so. Moreover, Form GST TRAN 2 will be taken into consideration for the purpose of assessment. In the assessment proceedings, the person filing the Form GST TRAN 2 would be at liberty to establish by cogent evidence that, the figures filed therein are incorrect or untrue. The Assessing Officer will be obliged to take into consideration such a stand while pronouncing upon the assessment. Therefore, when such a person, is seeking to correct Form GST TRAN 2 on its own, an opportunity should be afforded to such person to correct the same. The authorities may retain the original GST TRAN 2 Form for their assessment purpose and can confront the person seeking to revise the GST TRAN 2 with the Form GST TRAN 2 as originally filed and require explanation from the person filing a revised Form GST TRAN 2 as to why such revision was required and whether such revisions are justified or not. Such an enquiry can be held in the assessment proceedings. There is no ground as to why, a person filing Form GST TRAN 2 should not be allowed to revise Form GST TRAN 2 after its initial filing.

In view of the discussions above, the issue is answered in the affirmative and in favour of the petitioners.

In the facts of the present case, the authorities are directed to allow the first petitioner to file a revised Form GST TRAN 2, either electronically or manually, in accordance with law, within four weeks from the date of communication of this order.

W.P. No. 18879(W) of 2018 is disposed of. No order as to costs.

Urgent certified website copies of this judgment and order, if applied for, be made available to the parties upon compliance of the requisite formalities.