(2019) 12 DEL CK 0226

In the Delhi High Court

Case No : Civil Writ Petition No. 12485 Of 2019

Soni Traders APPELLANT

Vs

Union Of India & Ors RESPONDENT

Date of Decision : 17-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 300(A)
Central Goods And Service Tax Rules, 2017 — Rule 117(1A)
Central Goods And Service Tax Act, 2017 — Section 140(3)

Citation : (2019) 12 DEL CK 0226

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

Bench : Division Bench

Advocate : Puneet Rai, Bhuvnesh Satija, Ajinkya Tiwari, Anuj Aggarwal

Final Decision : Allowed

Judgement

Sanjeev Narula, J

1. Despite an opportunity, no counter affidavit has been filed. We, therefore, close the right of the respondents to file the counter affidavit and proceed to dispose of the writ petition.

2. The present petition under Article 226 of the Constitution of India seeks the following reliefs:

i. Issue a writ of mandamus or any other writ, order or direction in the nature thereof thereby directing the Respondents to open the Portal to enable the Petitioner to file its claim of tax credit in Form TRAN-1/TRAN-2 and allow the Input Tax Credit of Rs.70,22,473 /- which the Petitioner could not do so for reasons beyond its control due to technical problems in the system of the Respondents;

ii. Issue the direction of like nature to the Respondents, directing them to allow the file TRAN-1 and TRAN-2 or accept the manual submission of TRAN-1 by the Petitioner.

3. The case of the Petitioner as set out in the petition is that it is engaged in the business of trading of bitumen and is registered under the Central Goods and Service Tax Act, 2017 (hereinafter referred as ?CGST Act"). Petitioner was entitled to claim the Input Tax Credit on stock lying as on appointed date in terms of Section 140 (3) of the CGST Act. Before the introduction of the CGST Act, as on 30.06.2017, the Petitioner had a credit of eligible duties of Rs. 70,22,473/-. In order to avail transition of credit, Petitioner was required to submit a declaration in Form GST TRAN-1 on the GST Portal within the stipulated period of 90 days. However, the TRAN-1 Form was made available only on 25.08.2017 for the first time. 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 on the recommendation of GST Council, it was extended up to 27.12.2017.

4. Learned counsel for the Petitioner submits that pursuant to the aforesaid extension, in the month of November, 2017, Petitioner made several attempts to upload its claim for transition of credit in Form GST TRAN-1, but was unsuccessful on account of technical glitches on the common portal. Petitioner could not file Form GST TRAN-2 as the said Form was not available on the common portal. He further submits that Form GST TRAN-1 was available on the portal only till 27.12.2017, however Form GST TRAN-2 was made available on the common portal only after 27.12.2017 i.e. after the period for filing Form TRAN-1 had lapsed and therefore it could not fill Form TRAN-2 as TRAN-1 was deactivated by that time.

5. Faced with this situation, Petitioner visited the GST officer at Vyapar Bhawan, I.P Estate, New Delhi, however the matter could not be resolved. Petitioner submitted a representation dated 30.11.2018 to the Nodal officer requesting him to open Form GST TRAN-1 and TRAN-2. In pursuance thereto, it received an email dated 18.02.2019 from the Nodal officer stating that its grievance has been forwarded to the GSTN. Petitioner contends that despite the communication, the issue has not been resolved till date. The period for submitting declaration in the Form GST TRAN-1 was extended till 31.03.2019 vide Notification No. 48/2018 read with Order No.01/2019 for all the taxpayers who could not submit the said declaration on account of technical glitches on the common portal. It is contended that despite submitting grievance to the Nodal Officer, the Respondents failed to reopen Form TRAN-1 and TRAN-2.

6. 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; Krish Automotors Private Limited vs UOI, W.P.(C) 3736/2018, decided on 16.09.2019, to submit that the Court has granted reliefs to several other similarly placed parties.

7. 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, following the decisions of this Court in 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, 2019-TIOL-1509-HC-DEL-GST, 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 this court 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. The decision of this Court in Krish Automotors Pvt. Ltd. v UOI 2019-TIOL-2153-HC-DEL-GST has also been followed by the Punjab & Haryana High Court in Adfert Technologies Pvt Ltd v Union of India in CWP No. 30949/2018 (O&M) decided on 04.11.2019. The relevant paragraphs of Blue Bird (supra) read as under:

"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 TRAN-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 'trial and error phase' insofar as its implementation is concerned. It was observed in Bhargava Motors (supra) as under:

"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 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. 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."

[Emphasis Supplied]

8. The factual position in the present case is not any different. At this juncture, it may be noted that as per Notification No.49/2019 dated 09.10.2019 issued by CBIC, the date prescribed for filing of Form GST TRAN-1 under Rule 117 (1A) of the CGST Rules has been extended to 31.12.2019. This itself demonstrates that the Respondents recognise the fact that the registered persons were not able to upload the Form GST TRAN-1 due to the glitches in the system. It is not fair to expect that each person who may not have been able to upload the Form GST TRAN-1 should have preserved some evidence of it - such as, by taking a screen shot. Many of the registered dealers/traders come from rural/semiliterate background. They may not have had the presence of mind to create any record of their having tried, and failed, to upload the Form GST TRAN-1. They cannot be made to suffer in this background, particularly, when the systems of the Repsondents were not efficient. From the documents placed on record, it emanates that the Respondents have no cogent ground to deny the benefit of the Notification No. 49/2019 dated 09.10.2019 issued specifically to grant relief to taxpayers who faced difficulty in filing Form GST TRAN-1 due to technical glitches.

9. We may further add that the credit standing in favour of an assessee is "property" and the assessee could not be deprived of the said property save by authority of law in terms of Article 300 (A) of the Constitution of India. There is no law brought to our notice which extinguishes the said right to property of the assessee in the credit standing in their favour.

10. 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 31.12.2019. Respondents shall process the petitioner"s claim in accordance with law once the Form GST TRAN-1 and GST TRAN-2 both are filed. The petition is allowed in the aforesaid terms.