

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.2169 of 2018.

Date of decision: 16.11.2019.

M/s Jay Bee Industries

.....petitioner.

Versus

Union of India and others

.....Respondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

Whether approved for reporting?*¹ *No

For the Petitioner : Mr. Surinder Saklani and Mr. Ajay Jain, Advocates.

For the Respondents: Mr. Shashi Shirshoo, Central Government Counsel, for respondent No.1.

Mr. Ajay Vaidya, Senior Additional Advocate General with Mr. Vinod Thakur, Additional Advocate General, Mr. Bhupinder Thakur, Deputy Advocate General and Mr. Ram Lal Thakur, Assistant Advocate General, for respondents No.2 and 3.

Mr. Rajiv Jiwan, Senior Advocate with Mr. Ajit Sharma, Advocate, for respondents No.4 and 5.

¹***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

Tarlok Singh Chauhan, Judge (Oral)

The present petition filed by the petitioner under Article 226 of the Constitution of India seeks the following reliefs:

“a. To issue a writ of mandamus or other appropriate writ, order or direction to respondents to re-open the common portal and allow the petitioner to file the Tran-1 form so as to avail and utilize the input credit in respect of duties/taxes paid on the inputs held in stock and contained in semi-finished and finished goods as on 30-06-2017 and not to charge interest from the petitioner to the extent of that amount so as to prevent the miscarriage of justice;

b. In case the respondents are unable to do so, they be directed to entertain Tran-1 Form of the petitioner manually/physically with supporting records;

c. To hold that the petitioner shall not be treated as in default in compliance;

d. To ensure that the petitioner is allowed to pay its taxes on regular electronic system after utilization of the input tax credit.”

2. The petitioner is engaged in the manufacture and sale/supply of Electrical Transformers/parts thereof etc. holding GST No.02AACFJ9239Q2ZW. The petitioner has been subjected to appropriate levies of goods and service

tax on the supplies made by it. The petitioner is also entitled to credit of input tax on the inputs as well as capital goods and input services. The input credit is also admissible in respect of the duty/tax paid on the inputs lying as such and those contained in the semi-finished goods and finished goods lying in stocks as on 30.06.2017 for being carried forward and utilized under the GST Act.

3. The Goods and Service Tax (in short 'GST') has been introduced with effect from 01.07.2017 which has resulted into subsuming of large number of Central and State levies into a single tax. Various taxes like Central Excise Duty, Additional Duties, Special Duties, Service Tax, Cesses, Surcharge and State VAT, CST, Purchase Tax etc. have been merged into single tax i.e. GST which has been implemented with effect from 01.07.2017.

4. Prior to introduction of GST, the petitioner was registered with the Central Excise/Service Tax as well as Sales Tax Department and was paying appropriate duties/taxes. With the introduction of the GST with effect from 01.07.2017 and subsuming of various taxes into GST, the petitioner was made to migrate into GST and was allotted GST No.02AACFJ9239Q2ZW and the petitioner has

held various stocks of duty/tax paid raw materials as well as those contained in the semi-finished goods and finished goods. It is the case of the petitioner that in terms of the provisions of Section 140(3) of the Central Goods and Service Tax Act, 2017, a registered person is entitled to take credit of eligible duties in respect of inputs held in stock as well as those contained in the semi-finished goods & finished goods. Rule 117 of the Central Goods and Service Tax Rules, 2017, provides that every registered person entitled to take credit of input tax credit under Section 140 shall submit a declaration electronically in Form TRAN-1 on the common portal specifying therein, the amount of input tax credit.

5. Even though, the GST had been implemented with effect from 01.07.2017, however, the electronic system/common portal was not available/accessible for operation. Only few services like registration, migration were made available on the portal. Neither the GST Returns monthly/quarterly were available nor the Forms including the TRAN-1 Forms were made available, resulting in lot of administrative and practical problems, both for taxpayers and for the revenue. The respondents deferred

the dates at regular intervals for furnishing of Returns/Forms by extending the dates, but the system could not be set right by them and could not be made use of by the taxpayers to file returns and to comply with various procedural requirements.

6. Due to the defects in the system/glitches on the portal, the petitioner was unable to fill up the TRAN-1 Form and furnish the details on the portal despite repeated and best efforts made by it.

7. On 27.12.2017, the petitioner again tried to submit the aforesaid TRAN-1 Form, but due to system problem/glitches, could not file it. The petitioner thereafter approached its jurisdictional authorities and also submitted a letter requesting for solution of the problem. Again, when the petitioner tried to submit the aforesaid TRAN-1 Form, there was a message appearing on the portal reflecting that the filing of declaration in TRAN-1 is not available now as the due date is over.

8. The petitioner filed requests/reminders dated 15.01.2018 and 05.03.2018 to the respondents for allowing it to carry forward the input tax credit on the stocks lying on

30.06.2017 at regular intervals, but to no avail, hence, this petition.

9. The respondents have opposed the petition by filing reply wherein it is averred that the limitation as provided under Section 117 of the CGST Rules 2017, provides for transition of credit by filing of Form TRAN-1 within a period of 90 days from the appointed date i.e. 01.07.2017 subject to an extension of the last date by a further period not exceeding 90 days and since the Form had not been filed, the petitioner cannot be permitted to file the same after the period of limitation. As regards the allegations of the petitioner that it could not file the TRAN-1 Form and carry forward the legitimate input service tax, the same has been denied on the ground that it is not supported by any documentary evidence.

10. We have heard the learned counsel for the parties and have minutely perused the material available on record.

11. It is not in dispute that there were glitches in the system which led to filing of petitions before various High Courts of the Country and these Courts have granted the relief to the taxpayers by directing the authorities to open

the portal and/or receive the manually filed Forms and/or approach the Nodal Officers appointed by the Government in this regard.

12. Reference in this regard can conveniently be made to the following orders of the different High Courts:

- (i) Madras High Court order dated 10.09.2018 in W.P(MD)18532 of 2018 in case titled 'Tara Exports versus The Union of India and others',
- (ii) Delhi High Court order dated 13.05.2019 in W.P. (C) 1280/2018 in case titled 'Bhargava Motors versus Union of India and others',
- (iii) Delhi High Court order dated 22.07.2019 in W.P. (C) 3798/2019 in case titled 'M/S Blue Bird Pure Pvt. Ltd. versus Union of India and others',
- (iv) Delhi High Court order dated 16.09.2019 in W.P. (C)3736/2018 in case titled 'Krish Automotors Private Limited versus Union of India and others',
- (v) Delhi High Court order dated 20.09.2019 in W.P. (C) 9775/2019 in case titled 'M/s Aadinath Industries and another versus Union of India and others',
- (vi) Delhi High Court order dated 06.11.2019 in W.P. (C) 6331/2019 in case titled 'M/S Arora & Co. versus Union of India and others',
- (vii) a detailed judgment of the Punjab and Haryana High Court in Adfert Technologies Pvt. Ltd. versus Union of India and others, dated 04.11.2019.

13. In all the aforesaid judgments, it has been held that GST is a new progressive levy. One of the progressive

ideal of GST is to avoid cascading taxes. GST Laws contemplate seamless flow of tax credits on all eligible inputs. The input tax credits in TRAN-1 are the credits legitimately accrued in the GST transition. The due date contemplated under the laws to claim the transitional credit is procedural in nature. Therefore, in view of the GST regime and the IT platform being new, it may not be justifiable to expect the users to back up digital evidences. Even, under the old taxation laws, it is a settled legal position that substantive input credits cannot be denied or altered on account of procedural grounds.

14. We have no reason to doubt the claim of the petitioner that it had made genuine efforts for filing the returns online, but such attempts failed because of technical glitch. We, however, make it clear that does this Court is not dealing with an issue whether the petitioner is entitled to input credit as claimed by it because that is a matter to be examined by the authorities. However, the issue is about the technical glitch in the system which either does not permit a rectification in a situation where a dealer may have, due to inadvertence, or a bonafide error, not correctly filled up a form or where the system, due to a

limitation in the algorithm/software programme, did not accept the entries sought to be made by the dealer. ◊

15. In the judgments referred to above, it has been judicially recognized that GST system is still in a “trial and error phase”, as far as its implementation is concerned and because of this the Courts had been approached by the dealers facing genuine difficulties in filing returns, claiming input tax credit through the GST portal. As a matter of fact, the Court acknowledged the procedural difficulties in claiming input tax credit in the TRAN-1 Form and the Court permitted the respondents “either to open the portal so as enable the petitioner to file the TRAN-1 electronically for claiming the transitional credit or accept the manually filed TRAN-1 and to allow the input credit claimed after processing the same, if otherwise eligible in law”.

16. Relying upon the aforesaid judgments, similar directions were issued by a learned Division Bench of the Delhi High Court in ***Bhargava Motors' case (supra)*** and have been repeatedly reiterated thereafter in the subsequent judgments referred to above.

17. The judgment of the Punjab and Haryana High Court in ***Adfert Technologies's case (supra)*** is the latest

in point of time wherein the Court has agreed with the view taken by the Delhi High Court in **Krish Automotors Private Limited's case (supra)**.

18. As far as this Court is concerned, the respondents have not been able to persuade us to take a view other than the one taken by the Madras, Delhi, Punjab and Haryana High Courts and, therefore, we are in an agreement with the view taken by these High Courts wherein they have permitted the petitioner(s) before them to file TRAN-1 Forms even after 27.12.2017.

19. We need not burden the judgment with further judgments, save and except, to observe that a majority of the High Courts of the Country like Kerala, Madras, Bombay, Gujarat, Karanataka, Telangana, Delhi, Chhatisgarh, Rajasthan and Guahatti, have taken an identical view. A majority of the High Courts of the Country, referred to above, have taken a judicial notice of the technical glitch in uploading the Form TRAN-1 and afforded opportunities to the petitioner(s) before them for uploading these Forms by approaching Nodal Officers and some of the High Courts have also permitted the petitioner(s) to tender these forms manually.

20. Accordingly, the writ petition is allowed and we direct the respondents to permit the petitioner to file TRAN-1 either electronically or manually statutory form(s) TRAN-1 on or before 31.12.2019. The respondents are at liberty to verify the genuineness of the claim of the petitioner and its claim shall not be denied only on the ground that the same was not filed by 27.12.2017.

21. The writ petition is disposed in the aforesaid terms, leaving the parties to bear their own costs. Pending application, if any, also stand disposed of.

(Tarlok Singh Chauhan)
Judge

(Chander Bhusan Barowalia)
Judge

16th November, 2019.
(krt)