

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 20TH DAY OF DECEMBER 2019/29TH AGRAHAYANA, 1941

WP(C).No.34771 OF 2019(V)

PETITIONER:

KALPAKA DISTRIBUTORS PVT. LTD
XIV/226-5, KUTTYKUZHY ROAD, THAIKATTUSSERY,
OLLUR, THRISSUR-680306.

BY ADVS.SRI.SHERRY SAMUEL OOMMEN
SRI.SUKUMAR NAINAN OOMMEN
SRI.AADITYA NAIR
SMT.LAKSHMI SEETHARAMAN
SMT.ANU BALAKRISHNAN NAMBIAR

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY SECRETARY, DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE, ROOM NO.46, NORTH BLOCK,
NEW DELHI-110001.
- 2 GOODS AND SERVICE TAX NETWORK (GSTN)
THROUGH ITS CHAIRMAN, EAST WING, 4TH FLOOR,
WORLD MARK-1, AEROCITY, NEW DELHI-110037.
- 3 GOODS AND SERVICE TAX COUNCIL,
THROUGH ITS SECRETARY, 5TH FLOOR, TOWER II,
JEEVAN BHARTI BUILDING, JANPATH ROAD,
CONNAUGHT PLACE, NEW DELHI-110001.
- 4 THE COMMISSIONER OF STATE TAX,
TAX TOWER, KILLIPPALAM, KARAMANA P.O.,
THIRUVANANTHAPURAM-659001.
- 5 THE DEPUTY COMMISSIONER OF STATE GOODS AND SERVICES TAX,
GST COMPLEX, POOTHOLE, THRISSUR-680004.
- 6 THE NODAL OFFICER FOR STATE GST,
GOODS AND SERVICES TAX DEPARTMENT,
KARAMANA, THIRUVANANTHAPURAM-695002.

R1-3 BY ADV. SHRI.P.VIJAYAKUMAR, ASG OF INDIA
R2 BY ADV. SRI.P.R.SREEJITH
BY ADV.SREELAL WARRIER, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 20.12.2019, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

J U D G M E N T

The petitioner in this writ petition is an assessee under the Kerala Value Added Tax Act, 2003, who migrated to the GST regime pursuant to the enactment of the Central Goods and Service Tax/ State Goods and Service Tax (CGST/SGST) Act, 2017. The petitioner, consequent to their migration to the GST regime, was entitled to carry forward the tax paid on purchase of goods during the VAT regime to the GST regime and to avail credit under the latter regime. The transition provisions, which govern the transfer of credit under the CGST/SGST Act and Rules are Sections 139 to 143 of the Act and Rule 117 of the SGST Rules. As part of the procedure for the transfer of credit, the petitioners had to file a declaration in Form GST TRAN-1 on or before 27.12.2017 for the purposes of successfully migrating the credit to the GST regime. In this writ petition, the grievance of the petitioner is essentially that, while he attempted to upload the necessary details in the web portal of the GSTN, he was not able to do so because of a technical glitch that was encountered in the system. The request made by him before the respondent authorities under the GST Act also did not meet with any success, and the stand of the respondents was that since the

petitioners had not complied with the procedural requirements before the cut-off date prescribed, they could not carry forward the credit, that had accrued to them under the erstwhile regime, into the GST regime. In this writ petition, the communications issued to him by the respondents denying him the facility of transfer of accrued credit are impugned, inter alia, on the contention that the substantial rights available to him under the GST Act cannot be deprived solely on account of a technical lapse that was occasioned at the instance of the respondents.

2. Through statements filed on behalf of the respondents, it is stated that the complaints with regard to system error and the alleged inability of assesseees to upload the necessary details for carrying forward the credit earned by him under the erstwhile regime to the GST regime on or before 27.12.2017, were considered by the respondents, who have the wherewithal to ascertain whether an assessee had in fact made an attempt to log into the system or not. It is stated that system log maintained by the respondents clearly reveals cases where an assessee attempted to log into the system but failed, and also whether or not the inability of the assessee to upload the necessary details was on account of a system error or otherwise. It is stated that inasmuch as the system logs in the instant case reveals that the petitioner had in fact made an

attempt to log into the system before 27.12.2017, his case would be covered by category B2, in the categorization drawn up by the respondents. It is stated that in the case of such assesseees, while their attempt at logging in would be recorded by the system, it would have to be established that the inability to upload the details was on account of any system error occasioned at the instance of the respondents. In particular, the case of the petitioner herein is stated as follows:

“It is respectfully submitted that so far as the above Writ petition (GSTIN 32AAECK2911P1ZI) is concerned, the same has already been forwarded by GSTN as per CBIC's Circular dated 03.04.2018 to ITGRC. The case of the petitioner was not approved in 4th ITGRC meeting under category B-2. **As per GST System logs, the Petition saved record in TRAN-1 on 30th Aug. 2017 at 11:57:47 AM. No technical error or technical issues has been observed in GST logs. Further, the Petitioner has successfully saved TRAN-1 only once and did not attempt saving or Filing of TRAN-1 subsequently.** The current status of TRAN-1 is NOT FILED.”

3. I have heard the learned counsel appearing for the petitioner and the learned Standing Counsel appealing for the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that since it is not in dispute that the petitioner herein did attempt to upload the necessary details in the system maintained by the respondents, and

it cannot be disputed, based on a perusal of the system log, that the petitioner did attempt to log into the system, the mere fact that the petitioner cannot establish that the inability to upload the required details was on account of a system error that was occasioned by the respondents, cannot be a reason for denying him the substantive benefit of carrying forward the credit earned by him under the erstwhile regime. I also take note of the decision of the Delhi High Court in **Blue Bird Pure Pvt.Ltd. V. Union of India and Others [(2019) 68 GSTR 340 (Delhi)]**, and the decision of the Himachal Pradesh High Court dated 16.11.2019 in **CWP No.2169 of 2018 (Jay Bee Industries Vs. Union of India and Others)**, which take the view that accrued tax credits cannot be denied or varied on account of procedural defects cited by the respondents. In particular, it was noticed in those judgments that the GST system was still in a trial and error phase as far as its implementation was concerned, and there were a large number of dealers approaching the High Court expressing difficulties in filing return, claiming input tax credit etc., through the GST portal. In the said cases, the Writ petitions were allowed and a direction was issued to the respondents to permit the petitioners therein to file the TRAN -1 Form, either electronically or manually on or before 31.12.2019 without prejudice to the right of the respondent statutory authorities to verify the genuineness of the claim of the petitioners. Taking cue from the said

judgment, and finding that in the instant cases also there is no dispute with regard to the attempt made by the petitioner to log into the system on or before 27.12.2017, I allow this writ petition by quashing the impugned communications, and directing the respondents to permit the petitioner to file their TRAN-1 Forms either electronically or manually on or before 31.12.2019. While the respondents shall attempt to facilitate the filing of these TRAN-1 Forms electronically by making the necessary arrangements in the web portal an insistence on manual filing shall be only in circumstances where the electronic filing is not possible. In either event, the respondents are at liberty to verify the genuineness of the claim of the petitioners and the claim shall not be denied only on the ground that the same was not filed before 27.12.2017.

This writ petition is allowed on the above lines.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/20/12/19

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE PETITIONER'S REGISTRATION CERTIFICATE UNDER THE KERALA VALUE ADDED TAX ACT, 2003.
- EXHIBIT P2 TRUE COPY OF THE PETITIONER'S REGISTRATION CERTIFICATE UNDER THE KERALA GOODS AND SERVICES TAX ACT, 2017.
- EXHIBIT P3 TRUE COPY OF THE PURCHASE REGISTER FOR THE PERIOD OF 01.06.2017 TO 30.06.2017.
- EXHIBIT P4 TRUE COPY OF THE SCREEN SHOT OF THE ERRORS FACED BY THE PETITIONER WHILE FILING FORM GST TRAN-1.
- EXHIBIT P5 TRUE COPY OF THE CIRCULAR NO.39/13/2018-GST DATED 03.04.2018.
- EXHIBIT P6 TRUE COPY OF GSTR 3B FOR MONTH OF APRIL, 2018-19.
- EXHIBIT P7 TRUE COPY OF AUTO GENERATED EMAIL DATED 17.07.2018 IN RESPONSE TO THE GRIEVANCE RAISED BY THE PETITIONER.
- EXHIBIT P8 TRUE COPY OF THE ORDER DATED 09.08.2018 IN W.P.(C) NO.27016 OF 2018 OF THIS HON'BLE HIGH COURT.
- EXHIBIT P9 TRUE COPY OF THE PETITIONER'S APPLICATION DATED 12.09.2018 TO THE 6TH RESPONDENT.
- EXHIBIT P10 TRUE COPY OF THE PETITIONER'S MANUAL FILED TRAN 1 AND TRAN 2 TO THE 5TH RESPONDENT ON 30.03.2019.
- EXHIBIT P11 TRUE COPY OF NOTIFICATION NO.48/2018 DATED 10.09.2018 ISSUED BY THE DEPARTMENT OF REVENUE.

EXHIBIT P12 TRUE COPY OF SCREENSHOT OF ERRORS FACED BY
PETITIONER WHILE FILING FORM GST TRAN-1 ON
22.01.2019.

EXHIBIT P13 TRUE COPY OF SCREENSHOT OF ERRORS FACED BY
PETITIONER WHILE FILING FORM GST TRAN-1 ON
28.03.2019.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE