

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19818 of 2019

PRECISION GASIFICATION SERVICES PVT. LTD.

Versus

UNION OF INDIA

Appearance:

UCHIT N SHETH(7336) for the Petitioner(s) No. 1,2

DS AFF.NOT FILED (N)(11) for the Respondent(s) No. 1

MR PY DIVYESHWAR(2482) for the Respondent(s) No. 2

CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA

and

HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 18/03/2021

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs:-

“(A) This Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or order directing the learned respondents to forthwith grant transitional credit under Section 140(1) of the CGST Act in the electronic credit ledger of the amount of carry forward credit of Rs.12,30,843/- under the Excise Act and Rs.20,01,640/- under the Finance Act.

(B) In the alternative this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or order directing the learned respondents to allow revision of Form GST TRAN 1 either on the portal or manually for the purpose of claiming transitional credit under Section 140(1) of the CGST Act;

(C) Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to direct the learned respondents to forthwith grant transitional credit under Section 140(1) of the CGST Act in the electronic credit ledger of the amount of carry forward credit of Rs.12,30,843/- under the Excise Act and Rs.20,01,640/- under the Finance Act.

(D) Ex parte ad interim relief in terms of prayer C ma kindly be granted.”

2. We have heard Mr. Uchit N. Sheth, the learned counsel appearing for the writ applicants and Mr. Priyank Lodha, the learned Standing Counsel appearing for the respondents.
3. The writ applicants are engaged in the business of fabrication. The writ applicants had unutilized input tax credit of Rs.12,30,843/- under the Central Excise Act, 1944 and Rs.20,01,640/- under the Finance Act, 1994 which was carried forward in the returns. The writ applicants duly filed the GST Form TRAN 1 within the stipulated time period claiming for the transitional tax credit under Section 140 of the Central Goods and Services Tax Act, 2017.
4. Such transitional tax credit was however not reflected in the electronic credit ledger. When the writ applicants approached the authorities requesting for grant of such credit, the writ applicants were informed that since the amount of credit was shown in the wrong column in the Form GST TRAN 1, the transitional tax credit could not be granted to the writ applicants.
5. The issue arising in the present writ application is squarely covered by a judgment of this Court in the case of **Jakap Metind Pvt. Ltd. v/s Union of India, [Special Civil Application No. 19951 of 2018]**, wherein in identical set of facts, it was held and observed by this Court as under:

“22. It may be pertinent to note that the last date of filing the FORM GST TRAN-1 was 27th December, 2017, which was also the last date for filing a revised FORM GST TRAN-1. In the present case, the petitioner filed the FORM GST TRAN-1 on 2374

December, 2017 and by the time it noticed the inadvertent error in filing the form, the last date for filing revised FORM GST TRAN-1 had elapsed. The stand of the respondents is that the last date for filing revised FORM GST TRAN-1 having elapsed, the petitioner is not entitled to transitional credit of such amount.

23. In this case, it is not as if the petitioner has not filed FORM GST TRAN-1 within the time provided by the respondents under the rules. The petitioner had filed the form, but on account of not properly understanding the nature of the columns provided in the form, due to inadvertent error, did not mention the details of Rs.83,99,136/- in column 6 of Table 5a and instead uploaded the details in column 5 of Table 5a in FORM GST TRAN-1. Now the substantive right of the petitioner to claim transitional credit of such amount is sought to be denied on the ground that the time limit or filing revised FORM GST TRAN-1 has elapsed.

24. In the opinion of this court, as held by the Delhi High Court in *M/s Blue Bird Pure Put. Ltd. vs. Union of India (supra)*, the respondents ought to have provided in the system itself a facility or rectification of such errors which are clearly bona fide. Besides, although the system provided for revision of a return, the deadline for making the revision coincided with the last date for filing the return, that is, 27th December, 2017. Thus, such facility was rendered impractical and meaningless.

25. This court is further of the view that retention of the amount of Rs.83,99,136/- by the respondents which the petitioner is otherwise entitled to get by way of transitional credit would be directly hit by article 265 of the Constitution of India which provides that no tax shall be levied or collected except by authority of law. The respondents have no legal authority to retain the amount of credit to which the petitioner is duly entitled and retention of the same is violative of article 265 of the Constitution of India. Therefore, when the petitioner is entitled to credit of Rs.83,99,136/-, non grant of the same is bad in law.”

The operative portion of the aforementioned judgment read as under:

“27. The petition, therefore, succeeds and is accordingly, allowed. The respondents are directed to either open the online portal so as to enable the petitioner to again file the rectified Form GST TRAN-1 electronically or accept the manually filed FORM GST TRAN 1 with corrections on or before 30th November, 2019.”

6. In view of the aforesaid, this writ application succeeds and is accordingly allowed. The respondents are directed to either open the online portal, so as to enable the writ applicants to again file rectified Form GST TRAN-1 electronically or accept the manually filed from the GST TRAN-1 with necessary corrections on, or before, 18.05.2021.

7. With the aforesaid, this writ application is disposed of.

(J. B. PARDIWALA, J)

(ILESH J. VORA, J)

SUCHIT

