

GAHC010127982020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 3695/2020

1:GEEP INDUSTRIES (INDIA) PVT. LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956 AND HAVING ITS REGISTERED HEAD OFFICE A/B-5,
NANDANVAN INDUSTRIAL ESTATE, NEAR, TEEN HATH NAKA, OPP.
ETERNITY MALL LBS MARG, THANE (W) 400604 HAVING ONE OF ITS UNIT
AT BRAHMAPUTRA INDUSTRIAL PARK PLOT NO. 20, AMINGAON, NORTH
GUWAHATI, GUWAHATI-781031, ASSAM AND IN THE PRESENT
PROCEEDINGS REP. BY SHRI BISWANATH PAUL THE AUTHORIZED
SIGNATORY OF THE PETITIONER COMPANY

VERSUS

1:THE UNION OF INDIA AND 7 ORS.
REP BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF FINANCE
DEPTT. OF REVENUE, NEW DELHI

2:THE COMMISSIONER
CENTRAL GOODS AND SERVICE TAX ASSAM
CENTRAL GST HQRS
GUWAHATI
GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI-781001

3:GST COUNCIL
5TH FLOOR
TOWER II
JEEVAN BHARTI BUILDING JANAPATH ROAD
CONNAUGHT PLACE
NEW DELHI-110001

4:GOODS AND SERVICE TAX NETWORK
EAST WING

WORLD MARK-1
AEROCITY
NEW DELHI

5:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
NORTH BLOCK
DELHI-110001

6:COMMISSIOER OF STATE TAXES
ASSAM
KAR BHAWAN G.S. ROAD
DISPUR
GUWAHATI-6

7:SUPERINTENDENT
CENTRAL GOODS AND SERVICE TAX
CENTRAL GST
HQRS
GUWAHATI GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI-781001

8:ASSISTANT COMMISSIONER
CENTARL GOODS AND SERVICE TAX
CENTRAL GST HQRS
GUWAHATI
GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI-78100

Advocate for the Petitioner : DR. A SARAF

Advocate for the Respondent : ASSTT.S.G.I.

B E F O R E

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

05.10.2020

Heard Dr. A. Saraf, learned senior counsel assisted by Mr. Z. Islam, learned counsel for the petitioner and Mr. S.C. Keyal, learned Standing Counsel, CGST for all the respondents.

On 19.09.2019, the following order was passed by this Court in WP (C) No. 1738/2019:

“Heard Dr. A. Saraf, learned senior counsel assisted by Mr. Z. Islam, learned counsel for the petitioner. Also heard Mr. B. Choudhury, learned standing counsel for the Finance and Tax Department and Mr. S. C. Keyal, learned Asstt. SGI.

2) In this petition, the petitioner has assailed the act of the respondent No. 2 namely, the Commissioner, Central Goods and Service Tax, Assam in not allowing the petitioner to submit the GST TRAN-2 return in relation to Part 7A either electronically or manually in terms of the statement made before this Court earlier by the respondent authorities.

3) It has been stated that the petitioner had earlier approached this Court by filing a writ petition being WP (C) No. 4901/2018, challenging the non acceptance of GST TRAN-2 return from July 2017 onwards by the GST portal and also for non consideration of complaints lodged by the petitioner before the respondent authorities regarding non acceptance of TRAN-2 return submitted by the petitioner company in the GST portal.

4) This Court after hearing the parties passed the following order:

“Heard Dr. A. Saraf, learned senior counsel for the petitioner. Also heard Mr. S.C. Keyal, learned ASGI for the respondent Nos. 1, 2, 5 and 6 and Mr. B. Choudhury for the respondent Nos. 3 and 4.

2. This petition is taken up for its final consideration on the basis of the submission made by Mr. S.C. Keyal, learned ASGI that the authorities under the GST Act are willing to facilitate the submission of Form GST TRAN-2 in relation to Part-7A, either enabling the petitioner to file the same electronically or to provide adequate mechanism for filing the same manually.

3. *The petitioner which is a private limited company engaged in the trade of dealing in food items, edibles, FMCG etc. is aggrieved to the extent that although they are registered under the Central Goods and Service Tax Act, 2017 (in short CGST Act of 2017), but they are unable to submit the Form GST TRAN-2 in relation to Part-7A. According to the petitioners, they have submitted TRAN-1 return in a proper complete and correct manner. But inspite of such filing, the GST portal does not reflect the value of the stock returned by the petitioner, against which he is entitled to get import credit on filing of TRAN-2 return. Although initially, the Commissioner of Taxes had submitted a written instruction that if the portal does not reflect the value of the stock submitted under TRAN-1 in such event, the GST TRAN-2 in relation to Part-7A cannot be accepted.*

4. *The instruction was found to be unacceptable in the form it was presented inasmuch as, there were allegations that the GST portal was not functioning in its proper manner at all times. Against the said situation, the Commissioner was required to explain as to what would be the remedy available for the assessee in such circumstance.*

5. *Today when the matter is taken up, Mr. S.C. Keyal, learned ASGI makes a statement on behalf of the GST Commissioner that in the aforesaid circumstance, the petitioner may submit a representation stating in detail all their grievances and upon the representation being filed, the Commissioner would give a due consideration to the matter and make necessary arrangement so as to enable the petitioner either to submit the Form GST TRAN-2 in relation to Part-7A electronically or in the event, the portal is not functioning in proper manner, appropriate arrangement would be made that the same be filed manually.*

6. *In view of such stand, this petition stands disposed of in the above term and by providing that in the event, the application is filed, the GST Commissioner shall do the needful to ensure that the petitioner is able to submit the Form GST TRAN-2 in relation to 7A either electronically or manually as may be convenient to the authorities. In the event, the petitioner has any difficulty in submitting the form, liberty is granted to approach the Court again, if so advised. 7. Writ petition is accordingly disposed of.”*

5) The grievance of the petitioner is that in spite of specific direction by this Court to allow the petitioner to submit GST TRAN-2 either electronically or manually, the authorities have not allowed to file electronically or manually the same on the ground that the petitioner has not been able to show that there was genuine difficulty on the part of the petitioner to upload the form.

6) On the other hand, learned senior counsel for the petitioner states that as regards glitches

in the portal, which resulted in the non uploading of data it will be impossible for the petitioner to prove that he did not made all efforts or that there wasno negligence on the part of the petitioner to upload the same.

7) It has been submitted by the learned senior counsel for the petitioner that because of the aforesaid refusal of the authorities in accepting the TRAN-2 form electronically as well as manually, it will deprive the benefit of input tax credit, which would be otherwise available to the petitioner on filing of the returns, as mentioned above.

8) Mr. S. C. Keyal, learned Asstt. SGI has, however, submitted on written instruction received that it is the stand of the respondents as indicated in the affidavit-in-opposition filed that the Commissioner of GST, Guwahati duly examined the petitioner's grievances and it was found that petitioner filed his TRAN-1 successfully, however, petitioner did not submit information in his TRAN-1 correctly and did not revise his return within the stipulated time frame. However, the Commissioner of GST, Guwahati has duly forwarded the matter to the higher authorities on 05.10.2018 for taking up the matter with Central Board of Indirect Tax Custom (in short 'the Board')/GST Council so that the petitioner is allowedto make amendment in his TRAN-1.

9) Accordingly, it has been further stated that the Board issued a letter dated 13.11.2018 to all the concerned by making it clear that if non-submission of due of requisite declaration is not traceable due to any technical glitch, re-opening of the portal for filing requisite declaration or allowing manual declaration of requisite form may not be in consonance with the current statutory framework of GST law.

10) This Court is of the view that if there is a provision made for filing returns electronically and if because of certain technical glitches uploading could not be done in time, on that ground the concerned individual or firm ought not to be put to a disadvantageous position.

11) It is not the case that the petitioner is not willing to file any return or seeking time for filing return on various grounds. The case of the petitioner is that though the petitioner was ready to file TRAN-2 electronically, the same could not be done as the portal was not working, because of which he had approached the authorities for allowing him to submit the form manually also, which

in fact was considered by this Court as referred above and directed the authorities to allow the petitioner to file the form, either electronically or manually, as the case may be.

12) However, as regards this claim of the petitioner that he had made all the attempts to file electronically but because of computer glitches, the same could not be filed and as also been mentioned in the affidavit-in-opposition that the GST Council has been apprised of the same and as also agreed by the learned senior counsel for the petitioner, the GST Council respondent No. 5 therein will examine the said grievance of the petitioner and allow him to file the return either electronically or manually, as they may decide, so that the petitioner is not deprived of the ITC, which is due to him.

13) The aforesaid exercise shall be undertaken within a period of three weeks from the date of receipt of a certified copy of this order.”.

It is submitted by the learned counsels for the parties that this petition can also be disposed of with similar directions and accordingly, respondent No. 3, the GST Council will look into the grievance of the petitioner, so that the petitioner may file TRAN -1 form either electronically or manually, as the case may be, which exercise shall be undertaken within a period of three weeks from the date of receipt of a certified copy of this order to be furnished by the petitioner.

The writ petition stands disposed of.

JUDGE

Comparing Assistant