

Serial No.01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.404/2021

Date of Order: 06.12.2021

M/s Pioneer Carbide Pvt. Ltd. Vs. Union of India & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. A Paul, Sr.Adv with
For the Respondent(s) : Mrs. R Dutta, Adv
Dr. N Mozika, ASG with
Ms. T Sutnga, Adv

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The case of the writ petitioner-assessee is that a mistake was made while submitting a declaration electronically in form GST TRAN-1 under Rule 117 of the Central Goods and Services Tax Rules, 2017.

2. According to the petitioner, in course of the transition from the previous central excise regime to the GST regime, the petitioner, like other assesses, may not have been experienced and the mistake inadvertently crept in: the credit that ought to have been claimed had not been claimed. In connection with the erroneous declaration a show-cause notice was issued by the department. Such notice dated December 20, 2019 was challenged in proceedings under Article 226 of the Constitution before this court,

whereupon the petitioner-assessee was permitted to respond to the show-cause notice for the department to take a stand.

3. The petitioner furnished a detailed respond, inter alia, suggesting that in the transitional phase, the petitioner, like several other assesses, lacked the experience to fill up the form and submit the same electronically and, as a result, the mistake had been committed. Though no specific request was made by the petitioner for any revised declaration to be filed, it is implicit from the response to the show-cause notice was such an underlying request was made for the petitioner to be afforded an opportunity to rectify the mistake and get due credit for the relevant amount.

4. Following the petitioner's response to the show-cause notice, an order was passed by the Superintendent, Central Goods and Services Tax, Byrnihat Range-1, Shillong Div-1, Shillong Commissionerate. It is such order of August 12, 2021 which has been challenged by way of the present writ petition.

5. The petitioner refers to Rule 120A of the said Rules of 2017 that provides as follows:

“[120A. **[Revision of declaration in FORM GST TRAN-1].**— Every registered person who has submitted a declaration electronically in FORM GST TRAN-1 within the time period specified in rule 117, rule 118, rule 119 and rule 120 may revise such declaration once and submit the revised declaration in FORM GST TRAN-1 electronically on the common portal within the time period specified in the said rules or such further period as may be extended by the Commissioner in this behalf.]”

6. The relevant Rule give a registered person who had submitted his declaration electronically in the appropriate form to revise such declaration. As to the period within which the revised declaration has to be filed, the Rule recognizes the timelines stipulated in the relevant provisions which provide for different categories of persons or different kinds of declarations. The present matter is governed by Rule 117 of the said Rules of 2017. Thus, on plain reading of the Rule, a registered person who has submitted a declaration electronically in the relevant form is entitled to revise the declaration and file it afresh within the period stipulated in Section 117 of the said Rules of 2017. However, there is also a possibility of the time for filing the revised declaration to be enlarged by a general order or a specific order of the Commissioner as the expression “or such further period as may be extended by the Commissioner” suggests. It is possible that the period for filing the declaration under the relevant Rules, including under Rule 117 of the said Rules of 2017, is extended by a general order of the relevant Commissioner. In such an event, the time for filing a declaration under the relevant Rules, including under Rule 117 of the said Rules of 2017 which is relevant in the present case, would stand extended. The expression also permits the Commissioner to make a specific extension at the request of a registered person who had submitted a declaration electronically in the relevant form and then seeks to revise the declaration after the time for submitting the declaration has expired.

7. It does not appear that the petitioner herein availed of such opportunity or requested the relevant Commissioner for a specific extension so that the petitioner could revise the declaration already furnished.

8. Accordingly, the petition is allowed by permitting the writ petitioner to make a specific request to the relevant Commissioner under Rule 120A of the said Rules of 2017 to extend the time for the petitioner to file a revised declaration upon correcting whatever mistake may be perceived to have been committed in the course of the initial filing. If such request is made by the petitioner to the relevant Commissioner within a fortnight from date, the Commissioner will consider the matter in appropriate perspective and without reference to the order impugned dated August 12, 2021. In the unlikely event that the Commissioner declines the request, due reasons in support of such decision should be communicated to the petitioner within a period of six weeks from the receipt of the written request in terms of this order.

9. Till such time that the Commissioner decides on the matter as aforesaid, no coercive action will be taken against the petitioner in terms of the original show-cause notice or the order impugned dated August 12, 2021.

10. It is made clear that as to whether or not there was any inadvertence or a mistake was committed by the petitioner in course of electronically filing the declaration, has not been considered and it will be

open to the Commissioner to take an appropriate view in accordance with law in such regard.

11. WP (C) No.404 of 2021 is disposed of

12. There will be no order as to costs.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
06.12.2021
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