

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.04.2022

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD) No.8250 of 2021

and

W.M.P.(MD)No.6231 of 2021

M/s.Vetrivel Explosives Pvt. Ltd.,
Rep. by its Managing Director,
R.Vijaya Kannan,
T.Murungampatti Village,
Thuraiyur Taluk,
Trichirappalli District – 621 102.

.. Petitioner

Versus

- 1.Union of India,
Rep. by its Secretary,
Department of Revenue, Ministry of Finance,
Room No.46, North Block,
New Delhi – 110 001.
- 2.Goods and Service Tax Networks (GSTN),
Through its Chairman,
East Wing, 4th Floor,
World Mark – 1,
Aerocity,
New Delhi.
- 3.Goods and Service Tax Council,
Through its Secretary,
5th Floor, Tower – II,
Jeewan Bharti Building,
Janpath Road,
Connaught Place,
New Delhi – 110 001.



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4. The Commissioner of GST and Central Excise,
No.1, Williams Road,
Cantonment,
Tiruchirappalli.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the fourth respondent relating to the impugned communication, dated 19.11.2020, in File No.GEXCOM/TECH/MISC/1634/2020-TECH, quash the same and consequently, direct the fourth respondent to verify the claim of the petitioner and forward the same to the third respondent for consideration on merits, within a time frame as may be fixed by this Court.

For Petitioner : Mr.M.Karthikeyan
For R1 : Mr.M.Ashokkumar
Central Government Standing Counsel
For R2 to R4 : Mrs.S.Ragaventhre
Junior Standing Counsel

ORDER

The petitioner has challenged the impugned communication dated 19.11.2020 of the fourth respondent. By the impugned communication, the fourth respondent has stated as follows:-

"7. You have neither attempted to file Tran-1 return nor come across any technical glitches at the time of filing TRAN-1 return at GSTN common portal. Hence, it is informed that as per the minutes of the 32nd Council Meeting regarding TRAN-1 Credit, your request for enabling of filing of GST TRAN-1 does not merit consideration."



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2.It is the specific case of the petitioner that they are engaged in manufacture of explosives and that there was a huge fire accident on 01.12.2016, which resulted in few fatal deaths of the workers of the petitioner. Under these circumstances, the factory was closed for a period about two years and after several round of litigations, the petitioner was able to re-open the factory only during August 2018, by which time, the Central Excise Act had been replaced and substituted by the Central Goods and Services Tax Act, 2017 and the respective State Goods and Services Tax Act, 2017. The petitioner was required to file TRAN-1 Application in terms of Rule 117 of the Central Goods and Services Tax Rules, 2017. As an assessee under the Central Excise Act, 1944, Finance Act, 1994 and as an assessee/dealer under the Tamil Nadu Value Added Tax Act, 2006, the petitioner was required to file Form GST TRAN-1 on the common web portal in terms of Rule 117 of the Central Goods and Services Tax Rules, 2017 read with Section 140 of the Central Goods and Services Tax Act, 2017. The last date for filing return was 27.12.2017. However, the petitioner was unable to file Form GST TRAN-1 in time as the factory had been closed and was under lock and seal.

3.It is submitted that a reprieve was given only to those assesses, who faced technical problems after loading the information and therefore, Rule 117 of the Central Goods and Services Tax Rules, 2017 amended by Notification



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No.48/2018-Central Tax, dated 10.09.2018, with effect from 10.09.2018. The

respondents have rejected the request of the petitioner stating that the petitioner is not entitled to avail the facility under sub-rule (1A) to Rule 117 of the Central Goods and Services Tax Rules, 2017.

4.In support of his submissions, the learned counsel for the petitioner relied on the following decisions:-

(i) P.Preetha vs. The Goods and Service Tax Council (GST Council), The Commissioner of Central Tax, The Assistant Commissioner Central Tax (GST) reported in 2022 (3) TMI 735 [Mad.]

(ii) M/s.Avatar Petro Chemicals Private Limited, Rep. by its Director K.Satheesh Raja vs. Goods and Service Tax Council, Rep. by its Chairman, Department of Finance, New Delhi and others [W.P.(MD)No. 7093 of 2020, dated 04.03.2022]

(iii) M/s.Suriya Engineering Works, Rep. by its Managing Partner, Thiru.Ravichelvam vs. The Office of the Superintendent of Control GST and Central Excise (Thiruverumbur Range), Tiruchirappalli [W.P. (MD)No.7377 of 2020, dated 04.03.2022]

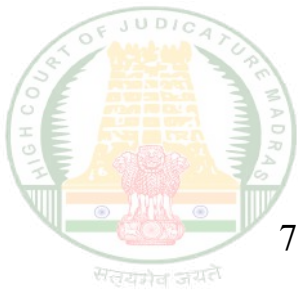
5.The learned Standing Counsel for the respondents 2 to 4 submits that impugned communication is well reasoned and requires no interference. The



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learned Standing Counsel further submits that the benefit of sub-rule (1A) to Rule 117 of the Central Goods and Services Tax Rules, 2017 is available only for the persons those who filed returns in Form TRAN-1 in time *i.e.*, on or before 27.12.2017 and not to the persons like the petitioner, who did not file Form TRAN-1 in time. Therefore, in the absence of an enabling provision in the Rules or in the Act, the benefit of transitional credit cannot be allowed to the petitioner in the year 2020. It is, therefore, submitted that the Writ Petition is liable to be dismissed.

6.The learned Standing Counsel for the respondents 2 to 4 referred to the decision of the Delhi High Court in the case of **M/s.Brand Equity Treaties Limited vs. Union of India** [W.P.(C)No.11040/2018 and C.M.No. 42982/2018], wherein the Delhi High Court held that period of 90 days for claiming input tax credit in TRAN-1 is directory and therefore, the period of limitation of three years under the Limitations Act would apply is not good law. It is, therefore, submitted that though the above said order has been passed in favour of the assessee, the Department is in appeal before the Hon'ble Supreme Court and therefore, the question of allowing the petitioner to avail input tax credit in TRAN-1 cannot be permitted.



7.I have considered the arguments advanced by the learned counsel for the respective parties and perused the judgments produced by them.

8.In all the cases cited above, the benefit has been granted to the assesses and writ petitions have been allowed. Since the input tax credit equivalent to cash meant for being used for discharging the tax liability, transition of the input tax credit cannot be restricted or denied merely because there were technical difficulties. In case, the respondents are unable to permit the petitioner to file TRAN-1 belatedly, they have to credit the corresponding amount in the electronic cash register of the petitioner, provided such credit remained unutilized on the cut-off date. Therefore, I am inclined to dispose this Writ Petition, by directing the respondents to verify whether indeed the petitioner had any input tax credit on the date of the accident *i.e.*, 01.12.2016. The monthly returns, which would have been filed for the months of October and November 2016 would show the quantum of unutilized input tax credit on input service tax and capital goods credit. If it existed on that day, I see no reason why such credit should not be allowed to the petitioner either by way of suitable credit entry in the electronic cash register of the petitioner or by way of cash refund to the petitioner. I therefore direct the respondents to verify the same and allow such credit which remained unutilized on the date of accident in the regular returns filed by the petitioner.



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9.This Writ Petition stands disposed of in terms of the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/No
To

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C.SARAVANAN, J.

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