

\$~28

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3736/2018**

KRISH AUTOMOTORS PRIVATE LIMITED Petitioner
Through Mr. Aseem Mehrotra and Mr.
M.K.Gandhi, Advocates

versus

UNION OF INDIA & ORS. Respondents
Through Mr. Anurag Ahluwalia, CGSC,
Mr. Kartikeya Rastogi &
Mr. Abhigyan Siddhant, Advocates
for Respondent No.1
Mr. Harpreet Singh & Mr. Satyakam,
Advocates for Customs.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
16.09.2019

%

Dr. S. Muralidhar, J.:

1. The Petitioner, registered under the Central Goods and Services Tax Act, 2017 ('CGST Act') has filed this petition *inter-alia* seeking a direction to the Respondents to permit the Petitioner to file the GST TRAN-I manually and allow the credit of Input Tax Credit ('ITC') of Rs. 1,41,02,394/- claimed in accordance with Section 140 (3) of the CGST Act, 2017, in its online electronic credit ledger for payment of its output liability under the GST laws.

2. The Petitioner is a dealer/distributor of Maruti Suzuki India Limited and is engaged in the business of trading and servicing of motor vehicles and parts and accessories of said motor vehicles. On the appointed day i.e. 1st July, 2017 when the CGST Act came into force the Petitioner was entitled to a credit of Rs.1,41,02,394/- in respect of the duties paid at the time of purchase of goods/stock on which central excise duty had already been paid. In terms of Rule 117 of the CGST Rules, 2017, the GST TRAN-1 was required to be filed by 30th September, 2017. Later, this time limit was extended till 30th November, 2017 and then till 27th December, 2017.

3. The Petitioner states that in view of the maze of compliance due dates, with the time extended time for filing the form GSTR-1 ending on 31st December, 2017, the accountant of the Petitioner is said to have missed noticing that the time for filing GST TRAN-1 was extended only till 27th December, 2017. The Petitioner was accordingly not able to file the GST TRAN-1 declaration online within time and claim the ITC of the eligible amounts. Thereafter, in order to be permitted to manually file the GST TRAN-1, the Petitioner made two representations dated 8th March and 19th March, 2018 to the jurisdictional GST Authorities, as well as representations dated 20th March, 2018 and 21st March, 2018 to the Ministry of Finance, Union of India and the GST Council respectively. With no response having been received from any of the aforesaid authorities, the Petitioner filed the present petition claiming the above relief.

4. Mr. Aseem Mehrotra, learned counsel for the Petitioner placed reliance on a judgment dated 6th September, 2019 of the Gujarat High Court in Special

Civil Application No.5758/2019 (**M/s. Siddharth Enterprises v. The Nodal Officer**) whereby in similar circumstances the High Court has permitted the Petitioners in those cases to file the declaration in GST TRAN-1 and GST TRAN-2 to enable them to claim ITC under Section 140 (3) of the CGST Act, notwithstanding that they were unable to do so within the extended time limit of 27th December, 2017.

5. This Court too has in a series of orders recognized the difficulties faced by tax payers in filing the GST TRAN-1 within 27th December, 2017. In some of those cases, the inability to file the GST TRAN-1 was due to technical glitches.

6. A sampling of such orders of this Court is as under:

- (i) Order dated 13th May, 2019 in W.P.(C) No. 1280/2018 (**Bhargava Motors v. Union of India 2019 SCC online Del 8474**)
- (ii) Order dated 22nd July, 2019 in W.P.(C) No.3798/2019 (**M/s Blue Bird Pure Private Limited v. Union of India**)
- (iii) **Kusum Enterprises Pvt. Ltd. v. Union of India 2019-TIOL-1509-HC-DEL-GST,**
- (iv) Order dated 9th August, 2019 in W.P.(C) No. 762/2019 (**Chogori India Retail Limited v. Union of India**) and
- (v) Order dated 20th August, 2019 in W.P.(C) No. 8970/2019 (**The Tyre Plaza v. Union of India**)
- (vi) Order dated 20th August, 2019 in W.P.(C) No. 8971/2019 (**Sikka Motors Pvt. Ltd. v. Commissioner, Central Goods and Service Tax**)

7. In **Bhargava Motors** (*supra*), the Petitioner was unable to file the TRAN-1 form on account of technical glitches. This Court referring to the decision of the Madras High Court dated 10th September, 2018 in W.P.(C) No. 18532/2018 in **Tara Exports vs. Union of India** held as under:

“11. In the present case also the Court is satisfied that the Petitioner’s difficulty in filling up a correct credit amount in the TRAN-1 form is a genuine one which should not preclude him from having his claim examined by the authorities in accordance with law. A direction is accordingly issued to the Respondents to either open the portal so as to enable the Petitioner to again file TRAN-1 electronically or to accept a manually filed TRAN-1 on or before 31st May 2019. The Petitioner’s claims will thereafter be processed in accordance with law.”

8. In **Blue Bird Pure Private Limited** (*supra*), in similar circumstances it was held in paragraphs 12 & 13 as under:

“12. In the present case, the Court is satisfied that, although the failure was on the part of the Petitioner to fill up the data concerning its stock in Column 7(d) of Form TRAN-1 instead of Column 7(a), the error was inadvertent. The Respondents ought to have provided in the system itself a facility for rectification of such errors which are clearly bona fide. It should be noted at this stage that although the system provided for revision of a return, the deadline for making the revision coincided with the last date for filing the return i.e. 27th December, 2017. Thus, such facility was rendered impractical and meaningless.

13. The Court also notes with some concern that the representations repeatedly made by the Petitioner were not attended to by the Respondents which resulted in the Petitioner having to approach this Court for relief. The apprehension of the Respondents that orders of the kind in **Bhargava Motors** (*supra*) and **Kusum Enterprises** (*supra*) can open the ‘flood gates’ can easily be allayed by the Respondents themselves if they provide a robust Grievance Redressal Mechanism that can

address such genuine grievances of the traders instead of compelling every trader to approach this Court for relief.”

9. In ***Tyre Plaza*** (*supra*) the Petitioner was not able to fill the GST TRAN-1 form for claiming ITC by the deadline of 27th December, 2017. After that date, the GST Network had disallowed any request for online submission of the TRAN-1 Form and accordingly, the Petitioner, filed the TRAN-1 form manually on 31st May, 2019 with its jurisdictional officer. Relying on its orders in ***Bhargava Motors v. Union of India 2019 SCC OnLine Del 8474***, ***Kusum Enterprises Pvt. Ltd. v. Union of India*** [W.P.(C)7423/2019] and ***Sanko Gosei Technology India Pvt. Ltd. v. Union of India & Ors.*** [W.P.(C) 7335/2019], the Court held as under:

“6. As pointed out in earlier orders of this Court, there appear to be technical errors or technical glitches of various kinds in the GST system, which is still in the ‘trial and error’ phase. There is merit in the contention of the Petitioner that in its case, if it was not able to even connect with the server, then at the end of the Respondents, the fact of a failed attempt at filing a return may not even be registered on the system. Added to this is the fact that the Petitioner’s eligibility to claim ITC in the sum of Rs.65,03,389/- has not been disputed by the Respondents in their reply.”

10. The Court is satisfied in the present case that the Petitioner was unable to fill the TRAN-1 Form on account of bonafide difficulties and that, therefore, the Petitioner should be afforded one more opportunity to do so.

11. Accordingly, a direction is issued to the Respondents to permit the Petitioner to either submit the TRAN-1 form electronically by opening the electronic portal for that purpose or allow the Petitioner to tender said

form manually on or before 15th October, 2019 and thereafter, process the Petitioner's claim for ITC in accordance with law. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 16, 2019

mw

