

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15531 of 2020

and

W.M.P.(MD)No.13042 of 2020

M/s.Ram Auto,
Represented by its Managing Partner,
V.Ganesh Khanna,
9-A, New Agraharam,
Palani Road,
Dindigul-624 001.

... Petitioner



1. The Commissioner of Central Taxes & Central Excise,
No.4 Lal Bahadur Sastri Road,
Bibikulam, Madurai 625 002.
2. The Principal Nodal Officer,
Office of the Principal Commissioner of GST & Central Excise,
GST Bhawan, 26/1, Mahatma Gandhi Road,
Chennai-600 034.
3. Goods and Service Tax Council,
Through its Secretary, 5th Floor, Tower-II,
Jeewan Bharti Building, Janpath Road,
Connaught Place, New Delhi-110 001.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari and Mandamus, calling for the records of the 1st respondent's communication in C.No.II/39/5/2018 Comp.

dated 22.09.2020, and quash the same and consequently direct the 2nd respondent to recommend the grievance of the petitioner favourably to the 3rd respondent and the 3rd respondent to redress such grievance suitably, within a time frame.

For Petitioner : Mr.S.Jaikumar

For Respondents : Mrs.Ragaventre

ORDER

Heard the learned counsel for the writ petitioner and the learned standing counsel for the respondents.

2. The petitioner is a dealer in two wheelers. He was an assessee registered under Tamil Nadu Value Added Tax Act, 2006. The petitioner was having input tax credit to the tune of Rs.4,85,684/- . Following the introduction of GST regime, transition and migrations from the earlier system had to be made. The petitioner like any other dealer was required to file the necessary GST TRAN-1. While filing the said Form, instead of entering the details under column 7(a), the petitioner erroneously entered the details against column 7(d). The column 7(d) would apply only in cases of stock of goods not supported by invoices/documents evidencing payment of tax. In the case on hand, the petitioner was very much having the necessary invoices/documents evidencing

payment of tax. Since the petitioner did not correctly enter the details, the petitioner was not given the consequential credit under the new GST regime.

3. After the petitioner realized the same, the petitioner submitted request vide letter dated 17.10.2018. The petitioner pointed out that the mistake committed by them was purely inadvertent. As a result, the petitioner was not able to adjust the claimed credit amount against their present liability. Therefore, the petitioner called upon the jurisdictional Assistant Commissioner, GST and Central Excise, Dindigul to do the needful. In order to enable the jurisdictional Assistant Commissioner to take up the follow-up actions, necessary details were furnished by the petitioner to the jurisdictional Superintendent of Central Central GST and Central Excise. The details furnished by the petitioner were duly verified and vide communication dated 17.05.2019, the jurisdictional Assistant Commissioner gave a finding that taxpayer's request was genuine and that the mistake committed by them was unintentional and recommended their case to GSTN for consideration. Even after such a positive recommendation was given by the jurisdictional Assistant Commissioner nothing further took place. Therefore, the petitioner reiterated their request vide letter dated 18.12.2019 and 30.01.2020. In response thereto, the impugned communication came to be issued. The jurisdictional

Commissioner/first respondent informed the petitioner that it is not possible for them to consider the petitioner's request in the absence of any specific Court order. Hence, the present writ petition came to be filed.

4. The learned counsel for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and wanted this Court to grant the relief as prayed for.

5. The prayer in the writ petition is contested by the respondents. The primary stand taken by the respondents is that the petitioner was specifically given time till 27.12.2017 to set right any mistake that might have been committed by them. The petitioner had failed to avail the opportunity granted by the respondents. This stand set out in the impugned order is reiterated in paragraph 9 of the counter affidavit also. The learned standing counsel would place reliance on Rule 120A of Central Goods and Services Tax Rules, 2017.

The said provision states that the every registered person who has submitted a declaration electronically in FORM GST TRAN-1 within the time period specified in rules 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. She would point out that the last

date of revision was extended from time to time and the petitioner had the final opportunity upto 27.12.2017. Since the petitioner had failed to avail the same, the petitioner cannot complain at this point of time. She would also point out when a learned Judge of this Court disposed of a similar prayer vide order dated 10.09.2018 in W.P.(MD)No.18532 of 2018, the same was stayed by the Hon'ble Division Bench in W.A.(MD)No.929 of 2020. She called for dismissal of the writ petition.

6.I carefully considered the rival contentions and went through the materials on record. As rightly pointed out by the learned counsel for the writ petitioner, the factual matrix obtaining in Tara Exports' case is quite different from the case on hand. In Tara Exports, the dealer had not even filed TRAN-1 in time. After missing the bus, he came to the Court seeking relief on the ground that his vested right cannot be taken away. That is not the contention urged before me. The petitioner had filed FORM GST TRAN-1 in time. His only grievance is that he is being denied the benefit of input tax credit for having entered the details in wrong column. Therefore, I am of the view that grant of interim stay by the Hon'ble Division Bench in Tara Exports' case cannot be put against the petitioner.

7.The learned counsel for the petitioner drew my attention to the decision of the Hon'ble Division Bench of the Delhi High Court in W.P.(C) No.3798 of 2019 (M/s.Blue Bird Pure Pvt. Ltd. Vs. Union of India and Others). In the said case also the dealer had committed an inadvertent error in showing the available stock of goods in column 7(d) of the Form insetad of 7(a) of the Form. The Hon'ble Division Bench of Delhi High Court held as follows:-

“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”

8.The decision of the Hon'ble Division Bench of Delhi High Court provides a complete answer to all the objections raised by the respondents before me.

9. In this view of the matter, the communication impugned in the writ petition is quashed. The second respondent is directed to forward the petitioner's application to the third respondent forthwith and without any delay. The third respondent will verify the correctness of the averments set out in communication of the jurisdictional Assistant Commissioner to the Commissioner of Central Taxes & Central Excise, Madurai vide C.No.IV/16/48/2018-Tech, dated 17.05.2019. Upon the third respondent being satisfied with the correctness of the same, the third respondent will grant the relief as sought for by the writ petitioner. The entire exercise shall be concluded within a period of twelve weeks from the date of receipt of a copy of this order. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

16.02.2021

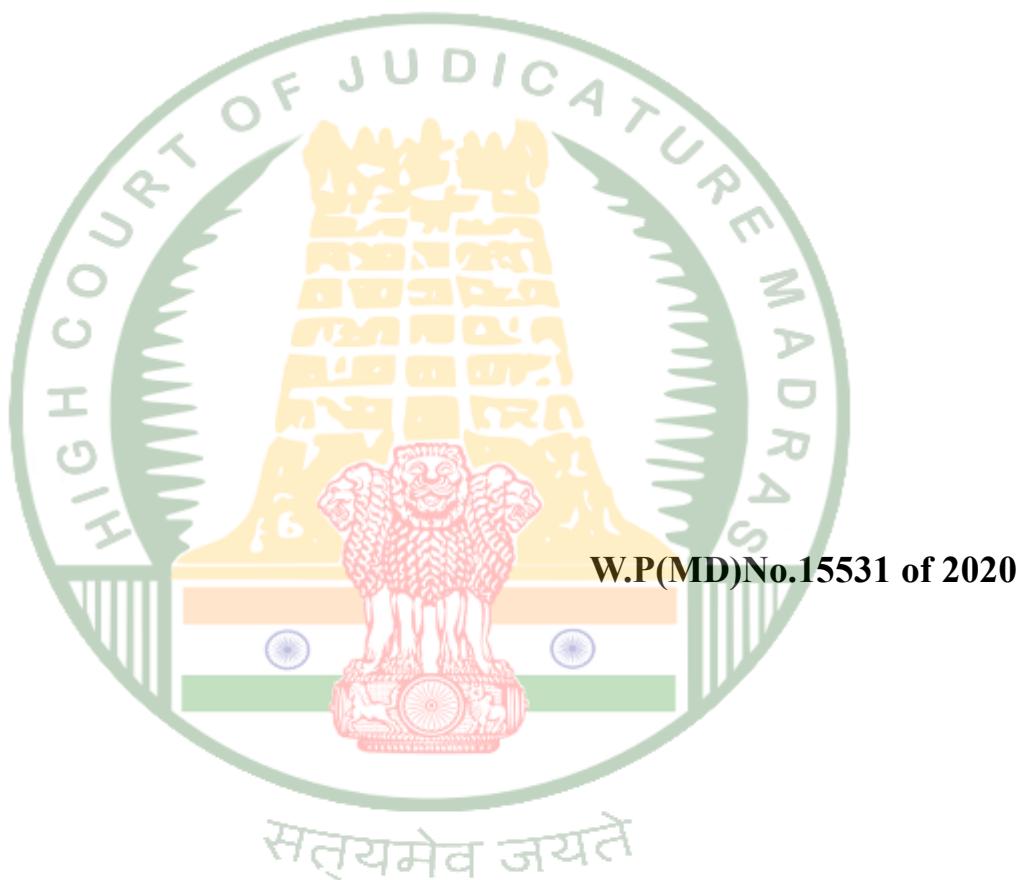
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Note : Issue order copy on **26.02.2021**.

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G.R.SWAMINATHAN, J.

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