

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 7TH DAY OF MARCH 2022 / 16TH PHALGUNA, 1943

WP(C) NO. 14096 OF 2019

PETITIONER:

M/S.G & C INFRA INNOVATIONS
K.P. 9/58, H & I,
TEL VIRUL ISLAM COMPLEX,
S.T. NAGAR, THRISSUR 680 001.
REPRESENTED BY ITS AUTHORISED SIGNATORY
SHRI. A.G. JOJU.

BY ADVS.
SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMT.G.MINI
SRI.P.S.SREE PRASAD
SHRI.JOB ABRAHAM
SRI.AJAY V.ANAND

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF FINANCE (DEPARTMENT OF REVENUE),
NO.137, NORTH BLOCK,
NEW DELHI 110 001.
- 2 THE COMMISSIONER,
STATE GOODS AND SERVICES TAX DEPARTMENT,
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.
- 3 THE GST COUNCIL,
REPRESENTED BY SECRETARY,
5TH GLOOR, TOWER II,
JEEVAN BHARTI BUILDING,
JANPATH ROAD, CONNAUGHT PLACE,
NEW DELHI 110 001.
- 4 THE PRINCIPAL COMMISSIONER,
CENTRAL TAX AND CENTRAL EXCISE,
CENTRAL REVENUE BUILDING,

- I.S. PRESS ROAD, KOCHI 682 018.
- 5 GOODS & SERVICES TAX NETWORK,
EAST WING, 4TH FLOOR,
WORLD MARK 1, AEROCITY,
NEW DELHI 110 037.
- 6 THE NODAL OFFICER,
GOODS & SERVICES TAX NETWORK,
EAST WING, 4TH FLOOR, WORLD MARK 1,
AEROCITY, NEW DELHI 110 037.
- 7 THE ASSISTANT COMMISSIONER,
OFFICE OF THE PRINCIPAL COMMISSIONER,
CENTRAL TAX AND CENTRAL EXCISE,
CENTRAL REVENUE BUILDING,
I.S. PRESS ROAD, KOCHI 682 018.
- 8 THE ASSISTANT COMMISSIONER,
CENTRAL TAX & CENTRAL EXCISE,
C.R. BUILDING, SAKTHAN THAMPURAM NAGAR,
THRISSUR 680 001.
- 9 CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS
REPRESENTED BY ITS SECRETARY (REVENUE)
DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE, NO.137,
NORTH BLOCK, NEW DELHI 110 001.

BY ADVS.

SMT.JASMIN M.M. ,GOVT. PLEADER,
SRI.S.MANU, ASGI
SRI.P.R SREEJITH, SC,
SRI.SREELAL WARRIER, SC
SRI.K.SUDHINKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 07.03.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

W.P.(C) No.14096 of 2019

Dated this the 7th day of March, 2022

JUDGMENT

Petitioner challenges inter alia the communication rejecting the application of the petitioner to revise the form TRAN-1 under the Central Goods and Services Tax Act, 2017.

2. Petitioner was a registered dealer under the Kerala Value Added Tax Act, 2003 as well as the Central Sales Tax Act, 1956. It is engaged in the trading of Iron and Steel products and other accessories and allied items. As on 30.06.2017, petitioner alleges to have Rs.19,28,654/- as unutilized input tax credit under the earlier tax regime. After the introduction of GST, petitioner submitted a declaration in form GST TRAN-1 on 01.09.2017 declaring the details of the credit to be claimed while filing form GST TRAN-2. However, while attempting to complete the form TRAN-2, petitioner received an error message stating that it had not declared anything in Part 7B of Table 7(a) of form GST TRAN-1 and hence petitioner cannot fill details in Table 4 of TRAN-2.

3. Pursuant to the receipt of the aforesaid error message and on verification, petitioner realised that, while filling up form GST TRAN-1, an inadvertent mistake was made by filling Table 7(d) of Part 7B of form GST TRAN-1 instead of Table 7(a) of Part 7B. The said mistake resulted in the petitioner unable to fill form GST TRAN-2 and transition the input tax credit to the electronic ledger.

4. According to the petitioner, the mix up of fields in the GST form occurred inadvertently, due to lack of awareness under a nascent legislation and the same ought not to be treated as fatal to the entitlement of the petitioner to obtain credit. Immediately thereafter, petitioner represented to the GST Council seeking redressal of its grievance and requesting permission to revise TRAN-1 in order to file TRAN-2. Petitioner received a reply from the 7th respondent pointing out that a one time facility to complete TRAN-1 procedure was extended to those assesseees who could not file TRAN-1 due to glitches as prescribed in Circular No.39/13/2018-GST dated 03/04/2018. It was also mentioned that the period for revising the declaration in form GST TRAN-1 was extended till 27/12/2017 and that no orders for extension of time have been permitted. Subsequently,

petitioner approached this Court by filing W.P.(C) No.20287 of 2018 and obtained an order permitting the petitioner to prefer a representation pointing out the grievance before the Nodal Officer appointed and the said officer was directed to take a decision on the representation, if filed.

5. Consequent to the said direction, petitioner preferred Ext.P6 representation to the 8th respondent. However, by communication dated 20.03.2019, the representation was rejected. Aggrieved by the rejection of petitioner's representation for correction of form GST TRAN-1, this writ petition is preferred. Amongst the reliefs claimed, petitioner has also sought for a direction to facilitate the corrections in form GST TRAN-1 and to allow credit of the unutilized input tax into the electronic credit ledger of the petitioner.

6. A statement has been filed on behalf of respondents 4 to 9 stating that "an inadvertent mistake" cannot be corrected and that only technical glitches were permitted to be corrected, that too, within the time limit for filing TRAN-1, which was 27.12.2019. It was mentioned that as per Rule 117 of the CGST rules, 2017 transition of credit by filing of form TRAN-1 within a period of 90 days from the appointed date i.e., 01.07.2017

subject to an extension of another 90 days. Respondents also pointed out that though the revision of TRAN-1 was permitted, as per Rule 120A of CGST Rules, 2017, the same can be used only once and alleged that the tax payers were given sufficient time to correct the mistakes that had crept in TRAN-1 form and further that the information regarding last dates for filing and its revision were all placed in public domain after giving due publicity. An IT Grievance Redressal Mechanism was also set up by the Central Board of Indirect Taxes & Customs to address grievances related to technical glitches. Respondents 4 to 9 also stated that providing facility for revision of TRAN-1 at this belated stage would seriously jeopardize Government revenue and that the limitation of time for filing any form or return are reasonable restrictions and are needed for administrative machinery of taxation to function well and that the onus lies on the tax payers to adhere to such limitations prescribed under law. It was also pointed out that the tax payers do not have absolute right to transitional credit and the same is subject to provisions of Section 140 of CGST Act, 2017, and Rule 117 of CGST Rules, 2017. In such a view of the matter, respondents sought dismissal of the writ petition.

7. I have heard Sri.A.Kumar, learned counsel for the petitioner, Sri.S.Manu, learned Assistant Solicitor General of India, Sri.P.R.Sreejith, learned Standing Counsel for respondents 3, 5, 6 and 9, Smt.M.M.Jasmin, learned Government Pleader for the second respondent and Adv.Sreelal Warriar, learned Standing Counsel for respondents 4, 7 and 8.

8. Registered taxpayers who were eligible for a credit of tax paid under pre-GST regime were entitled to claim credit of input taxes as per the provisions of section 140 of the CGST Act, 2017. GST TRAN-1 is the transition form to be filed for taxpayers who were registered under the pre-GST regime to avail the accumulated input tax, remaining in their account on the day preceding the appointed day. The said form is to be filed by every person having input tax credit on the closing stock and who have migrated to GST. The balance of closing stock held by the taxpayer as on the appointed day ought to be disclosed in TRAN-1 to claim the input tax credit on the old stock in the GST regime.

9. According to the petitioner, while the declaration in GST TRAN-1 was submitted on 01-09-2017 declaring the details of the credit to be claimed while filing GST TRAN-2, due to

unfamiliarity with the TRAN procedure and since the form GST TRAN-2 was not available until the second week of December 2017, an error crept in, while filling the form. This came to the knowledge of the petitioner only when form GST TRAN-2 was accessed and noticed the error message posted in the GST portal. The error read as follows:

"You have not declared anything in Part 7B of Table 7(a) of TRAN-1, so you are not permitted to fill in the details in table 4 of TRAN-2".

10. Instead of filling the details in Table 7(a) of Part 7B, petitioner had provided the details in Table 7(d) of Part 7B. Immediately on coming to know about the error, petitioner represented to the GST Council by representation dated 16-03-2018, which was rejected by Ext.P4. It is thereafter that this court directed the petitioner to prefer another representation to the nodal officer, who has rejected the representation by the impugned order dated 20-03-2019.

11. As far as the GST regime is concerned, the period between 2017 and 2020 ought to be regarded as the nascent period of legislation. Admittedly several glitches had occurred even from the part of the Department. The said period was regarded by the courts as a 'trial and error phase' as far as

implementation of the statute was concerned. The taxpayers were also in a state of confusion, during those periods. Unfamiliarity with the new regime caused formidable and unprecedented difficulties. As observed by the High Court of Delhi in **Brand Equity Treaties Limited and Others v. Union of India and Others** (MANU/DE/1009/2020), these problems could be attributed either to the failure of the system maintained by the Department or even on the inexperience of the assesseees in the ways and means provided by the new regime. The court went on to observe that the Department, which ought to have come to the rescue of the taxpayers, especially during the nascent stage of its legislation, has failed in respect of the petitioner to provide succor for the difficulty faced by it.

12. The fact that petitioner had sought to correct the mistake in the details supplied in TRAN-1 immediately on becoming aware of the error, is evident from Ext.P3 dated 16-03-2018. The statutory limitation prescribed for correcting errors that occurred during the initial stages of transition ought not to be used as an iron handle to deny the legitimate claims of taxpayers, especially for claims relating to transitional input tax credit. When it is apparent from the circumstances, that, the

mistake was a bonafide error and arose on account of an error in perception and comprehension of minute details of the new formats to be submitted, denying the relief of correcting the error can only be termed as arbitrary and unreasonable. In such instances, this Court cannot shy away from its constitutional obligation of enforcing equal protection of all laws within the territory of India, contemplated under Article 14 of the Constitution of India.

13. In this context it is relevant to notice that petitioner had in fact uploaded GST TRAN-1 on 01-09-2017. The time for filing the said form was available till 27-12-2017. Thus the form was filed within time. Admittedly the portal opened only on 15th March, 2018, for filing the TRAN-2 returns and petitioner could realise the inadvertent error only after that. Immediately thereafter, a complaint was made to the GST council. Thus, this Court finds that the mistake in filling up TRAN-1 form is a genuine, and, in the circumstances, the said error should not prevent the petitioner from claiming or being entitled to claim, what is otherwise legally due to it.

14. In similar instances, the courts of this country have come to the aid of the taxpayers. The decisions in **Blue Bird**

Pure (P) Ltd. v Union of India and Others [(2019) 68 GSTR 340], and of this Court in **Goods and Service Tax Network v. M/s Leo Distributors** (W.A No. 511 of 2020) were both rendered in identical situations, giving relief to the taxpayers. This court respectfully follows the aforesaid judgments.

15. In view of the above, I set aside Ext.P7 and direct the competent amongst the respondents to facilitate revising of form GST TRAN-1 submitted by the petitioner on 01-09-2017 and to file form GST TRAN-2 by making necessary arrangements on the web portal. If in case the same is not possible, to permit the manual filing of such returns by the petitioner, as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of the judgment.

Writ petition is allowed as above.

Sd/-
BECHU KURIAN THOMAS
JUDGE

vps

APPENDIX OF WP(C) 14096/2019

PETITIONER EXHIBITS

- EXHIBIT P1** TRUE COPY OF THE GST REGISTRATION CERTIFICATE.
- EXHIBIT P2** TRUE COPY OF THE ENTRIES IN TABLE 7(d) OF PART 7B OF GST TRAN-1, FORM AS OBTAINED IN EXCEL FORM
- EXHIBIT P3** TRUE COPY OF THE REPRESENTATION DATED 16.3.2018.
- EXHIBIT P4** TRUE COPY OF THE COMMUNICATION DATED 19.4.2018 BY THE ASSISTANT COMMISSIONER OFFICE OF PRINCIPAL COMMISSIONER, CENTRAL TAX AND CENTRAL EXCISE, KOCHI
- EXHIBIT P5** TRUE COPY OF THE JUDGMENT IN WPC NO. 20287/2018 DATED 22.6.2018.
- EXHIBIT P6** TRUE COPY OF THE LETTER DATED 9.7.2018.
- EXHIBIT P7** TRUE COPY OF THE REJECTION DATED 20.3.2019.

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REGISTERED