

WEB COPY



W.P.No.22854 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.22854 of 2023

and

W.M.P.Nos.22327 and 22328 of 2023

M/s.Sri Renga Timbers,
Represented by its Sole Proprietor
S.Renganathan,
No.18/3B, 18/3, Agarakeerangudy,
Elanthangudy Post,
Thiruvarur Main Road,
Mayiladuthurai - 609 001.

... Petitioner

Vs.

1.The Assistant Commissioner (ST) (FAC),
Mayiladuthurai.

2.The Superintendent of GST & Central Excise,
Tiruvarur Range,
No.12-A, Kumaran Koil Street,
Tiruvarur 610 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for records of the impugned proceedings of the first respondent in GSTIN:33AHXPR4039G1ZX dated 27.02.2023, quash the same as being



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violation of the principles of natural justice and further direct the first respondent herein to rectify the error on the face of records in the assessment proceedings made GSTIN:33AHXPR4039G1ZX dated 27.02.2023 by disposing of the petition filed by the petitioner u/s.161 of the GST Act dated 17.06.2023 as expeditiously as possible.

For Petitioner : Mr.S.Rajasekar

For Respondents :
For R1 : Mr.C.Harsharaj
Additional Government Pleader

For R2 : Mr.Rajnish Pathiyil
Senior Standing Counsel

ORDER

The Petitioner has challenged the impugned communication dated 27.02.2023 of the first respondent herein.

2. By the aforesaid communication, the first respondent has disallowed the transitional credit of Rs.89,88,498/- as claimed under Table7(a)7(A)/7.a.A in the revised FORM GST TRAN-1 filed by the petitioner under Section 140 of Central Goods and Services Tax (CGST) Act, 2017, as inadmissible Transitional Credit.



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WEB COPY3. The Petitioner was an assessee under the provisions of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006. With the implementation of respective GST enactments with effect from 01.07.2017, the petitioner filed FORM TRAN-1 under Section 140 of the CGST Act, 2017 in a bid to transmit the Input Tax Credit that was lying unutilized with the petitioner as on 30.06.2017.

4. The Petitioner had transferred the Input Tax Credit on the stock of inventory of locally purchased taxable goods valued at Rs.6,19,89,648/- and thus, the petitioner has declared the Input Tax Credit carried forward at the end of the month as Rs.89,88,498/- in the returns filed for the month of June 2017.

5. In FORM TRAN-1 filed on 24.08.2017, the petitioner had transited the aforesaid Input Tax Credit in table 5(c) in the third column State/Union Territory tax as credit claimed on account of State/Union Territory tax credit carried forward.



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WEB COPY 6. The credit which was transited was also utilized by the petitioner during the course of time for discharging the tax liability under the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017 for the supplies effected.

7. After the decision of the Hon'ble Supreme Court in **Union of India Vs. Filco Trade Centre Private Limited**, SLP(C)Nos.32709 & 32710 of 2018, vide order dated 22.07.2022 and 02.09.2022, the petitioner filed a revised return in TRAN-1 on 28.11.2022, although the decision was rendered to ameliorate the situation arising out of difficulties faced by the assessee to properly file Form GST TRAN-1 due to technical glitches in the web portal.

8. It is the case of the petitioner that instead of filing a revised TRAN-1 by showing the amount of credit of Rs.89,88,498/- in column 2 for State/Union Territory Tax against Table 7.c i.e., amount of VAT and Entry Tax paid on inputs supported by invoices under the caption "Inputs Held in Stock", the petitioner made an entry in Table 7.a.A i.e., for Input Held in Stock, where duty paid invoices were available. This mistake was also pointed out by the Central Goods and Services Tax (CGST) authorities,



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namely the Superintendent of GST & Central Excise, Tiruvarur Range, by a

WEB COMMUNICATION dated 19.01.2023.

9. The petitioner appears to have replied to the same by a communication dated 23.01.2023 wherein, it was stated as follows:

"Dear Sir,

Please refer to your above letter, in this connection hereby submit the followings - I am timber merchant, I purchased timbers within the state of Tamil Nadu after paid TNVAT and I also imported timbers from foreign country. Hence closing stock as on 30.06.2017 consist of both ITC - non availed stock and ITC already availed stock-break up details as follows

<i>Sl</i>	<i>Closing Stock 30.06.2017</i>	<i>VAT-ITC available</i>
<i>1</i>	<i>61989648</i>	<i>8988498 (SGST)</i>
<i>2</i>	<i>49353014</i>	<i>No ITC claimed in Foreign timbers purchased</i>
<i>Total</i>	<i>111342662</i>	<i>8988498 (SGST) ITC claimed</i>

Out of the above my accountant filed tran-1 during the year 2017 on 28.11.2022 with VAT-ITC claimed (SGST) of Rs.89,88,498, and stock value of Rs.6,19,89,648/- whereas by mistake accountant not reported above stock value of Rs.4,93,53,014/- which is not having any VAT-ITC as on date. (He assumed only ITC non availed stock only report in the Tran-1)

However now I filed revised tran-1 on 28.11.2022 without any change of ITC claim of earlier tran-1 filed, only stock value changed-rectify the above mistake for the purpose of accounting. Further I hereby declare that I am not claim any additional ITC though second tran-1 filed. Further I hereby declare and confirm only state ITC only claimed not any central excise duty or CGST.



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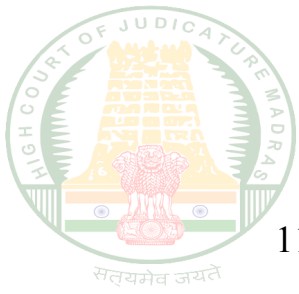
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On verification of revised tran-1 filed on 28.11.2022 a sum of Rs.89,88,498/- ITC-SGST claimed in the table 7(a) instead of table 7(c), kindly rectify the same and do the needful. Kindly drop CGST claim proceedings and allow only SGST claimed. I having all supporting documents which is specifically mentioned in your above referred letter for your kind verification. If you want any other details, kindly inform to me I will submit the same."

10. Since a revised return in TRAN-1 was revised, the respondents who are counterparts of the CGST authorities under whom, the petitioner is assessed to tax had issued with the impugned order dated 27.02.2023 based on the verification report dated 09.02.2023 received from their counterpart namely the Superintendent of GST & Central Excise, Tiruvarur Range in O.C.No.23 of 2023. In the aforesaid communication, the Superintendent of GST and Central Excise, Tiruvarur Range has stated as follows:-

"1. The taxpayer Tvl.Sri Renga Timbers (GSTIN 33AHXPR4039G1ZX), vide their letter dated 23-01-2023, submitted - (i) self-certified copy of Form GST TRAN-1 filed; (ii) Declaration in Annexure-A; & (iii) VAT Returns for the months of 01/2017 to 06/2017.

2. On verification of their Tran-1 claim, it is seen that though they have claimed CGST Credit in the revised FORM GST TRAN-1 application, they have not produced any documents relating to Central Excise or Service Tax. The claim has been filed wrongly by the taxpayer. The taxpayer themselves has admitted vide their letter dated 23-01-2023, that they don't claim any central Excise duty or CGST in the revised FORM GST TRAN-1."



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11. It is in this background and in the light of the clarification issued by the Principal Secretary/Commissioner of State Tax vide Circular No.19/2022 – TNGST (PP6/GST/145/2022) dated 14.12.2022, the first respondent Assistant Commissioner (ST) (FAC), Mayiladuthurai has concluded that the petitioner had wrongly claimed and utilized the excess SGST credit of Rs.89,88,499/- as per the revised Form GST TRAN-1 as per with the earlier FORM GST TRAN-1 claiming the aforesaid credit.

12. Under these circumstances, the credit that was availed and utilized by the petitioner for a sum of Rs.89,88,498/- is sought to be denied as inadmissible.

13. Pursuant to the aforesaid order of the first respondent, on 27.02.2023, a Show Cause Notice was also issued by the first respondent to the petitioner in DRC-01A. On the same date, the first respondent called upon the petitioner to pay the aforesaid sum of Rs.89,88,499/-. It is also stated, if the petitioner fails to pay the aforesaid amount, Show Cause Notice will be issued in Form GST DRC-01.



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WEB COPY14. The learned counsel for the petitioner submits that there was a mistake committed not once but twice by the petitioner. However, the credit that was availed on the stock lying as on 30.06.2017 was transited in FORM TRAN-1 on 24.08.2017 was carried forward by mistake instead, the amount of VAT/Entry tax on inputs supported by invoices in Table 7.c under the caption "Inputs Held in Stock". This was sought to be rectified by the petitioner by filing a revised return on 28.11.2022. However, by mistake, the petitioner filed a revised TRAN-1 by showing the amounts against the inputs held in stock where duty paid invoices are available in Table7.a.A.

15. The learned Additional Government Pleader for the first respondent submits that as on date, only revised TRAN-1 is available and since even as per the petitioner's own admission, credit was wrongly transited and there was no credit available against Table 7.c in TRAN-1, and therefore, the amount that was utilized by the petitioner in past has to be denied. The petitioner was required to pay Rs.89,88,499/- together with interest. It is therefore submitted that the impugned order does not warrant any interference.



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WEB COPY16. It is submitted that the petitioner is responsible for giving incorrect particulars in TRAN-1 both on 24.08.2017 and on 28.11.2022.

17. It is therefore submitted that since the VAT credit of the petitioner in the revised TRAN-1 for State GST is nil, amount of credit was wrongly utilized in the past has to be recovered.

18. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the first respondent and the learned Senior Standing Counsel for the second respondent.

19. The petitioner is responsible for the mistake committed by him in filing TRAN-1 on 24.08.2017. However, the fact remains that the aforesaid amount had remained unutilized as per the monthly returns filed by the petitioner for the month of June-17, which was the last return filed under the TNVAT Act, 2006 before the enactment of the respective GST Acts with effect from 01.07.2017.

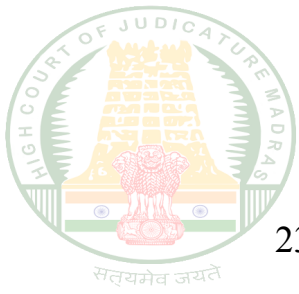


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WEB COPY20. The amount was also not disputed by the respondents when the first return was filed by the petitioner on 24.08.2017. The Hon'ble Supreme Court in **CCE Vs. Dai Ich Karkaria Limited**, 1999 (112) ELT 353, has held that the credit that was validly availed and cannot be denied.

21. It is held that validly availed credit is indefeasible in law. Although, the petitioner has blundered all the way by filing form TRAN-1 on 24.08.2017 and the revised return on 28.11.2022, the fact remains that the amount of Rs.89,88,498/- was the credit that was lying unutilized in the last return filed by the petitioner for the month of June 2017. Such credit cannot be denied even if there is a mistake in the returns filed in TRAN-1 twice.

22. The Hon'ble Supreme Court in **Unichem Laboratories Vs. Commissioner of Central Excise**, (2002) 7 SCC 145, has held that it is not on the part of the duty of the revenue to deny the benefit that was otherwise legitimately available to an assessee.



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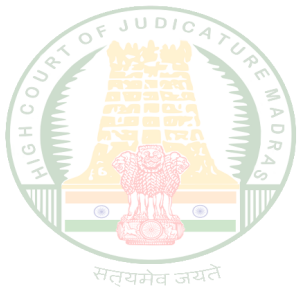
23. Considering the above, Court is inclined to quash the impugned order and remits the case back to the respondents to re-examine the records of the petitioner afresh from the last VAT return for the month of June 2017 under the TNVAT Act, 2006. In case such credit was available, even if there was any discrepancy while filing Form TRAN-1, the mistakes committed by the petitioner may be overlooked and the credit that availed and utilized can be condoned and regularized. In case no credit was available in the last VAT return and was wrongly transited, such credit shall be recovered from the petitioner in accordance with law. This exercise shall be carried out by the respondents within a period of four weeks from the date of receipt of a copy of this order.

24. This Writ Petition stands allowed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

17.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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C.SARAVANAN, J.

dpa/arb

To

- 1.The Assistant Commissioner (ST) (FAC),
Mayiladuthurai.
- 2.The Superintendent of GST & Central Excise,
Tiruvarur Range,
No.12-A, Kumaran Koil Street,
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