

25.03.2025
Item No.3
Ct. No.01
RP/SM

MAT 2126 of 2024
with
CAN/1/2024
with
CAN/2/2024

Javed Ahmed Khan
Vs.
Deputy Commissioner of Revenue,
State Tax, Ballygunge and Ors.

Mr. Sandip Choraria, Adv.
Mr. Sukalpa Seal, Adv.
Mr. Rishav Manna, Adv.

....For the Appellant

Mr. Prabir Kr. Bhowmick, Adv.
Mr. Soumen Bhattacharjee, Adv.
Ms. Shradhya Ghosh, Adv.
Mr. Ankan Das, Adv.

....For the Union of India/
Respondent

Mr. Md. T.M. Siddiqui, A.G.P.
Mr. N. Chatterjee, Adv.
Mr. T. Chakraborty, Adv.
Mr. S. Sanyal, Adv.

...For the State-Respondent

1. We have perused the averments made in the application for condonation of delay, being CAN 1 of 2024, filed in connection with filing of the appeal being MAT 2126 of 2024. We are satisfied that sufficient causes are pleaded in the application for delay for filing the appeal. Accordingly, delay is condoned and CAN 1 of 2024 is allowed.
2. This intra-court appeal is directed against an order passed by the learned Single Bench on 18th September, 2024 in WPA No.19089 of 2024 by

which the learned Single Bench was of the view that affidavits have to be called for before a decision taken in the writ petition and accordingly directed so. The appellant contends that the order passed by the authority rejecting transitional credit dated 7th February, 2023, is unjust and has been passed without taking note of the peculiar facts and circumstances which was faced by the appellant during the process of transition. Considering the narrow scope of the writ petition, with the consent of the learned advocates on either side the appeal as well as the writ petition is disposed of by this common judgment and order.

3. The order which was impugned in the writ petition dated 7th February, 2023, has rejected the TRAN-1 filed by the appellant/writ petitioner on the ground that the appellant had filed an application for new registration in form GST REG-01 in terms of Rule 8 of the CGST Rules, 2017, voluntarily on 23rd August, 2017 and was approved on 8th November, 2017 and accordingly the appellant/writ petitioner had not filed GSTR-3B return for the month of July, 2017. As the appellant/writ petitioner did not transit from existing law to present law on the appointed day, that is, on 1st July, 2017, but took new registration voluntarily, the entire claim of CGST in TRAN-1 of Rs.35,59,064/- was rejected. Thus, it has to be seen

as to whether the appellant/writ petitioner had voluntarily applied for registration in terms of Rule 8 of CGST Rules, 2017. This appears to be not voluntary act of the appellant/writ petitioner but pursuant to certain direction given by the CBEC helpdesk. The appellant sent an email dated 27th June, 2017 to the CBEC helpdesk requesting to reissue a provisional ID for GST migration. The appellant/writ petitioner had enclosed the screenshot of ST-2 to show that there was technical breach in obtaining the provisional ID for GST migration. The helpdesk in reply sent an email dated 16th August, 2017, while recording the stand taken by the appellant that they did not receive the provisional ID and password to migrate to the GST and they advised to apply for new registration on the GST Common Portal. Thus, pursuant to such advice rendered by the CBEC helpdesk vide email dated 16th August, 2017, the appellant/writ petitioner had applied for a new registration on the GST Common Portal, therefore, the said application cannot be stated to be a voluntary application but pursuant to the direction issued by the helpdesk. Therefore, the appellant cannot be non-suited of the said ground. Therefore, we are of the view that the claim made by the appellant/writ petitioner for transitional credit has to be reconsidered bearing in mind that the

application made by the appellant/writ petitioner for new registration was not voluntary but pursuant to the direction issued by the CBEC helpdesk.

4. For the aforesaid reasons the appeal as well as the writ petition is allowed and the impugned order dated 7th February, 2023, is set aside and the matter is remanded back to the Respondent No.1, Deputy Commissioner of Revenue, State Tax, Ballygunge to consider the application filed by the appellant/writ petitioner afresh bearing in mind the observations made in the preceding paragraphs which are to the effect that the application filed by the appellant/writ petitioner for new GST registration was not voluntary but on the direction issued by the department. In this regard, appropriate order be passed after affording an opportunity of personal hearing to the appellant/writ petitioner within three weeks from the date of receipt of server copy of the order.
5. With the aforesaid directions, the appeal along with the applications and the writ petition are disposed of.

**[T.S. SIVAGNAM]
CHIEF JUSTICE**

[CHAITALI CHATTERJEE (DAS), J.]