

[2021] 124 taxmann.com 100 (Andhra Pradesh)/[2020] 41 GSTL 600 (Andhra Pradesh)/[2021] 84 GST 85 (Andhra Pradesh)[13-08-2020]

GST : Where assessee was unable to upload Form GST TRAN-1 due to technical glitches on GST portal and it also met Nodal Officer from time to time explaining its grievances but nothing turned out from same, concerned Authority was to be directed to permit assessee to submit Form GST TRAN-1 electronically or in alternative manually by fixing a cut off date

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[2021] 124 taxmann.com 100 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Sri G.K. Exim

v.

Deputy Commissioner of Commercial Tax, Visakhapatnam*

C. PRAVEEN KUMAR AND SMT. LALITHA KANNEGANTI, JJ.

W.P. NO. 1922 OF 2020

AUGUST 13, 2020

Section [140](#) of the Central Goods and Services Tax Act, 2017, read with rule [117](#) of the Central Goods and Services Tax Rules, 2017/Section [140](#) of the Andhra Pradesh Goods and Services Tax Act, 2017, read with rule [117](#) of the Andhra Pradesh Goods and Services Tax Rules, 2017 - Transitional provisions - Input tax credit - Transitional arrangement for - Assessee was unable to upload Form GST TRAN-1 due to technical glitches in terms of poor internet connectivity and other technical difficulties on GST common portal - Assessee also met Nodal Officer from time to time explaining its grievances in uploading Form GST TRAN-1 apart from addressing letters to concerned but nothing turned out from same - Whether concerned Authority was to be directed to permit assessee to submit Form GST TRAN-1 electronically or in alternative manually by fixing a cut off date - Held, yes [Para 12] [In favour of assessee]

Circulars and Notifications : [Circular No. 39/13/2018-GST, dated 3-4-2018](#)

(NR)

CASE REVIEW

Lantech Pharmaceuticals Ltd. v. Pr. CIT [\[2019\] 111 taxmann.com 144 \(AP\)](#) (para 12) followed.

CASES REFERRED TO

P.R. Electronics v. Union of India [\[2020\] 117 taxmann.com 868 \(Mad.\)](#) (para 3), Lantech Pharmaceuticals Ltd. v. Pr. CIT [\[2019\] 111 taxmann.com 144 \(AP\)](#) (para 10), Uninav Developers (P.) Ltd. v. Union of India [W.P. (C) No. 1377 of 2018, dated 29-7-2019] (para 10), Bhargava Motors v. Union of India [\[2019\] 106 taxmann.com 200/74 GST 340 \(Delhi\)](#) (para 10), Kusum Enterprises (P.) Ltd. v. Union of India [\[2020\] 114 taxmann.com 501 \(Delhi\)](#) (para 10) and Sanko Gosei Technology India (P.) Ltd. v. Union of India [W.P. (C) No. 7335 of 2019, dated 12-7-2019] (para 10).

ORDER

C. Praveen Kumar, J. - The present Writ Petition came to be filed seeking issuance of a writ of Mandamus to declare the inaction of the Respondents to reopen the portal immediately enabling the Writ Petitioner to submit its GST TRAN-1 Form in the GSTN Portal in terms of section 140 of the CGST and APSGST Act, 2017; or in the alternative, permit the Writ Petitioner to submit GST TRAN-1 manually with a direction to the Respondents to consider the same in accordance with law. It is further pleaded that, a direction may be given to Respondent no. 1 and 4 to grant refund of VAT credit of Rs. 1,92,095/-, to which the Writ Petitioner is entitled for.

2. The facts, in issue, are that:

- (i) The Writ Petitioner is a partnership concern doing business in pulses and turmeric registered under the APSGST Act 2017 and CGST Act, 2017 bearing GSTI No. 37ACSF57596P1ZL. In short, the request of the Writ Petitioner is, to direct the Respondents to accept his Form GST TRAN-1 enabling him to claim transitional credit of the eligible taxes in respect of the excess input tax credit of Rs. 1,92,095/- on the appointed day i.e., 01st July, 2017 in terms of section 140(1) and (3) of the APSGST/CGST Act, 2017 read with Rule 117 of the Central Goods and Services Tax Rules, 2017.
- (ii) It is pleaded that, the Writ Petitioner could not upload the Form GST TRAN-1 due to technical glitches in terms of poor internet connectivity and other technical difficulties on the GST common portal. It is further pleaded that, the Writ Petitioner also met the 1st Respondent being the Nodal Officer from time-to-time and also addressed letters to the concerned for allowing him to file online Form GST TRAN-1 in terms of the decision of the GST Tax Council and Circular, dated 3-4-2018. The Writ Petitioner claims to have addressed letters to the 1st Respondent on 27-12-2019, but, nothing turned out from the same. The Writ Petitioner placed on record number of judgments to show that, when the petitioner was not able to gain access to the portal due to technical difficulties or due to ignorance of the usage of technology, the courts permitted the petitioners therein to apply manually. In other words, his plea is that, technology has been added to the system for the benefit and convenience of the tax payers, but it should not be subservient to the purpose and hence the impediments, if any, should not make the Writ Petitioner servants of the technology. He further pleads that, the authorities have time and again extended the last date for claiming input credit, but, his efforts to upload the Form proved futile for many a reasons. Hence, the present Writ Petition is filed seeking manual submission of Form GST TRAN-1.

3. The same is seriously opposed by the learned Counsel for the Respondents by placing the Judgment of the Division Bench of the Madras High Court in *P.R. Electronics v. Union of India* [2020] 117 taxmann.com 868. Insofar as the judgment delivered by this court is concerned, the Counsel for the Respondents would contend that, since the Petitioner therein was illiterate, this Court permitted him to submit GST TRAN-1 manually, but, the instant case stands on an altogether different footing.

4. In reply, the Counsel for the Writ Petitioner placed on record photostat copies of screen shots of GSTN common portal indicating the efforts made by the Writ Petitioner trying to submit TRAN-1 Form.

5. In order to deal with the issue raised, it is to be noted that, Section 40 of SGST Act provides for transfer of the amount of Value Added Tax Credit carried forward under the APVAT Act, 2005 to the GST regime, which reads as under:—

"140. Transitional Arrangements for Input Tax Credit:—

(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the amount of Value Added Tax carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law, in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—

- (i) where the said amount of credit is not admissible as input tax credit under this Act; or
- (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
- (iii) where the said amount of credit relates to goods manufactured and cleared under such

exemption notifications as are notified by the Government.".

6. Rule 117 of the SGST Rules, 2017 was introduced to provide for the mode and manner in which such credit is to be carried forward. The relevant portion of the Rule reads as under:

"117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day:

(1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in Form GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit to which he is entitled under the provisions of the said section:

Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days"

7. Rule 117 of the SGST Rules prescribed a period of 90 days from the appointed day to file Form GST TRAN-1 mentioning the amount of transitional input tax credit claimed by the registered person. The Form GST TRAN-1 is to be filed electronically on the common portal within the time fixed in the Rule initially or extended by notifications.

8. Though the prescribed time of 90 days from the appointed date expired on 29-9-2017, but the Respondent authorities have been extending time for uploading VAT Credit in Form TRAN-1 from time-to-time.

9. The averments in the affidavit filed in support of the Writ Petition shows that, the Writ Petitioner has been trying to upload the said form, but was unsuccessful in doing so for various reasons, like poor internet connection and the technical difficulties of GSTN common portal. The contents of the affidavit also makes it clear that the Writ Petitioner met the Nodal Officer from time-to-time explaining his grievances in uploading the Form TRAN-1 apart from addressing letters to the concerned. Therefore, the argument of the Standing Counsel that the Writ Petitioner has not come forward with a genuine reason seeking submission of application manually may not be correct.

10. In *Lantech Pharmaceuticals Ltd. v. Pr. CIT* [2019] 111 taxmann.com 144, a similar issue came up before the Division Bench of this Court for consideration. Relying upon the judgments in *Uninav Developers (P.) Ltd. v. Union of India* [W.P. (C) No. 1377 of 2018, dated 29-7-2019], *Bhargava Motors v. Union of India* [2019] 106 taxmann.com 200/74 GST 340 (Delhi), *Kusum Enterprises (P.) Ltd. v. Union of India* [2020] 114 taxmann.com 501 (Delhi) and *Sanko Gosei Technology India (P.) Ltd. v. Union of India* [W.P. (C) No. 7335 of 2019, dated 12-7-2019], the Court disposed of the writ petition, on 13-8-2019, directing the respondents to either open the portal so as to enable the petitioner to again file the Form GST TRAN-1 electronically or in the alternative, accept the Form GST TRAN-1 presented manually by fixing a cut of date and process the claim in accordance with law.

11. The Judgment delivered in W.P. No. 3298 of 2019 was followed by another Division Bench in W.P. No. 15769 of 2019, to which one of us was a party.

12. Having regard to the judgments referred to above, this Writ Petition is disposed of in terms thereof directing the respondents concerned to permit the Writ Petitioner to submit GST TRAN-1 Form electronically or, in the alternative, manually, by fixing a cut off date, within a period of 30 days from the date of receipt of judgment, in which event, the same may be dealt with, in accordance with law. No order as to costs.

13. Consequently, miscellaneous petitions pending, if any, shall stand closed.

S.K. JAIN

*In favour of assessee.
Partly in favour of assessee