
[2020] 114 taxmann.com 713 (Andhra Pradesh)[06-11-2019]

GST : Where assessee was unable to upload Form GST TRAN-1 due to technical errors, Competent Authority was to be directed to either open portal to enable assessee to again file Form GST TRAN-1 electronically or in alternative accept Form GST TRAN-1 presented mutually

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[2020] 114 taxmann.com 713 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Maturu Panchakshari

v.

Assistant Commissioner of State Tax*

C. PRAVEEN KUMAR AND MS. J. UMA DEVI, JJ.

WRIT PETITION NO. 15769 OF 2019

NOVEMBER 6, 2019

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 on 27-12-2017 due to some technical errors - Thereupon it approached GST Authorities to submit Form GST TRAN-1 manually but authorities had not taken any action on same - Assessee filed writ petition seeking relief in this regard - Whether Competent Authority was to be directed to either open portal to enable assessee to again file Form GST TRAN-1 electronically or in alternative accept Form GST TRAN-1 presented mutually on or before 31-12-2019 - Held, yes [Para 7] [In favour of assessee]

(NR)

CASE REVIEW

Lantech Pharmaceuticals (P.) Ltd. v. Pr. CIT [[2019](#)] [111 taxmann.com 144 \(AP\)](#) (para 7) followed.

CASES REFERRED TO

Lantech Pharmaceuticals (P.) Ltd. v. Pr. CIT [[2019](#)] [111 taxmann.com 144 \(AP\)](#) (para 5), *Union Developers (P.) Ltd. v. Union of India* [2019] - VIL - 367 - Delhi] (para 5), *Bhargava Motors v. Union of India* [[2019](#)] [102 taxmann.com 127 \(Delhi\)](#) (para 5) and *Sanko Gosei Technologies India (P.) Ltd. v. Union of India* [WP (1) 7 335 of 2019, dated 12-7-2019] (para 5).

ORDER

C. Praveen Kumar, J. - The present Writ Petition came to be filed under article 226 of the Constitution of India seeking issuance of writ of Mandamus to direct the respondents to allow the petitioner to submit its TRAN-1 Form on the GSTN Portal in terms of section 140 of the Central Goods and Services Tax Act, 2017 (for short, "the CGST Act, 2017) and the Andhra Pradesh State Goods and Services Tax Act, 2017 (for short, "the APSGST Act") (or) in the alternative, to permit the petitioner to submit TRAN-1 manually and to direct the respondents to consider TRAN-1 so filed and grant the credit in accordance with law (or) in further

alternative, direct respondent Nos.1 and 6 to grant a refund of VAT credit of Rs.1,10,24,763/- as shown in the petitioner's revised VAT 200 return, dated 27.08.2017, for the month of June, 2017.

2. Heard the learned counsel for the petitioner, learned Government Pleader for Commercial Taxes appearing for respondent Nos.1, 2 and 6, Sri M.V.J.K.Kumar, learned Standing Counsel for respondent Nos.3 and 4, and the learned Assistant Solicitor General of India appearing for respondent No.5. Perused the record.

3. The averments in the affidavit filed in support of the petition show that the petitioner is a dealer in fertilizers and pesticides in West Godavari District. The petitioner was registered as a dealer under the erstwhile Andhra Pradesh Value Added Tax Act, 2005 (for short, "the APVAT Act"). After the Goods and Services Tax Act came into force with effect from 01.07.2017, the petitioner has taken independent registration under the GST regime with GSTIN : 37AADFM6344A1ZL. The same registration number is applicable for both the CGST and APSGST Act, 2017. The GST regime which came into effect from 01.07.2017 repealed a host of indirect taxes which were previously in force. Section 140 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....."

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....."

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.

The prescribed period of 90 days from the appointed day expired on 29.09.2017 and thereafter, it was being extended from time to time. The claim of the petitioner is that initially, it tried to upload the details of the VAT credit in Form TRAN-1 on 27.12.2017 but the same could not be uploaded due to some technical errors. As the time fixed for filing the GST TRAN-1 electronically expired, the petitioner approached the authorities to submit the application manually but the authorities have not taken any action on the same.

4. At this stage, learned Standing Counsel would submit that the time fixed for submitting Form GST TRAN-1 is extended up to 31.12.2019.

5. Learned counsel submits that the petitioner is not technically well versed in these aspects and unable to upload the forms. In support of his plea, learned counsel relied upon a judgment, dated 13.08.2019, of the Division Bench passed by this *Lantech Pharmaceuticals Ltd. v. Pr. CIT* [2019] 111 taxmann.com 144 (Ap.) in which a similar issue came up for consideration. Relying upon the judgments in *Uninav Developers Pvt Ltd. v. Union of India* [2019-VIL-367-Delhi], *Bhargava Motors v. Union of India* [2019] 102 taxmann.com 127 (Delhi), *Kusum Enterprises (P.) Ltd. v. Union of India* [WP (C) 7423 of 2019, dated 12-7-2019] and *Sanko Gosei Technology India (P.) Ltd. v. Union of India* [WP(C)7335/2019 dated 12-7-2019, dated 12-7-2019] this Court disposed of the writ petition directing the respondents to either open the portal 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, on or before 31.08.2019 and process the claim in accordance with law.

6. It is to be noted that the aforesaid judgment of this Court delivered on 13.08.2019 was not challenged before the higher Court and the same has become final.

7. Having regard to the judgment referred above in W.P.No.3298 of 2019, this Writ Petition is disposed of in terms thereof directing the respondents to either open the portal 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, on or before 31.12.2019. It is needless to say that the petitioner's claim shall be processed in accordance with law. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

S.K. JAIN

*In favour of assessee.