

[2020] 116 taxmann.com 496 (Andhra Pradesh)/[2020] 80 GST 328 (Andhra Pradesh)[21-11-2019]

GST : Where assessee could not file Form GST TRAN-1 due to failure of electronic system, GST Authorities were to be directed to either open portal to enable assessee to again file Form GST TRAN-1 electronically or in alternative accept same presented manually

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[2020] 116 taxmann.com 496 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Sattibabu Motors (P.) Ltd.

v.

Assistant Commissioner of Central Tax*

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

WRIT PETITION NO. 12058 OF 2019

NOVEMBER 21, 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 could not file Form GST TRAN-1 in time due to failure of electronic system - It filed writ petition seeking directions to GST Authorities to allow it to submit Form GST TRAN-1 on GSTN Portal or in alternative to permit it to submit Form GST TRAN-1 manually - Whether GST Authorities were 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 manually on or before 31-12-2019 - Held, yes [Para 9] [In favour of assessee]

(NR)

CASE REVIEW

Lantech Pharmaceuticals Ltd. v. Pr. CIT [[2019](#)] [111 taxmann.com 144/31 GSTL 392 \(AP\)](#) (para 9) followed.

CASES REFERRED TO

Lantech Pharmaceuticals Ltd. v. Pr. CIT [[2019](#)] [111 taxmann.com 144/31 GSTL 392 \(AP\)](#) (para 7), *Uninav Developers (P.) Ltd. v. Union of India* [W.P. (C) No. 13772 of 2018, dated 29-7-2019] (para 7), *Bhargava Motors v. Union of India* [[2019](#)] [106 taxmann.com 200/74 GST 340 \(Delhi\)](#) (para 7), *Kusum Enterprises (P.) Ltd. v. Union of India* [WP (C) No. 7423 of 2019, dated 12-7-2019] (para 7) and *Sanko Gosai Technology India (P.) Ltd. v. Union of India* [WP (C) No. 7335 of 2019, dated 12-7-2019] (para 7).

S. Dwarakanath, Adv. for the Petitioner. **B. Krishna Mohan**, Adv. for the Respondent.

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.

2. Heard the learned counsel for the petitioner, learned Government Pleader for Commercial Taxes appearing for respondent Nos.1 and 2, 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 automobiles in Kakinada. The petitioner was registered as a Service Provider under the erstwhile Finance Act, 1994 and also under the 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 Andhra Pradesh Goods and Services Tax Act, 2017 (for short, "APGST 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 APGST Act provides for transfer of input tax credit under the VAT Act and CENVAT credit 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.
- (2) 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 unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act."

Rule 117 of the CGST 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 of eligible duties and taxes, as defined in *Explanation 2* to section 140, 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."

Therefore, Rule 117 of the CGST Rules, 2017 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 29.9.2017 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 input tax credit in Form TRAN-1 on 27.12.2017 but the same could not be uploaded due to some technical errors. Subsequently, the petitioner approached the GST help desk for support. The petitioner made its grievance vide Grievance No. GA370418000092H on 04.04.2018 on the GSTN Network with the following grievance:

"TRAN-1 not opened even after two weeks' time".

In response to the same, the petitioner received e-mail from the common portal on 04.04.2018 (Ex.P-2) at 12:50 P.M. that the grievance of the petitioner has been successfully submitted and the Grievance Tracking Number is GA370418000092H. Thereafter, the petitioner has not heard anything from the respondents and there is no improvement in the Grievance Redressal.

The petitioner wrote to respondent No. 1 on 19.07.2018 (Ex.P-3) that it could not file TRAN-1 even after making several efforts to file application in time due to failure of the electronic system. The petitioner submitted that it will be put to severe loss of the credit if the credit of Rs. 10,01,963/-, which it is otherwise entitled, is not available. The petitioner submitted the details of the inputs held in stock in pre-GST period and requested respondent No. 1 to do the needful.

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. Learned counsel for the petitioner submits that the petitioner has made an attempt to get its application processed but the learned Government Pleader opposed the same.

5. No material is placed before this Court to show that the petitioner has made an attempt to get its application processed. However, Sri S. Dwarakanath, learned counsel for the petitioner, submits that the petitioner has made an attempt but it could not succeed as it did not reach the portal. He further submits that now, the authorities are allowing them to make an application provided they show some proof, which according to them, cannot be produced after length of time more particularly, the screened shots.

6. 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.

7. Learned counsel for the petitioner 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 Court in *Lantech Pharmaceuticals Ltd. v. Pr. CIT* [2019] 111 taxmann.com 144/31 GSTL 392 in which a similar issue came up for consideration. Relying upon the judgments in *Uninav Developers (P.) Ltd. v. Union of India* [W.P. (C) No. 13772 of 2018, dated 29-7-2019], *Bhargava Motors v. Union of India* [2019] 106 taxmann.com 200/74 GST 340, *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 of 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.

8. 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.

9. The arguments of the learned counsel for the petitioner cannot be brushed aside. Having regard to the judgment referred above in *Lantech Pharmaceuticals (supra)*, 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.

*In favour of assessee.