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[2022] 144 taxmann.com 214 (Andhra Pradesh)/[2022] 94 GST 841 (Andhra Pradesh)[25-08-2022]

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GST : Form GST TRAN-1 and TRAN-2 were allowed to be filed in terms of directions issued by Supreme Court

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[2022] 144 taxmann.com 214 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Sruthi Chemicals

v.

Assistant Commissioner\*

C. PRAVEEN KUMAR AND A.V. RAVINDRA BABU, JJ.

WRIT PETITION NO.2634 OF 2021

AUGUST 25, 2022

Input tax credit - Transitional credit - Writ petition was filed to request court to issue direction for reopening portal in order to enable petitioner to file TRAN-1 and to claim credit of Rs. 42,05,365, which petitioner was entitled to claim as per section 140(3) of CGST Act, 2017 - Supreme Court in case of assessee had provided two months' time for filing concerned Forms for availing Transitional Credit through TRAN-1 and TRAN-2 with effect from 1-9-2022 till 31-10-2022 - HELD : Writ petition was to be allowed on basis of aforesaid order of Supreme Court - Further, any assessee, who intended to avail Transitional Credit may make use of said order and upload relevant Forms during relevant period [Section 140 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 7 and 8] [In favour of assessee]

#### **CASES REFERRED TO**

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*Union of India v. Filco Trade Centre (P.) Ltd.* [2022] 140 taxmann.com 535/92 GST 860 (SC) (para 3).

**Shaik Jeelani Basha**, Ld. Counsel for the Petitioner. **Y.N. Vivekananda**, Ld. Govt. Pleader and **N. Harinath**, Ld. Assistant Solicitor General for the Respondent.

#### **ORDER**

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**C. Praveen Kumar, J.** - Heard Sri Shaik Jeelani Basha, learned counsel for the petitioner, Sri Y.N. Vivekananda, learned Government Pleader for Commercial Tax appearing for respondent Nos.1 and 4, and Sri N. Harinath, learned Assistant Solicitor General for Customs, Central Excise, Service Tax & Central Goods and Services Tax and Union of India appearing for respondent Nos.2 and 3, and with their consent, this writ petition is disposed of at the stage of admission.

2. The present Writ Petition came to be filed under Article 226 of the Constitution of India seeking the following relief:-

"..... to issue Writ of Mandamus or any other appropriate writ or order or direction declaring the inaction of the Respondents to reopen the portal immediately enabling the petitioner to file TRAN-1 and to claim Credit Carry Forward of Rs. 42,05,365/-, which is entitled by the petitioner, as per section 140(3) of the CGST Act, 2017, as arbitrary, contrary to the provisions of the GST Act, 2017, contrary to Article 14, 19(1)(g) of the Constitution of India and also the same is in violation of principles of natural justice and consequently direct the respondents to redress the grievance of the petitioner forthwith, and in

the alternative, permit the petitioner to claim Credit Carry Forward of Rs. 42,05,365/- manually, in the interest of justice and equity, consequently direct the 1st respondent not to insist for payment of Rs. 41,16,841/- as per Notice in Form GST DRC 01, dated 2-7-2020 and pass ....."

3. Though various grounds are raised in the writ petition, learned counsel placed on record the order, passed by the Hon'ble Supreme Court in Petitions for *Union of India v. Filco Trade Centre (P.) Ltd.* [2022] 140 taxmann.com 535/92 GST 860 and contends that in view of the said order, the present writ petition has to be allowed.

4. Sri Y.N. Vivekananda, learned Government Pleader for Commercial Tax, opposed the same.

5. The point that arises for consideration in this writ petition is:-

"Whether the request of the petitioner can be considered?"

6. POINT:-

The aforesaid order, dated 22-7-2022, of the Hon'ble Supreme Court reads as under:-

"Permission to file Special Leave Petition(s) is allowed.

Delay condoned.

Having heard learned Additional Solicitor General, learned counsel appearing for different States and learned counsel appearing for different private parties and having perused the record, we are of the view that it is just and proper to issue the following directions in these cases:

1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 1-9-2022 to 31-10-2022.
2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).
3. GSTN has to ensure that there are no technical glitch during the said time.
4. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.
5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.
6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims. The Special Leave Petitions are disposed of accordingly. Pending applications, if any, also stand disposed of."

7. From a reading of the aforesaid order, it is very clear that the assesses are given two months' time for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 i.e., w.e.f. 1-9-2022 to 31-10-2022. Further, the authorities were also directed to see that there would be no technical glitches during the said period. A reading of the said order does not anywhere indicate that the same pertains to a particular assessment year. It appears that any assessee, who intends to file concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 and was denied earlier because of some technical problem, is always at liberty to make use of the said order and upload the relevant forms during the relevant period.

8. Following the aforesaid order of the Hon'ble Supreme Court and in terms thereof, this Writ Petition is allowed to the said extent alone. There shall be no order as to costs.

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

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\*In favour of assessee.