Jakap Metind Pvt Ltd vs Union Of India Through The Secretary on 4 October, 2019

Author: Harsha Devani

Bench: Harsha Devani, Sangeeta K. Vishen

C/SCA/19951/2018 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19951 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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JAKAP METIND PVT LTD

Versus

UNION OF INDIA THROUGH THE SECRETARY & 6 other(s)

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Appearance:
MR ANAND NAINAWATI(5970) for the Petitioner(s) No. 1
MS MAITHILI MEHTA, ASSISTANT GOVERNMENT PLEADER(1) for the Respondent(s) No. 2
MR NIRZAR S DESAI(2117) for the Respondent(s) No. 7
NOTICE SERVED BY DS(5) for the Respondent(s) No. 4
NOTICE SERVED(4) for the Respondent(s) No. 1,3

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CORAM:HONOURABLE MS.JUSTICE HARSHA DEVANI
and
HONOURABLE MS. JUSTICE SANGEETA K. VISHEN
Date : 04/10/2019
ORAL JUDGMENT

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI) C/SCA/19951/2018 JUDGMENT

1.Rule. Mr. Nirzar Desai, learned senior standing counsel waives service of notice of rule on behalf of the respondent No.7 and Ms. Maithili Mehta, learned Assistant Government Pleader waives service of notice of rule on behalf of respondent No.2.

2.Having regard to the controversy involved in the present case and the fact that the court has heard the learned counsel for the respective parties at length, the matter was taken up for final hearing.

3.By this petition under article 226 of the Constitution of India, the petitioner seeks grant of input tax credit in terms of section 140 of Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'the CGST Act') read with rule 117 of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as the 'CGST Rules').

4.The petitioner is inter alia engaged in manufacture of brass/steel/aluminum electrical wiring accessories, other articles of brass etc. and is registered under the CGST Act. Under the erstwhile Central Excise provisions the petitioner has three Central Excise registrations C/SCA/19951/2018 JUDGMENT for its three factories located at Jamnagar. At the time of migration to GST regime, the petitioner had CGST transitional credit to be claimed/transferred to its GST electronic credit ledger in terms of sub-section (1) of section 140, sub-section (2) section 140 and sub-section (5) section 140 of the CGST Act. In terms of the provisions of section 140 of the CGST Act, post migration to GST, the petitioner was entitled for the input tax credit of the following:

- Input credit of closing balance under ER-1.

- Input credit of unavailed credit (balance 50%) of capital goods.

- Input or input services in respect of which the supplier has already paid duty under the erstwhile Central Excise Act, 1944 and service tax under Finance Act, 1994.

5.The petitioner filed monthly returns in form of ER-1/ER-2 for all the three units. The transitional credit available with the petitioner as mentioned under sub-section (1) of section 140 of CGST Act is as under:

Sr. No.	Nature of credit	Amount (Rs.)
1	Balance in June 2017, ER-1 return of registration no.AAACJ5428LXM007	2,77,248
2	Balance in June 2017, ER-2	66,40,060

return of registration

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	no.AAACJ5428LXM005	
3	Balance in June 2017, ER-1 14,81,828 return of registration no.AAACJ5428LEM008	
	Total	83,99,136/-

6.In terms of the erstwhile Cenvat Credit Rules, 2004, the petitioner was entitled to avail 50% of the cenvat credit of the capital goods purchased in the financial years 2015-16, 2016-17 and 2017- 18 in the subsequent financial years. Post the shift to the GST regime, the petitioner was entitled to balance credit to the extent of 50% in terms of sub-section (2) of section 140 of the CGST Act. The amount of credit available to the petitioner with respect to capital goods was Rs.5,70,328/-.

7.The petitioner also received inputs during the period July, 2017 for which duty was already paid by the supplier under the provisions of the Central Excise Act. The invoices in respect of such inputs were received by the petitioner after the appointed day. Post the shift to the GST regime, the petitioner was entitled to credit of the said inputs purchased in terms of sub-section (5) of section 140 of the CGST Act. The amount of credit available to the petitioner with respect to such inputs was Rs.59,123/-.

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8.Similarly, the petitioner also received invoices of input services received for whic service tax was already paid by the service providers under the provisions of the Finance

Act, 1994. The invoices in respect of such input service were received by the petitioner after the appointed day and hence, post the shift to the GST regime, the petitioner was entitled to credit of the said input services received in terms of sub-section (5) of section 140 of CGST Act which came to Rs.2,34,604/-. Thus, the petitioner was entitled to claim credit of Rs.2,93,727/- in terms of sub-section (5) of section 140 of the CGST Act with respect to inputs and input services purchased/received as the case may be. It is the case of the petitioner that it was entitled to get

transitional input tax credit in terms of sub-sections (1), (2) and (3) of section 140 of the CGST Act.

9.Rule 117 of the CGST Rules provides a mechanism to avail credit carried forward under any existing law or on goods held in stock on the appointed day. In terms of the provisions of sub- rule (1) of rule 117 of the CGST Rules, a registered person is entitled to take input tax credit under section 140 of the CGST Act within C/SCA/19951/2018 JUDGMENT 90 days of the appointed day electronically, in FORM GST TRAN-1 which may be further extended for 90 days on the recommendation of the council.

10.The petitioner while filing FORM GST TRAN-1 provided details of balance credit amounting to Rs.83,99,136/- under ER-1/ER-2 returns under column 5 of Table 5a and details of unutilized credit of capital goods amounting to Rs.5,70,328/- and central excise duty on inputs and service tax on input services totally amounting to Rs.2,93,727/- in respect of which the supplier has paid duty/tax under the erstwhile laws in column 6 of Table 5a.

11.The total amount of Rs.8,64,055/- mentioned in column 6 were granted to the petitioner as transitional credit on 23rd December, 2017 in its electronic credit ledger. However, the amount mentioned in column 5 of Table 5a was not granted as transitional credit to the petitioner and accordingly the petitioner was denied the credit of Rs.83,99,136/- as eligible credit. It is the case of the petitioner that as the time period to fill details in FORM GST-TRAN-1 had elapsed, the petitioner was not able to amend the form for which the eligible benefit of input tax credit was denied to it.

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12.Vide letters dated 19th February, 2018, 1

April, 2018 and 29th May, 2018, the petitioner submitted its issue to the authorities of the first respondent as regards denial of input tax credit benefit to it as it did not mention the details of Rs.83,99,136/- in column 6 of Table 5a and instead uploaded the details in column 5 of Table 5a in FORM GST-TRAN-1 due to misunderstanding of the form.

13.It is further the case of the petitioner that it has also placed this issue of filing TRAN-1 form on goods and services tax portal on 4th July, 2018 along with the attachment of letter describing details of its case. The grievance status as reflected on 7th August, 2018 is "Resolution under progress". The petitioner, however, did not receive any response from the authorities of the first and second respondents. Being aggrieved by the non-redressal of its grievance due to which the legitimate input tax credit benefit cannot be availed by it, the petitioner has filed the present petition seeking the reliefs noted hereinabove.

14.Mr. Anand Nainawati, learned advocate for the petitioner, submitted that the petitioner is C/SCA/19951/2018 JUDGMENT entitled to carry forward balance cenvat credit available in

ER-1/ER-2 in terms of sub-section (1) of section 140 of CGST Act. Referring to the provisions of section 140 of the CGST Act, which to the extent the same are relevant for the present purpose read 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, the amount of CENVAT credit 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."

It was submitted that sub-section (1) of section 140 of the CGST Act clearly permits the assessee to carry forward cenvat available in the closing balance of the cenvat account of the registered person. It was pointed that the bar on carry forward of transitional credit of balance cenvat C/SCA/19951/2018 JUDGMENT in ER-1/ER-2 return is only in the three conditions stipulated thereunder, whereas in the present case, the petitioner does not fall in any of the above-mentioned three conditions. It was contended that the petitioner has furnished all the returns required under the Central Excise Act and rules and the cenvat credit is not related to any goods which are cleared under any exemption notification, and, therefore, the restriction under section 140 of the CGST Act is not applicable in the facts of the present case and therefore, the petitioner is entitled to carry forward the transitional credit of balance amount in ER-1/ER-2 returns.

14.1 It was next submitted that in exercise of powers conferred by section 164 of the CGST Act, the Central Government has framed rules called the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as the "CGST Rules". Chapter XIV of the said rules provides for various transitional provisions and rule 117 thereof provides a mechanism for carry forward of transitional cenvat credit. Referring to rule 117 of the CGST Rules, it was submitted that from clauses (1), (2) and (3) thereof, it is evident that the registered person has to submit a declaration electronically within ninety days from the appointed day in FORM GST TRAN-1 C/SCA/19951/2018 JUDGMENT specifying eligible amount of input credit. Referring to the relevant part of the GST TRAN-1 form, it was submitted that Table 5a of the TRAN- 1 form provides for claiming credit of central taxes (excise and service tax) which have to be carried forward as central tax in GST. In the said table, the assessee is required to mention the excise or service tax registration number and is also required to

select the tax period for which the last return is filed and the date of filing the last return. In column 5 of the table, balance amount which was carried forward in the last return has to be specified. In column 6 of the table, out of that amount, the assessee has to mention as to how much amount is admissible as input tax credit in GST as central tax.

14.2 Adverting to the facts of the present case, it was submitted that the petitioner inadvertently mentioned the balance cenvat credit of ER-1 in column 5 of the table instead of column 6 thereof due to misunderstanding of the language used in the TRAN-1 form. Due to such inadvertent error, the amount mentioned in column 5 being balance of cenvat credit under ER-1/ER-2 returns could not be carried forward as Central GST. It was submitted that merely because the petitioner filled the details of eligible credit in the wrong column of TRAN-1 form, the C/SCA/19951/2018 JUDGMENT petitioner ought not to be disallowed the eligible credit, inasmuch as the credit available under sub-section (1) of section 140 of the CGST Act is a substantive right of the petitioner.

14.3 It was further submitted that rule 117 of the CGST Rules providing for filing declaration in the form of TRAN-1 cannot curtail the right of the petitioner in claiming input tax credit inasmuch as merely not following the procedural conditions would not disentitle the petitioner of its substantive right of input credit.

14.4 It was next submitted that sub-rule (1) of rule 117 of the CGST Rules requires the registered person to submit a declaration electronically within 90 days from the appointed day in FORM GST TRAN-1 specifying the eligible amount of input credit. It was pointed out that the said time limit of 90 days has been extended from time to time, and the last extension was granted vide order dated 15th November, 2017 whereby the time limit was extended till 27th December, 2017.

14.5 Reference was made to rule 120A of the CGST Rules, which reads as under:

C/SCA/19951/2018 JUDGMENT "120A.Revision of declaration in FORM GST TRAN-1.Every registered person who has submitted a declaration electronically in FORM GST TRAN-1 within the time period specified in rule 117, rule 118, rule 119 and rule 120 may revise such declaration once and submit the revised declaration in FORM GST TRAN-1 electronically on the common portal within the time period specified in the said rules or such further period as may be extended by the Commissioner in this behalf.

It was submitted that rule 120A of the CGST Rules provides for revision of TRAN-1 form within the period as provided under the said rules. In the present case, FORM GST TRAN-1 was filed under rule 117 of the CGST Rules, thus the period of revision as per rule 120A would be period of filing TRAN-1 form as extended by the Commissioner from time to time. It was submitted that the last date of filing TRAN-1 was 27th December, 2017, which has already elapsed.

14.6 It was contended that the time period of ninety days as provided under rules 117(1) and 120A of the CGST Rules is beyond the mandate of section 140 of the CGST Act. According to the learned advocate, sub-section (1) of section 140 of the CGST Act only provides that the Government can prescribe the manner in which the registered C/SCA/19951/2018 JUDGMENT person shall be

entitled to take, in his electronic credit ledger, the amount of cenvat credit 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. It was submitted that under section 140 of the CGST Act, the Government can only prescribe the manner in which the registered person is entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending within the day immediately preceding the appointed day, furnished by him under the existing law. It was contended that in terms of section 140 of the CGST Act, the Government can only provide the procedure for claiming the credit but cannot put restrictions on eligibility of credit and conditions for denial of credit. Therefore, rules 117(1) and 120A of the CGST Rules which provide for a time limit of ninety days for filing TRAN-1 are beyond the mandate of section 140(1) of the CGST Act.

14.7 It was urged that rules 117(1) and 120A of the CGST Rules provide for a time limit only for electronic filing of TRAN-1 and revision of said TRAN-1; however, there is no restriction on the manual revision of said TRAN-1 form before the GST officer. Therefore, the restriction on one C/SCA/19951/2018 JUDGMENT mode of filing TRAN-1 form cannot stretch to other modes of filing documents.

14.8 In support of his submission, learned advocate for the petitioner placed reliance upon the decision of the Delhi High Court in M/s Blue Bird Pure Pvt. Ltd. v. Union of India & Ors., 2019(7) TMI 1102, wherein the court has held that the respondents ought to have provided in the system itself a facility for rectification of errors which are clearly bona fide. The court further noted that although the system provided for revision of a return, the deadline for making revision coincided with the last date for filing the return i.e. 27th December, 2017. Thus, such facility was rendered impractical and meaningless. The court, accordingly, directed the respondents to either open the online portal so as to enable the petitioner therein to again file the rectified TRAN-1 form electronically or accept the manually filed TRAN-1 form with the correction on or before 31th July, 2019.

14.9 Reliance was also placed upon the decision of the Delhi High Court in the case of M/s Aadinath Industries v. Union of India, 2019(10) TMI 91, wherein the court followed its earlier decision in M/s. Blue Bird Pure Pvt. Ltd. vs. Union of C/SCA/19951/2018 JUDGMENT India (supra), and further observed that the credit standing in favour of an assessee is property and the assessee could not be deprived of the said property save by authority of law in terms of article 300A of the Constitution of India. The court noted that no law was brought to its notice which extinguishes the said right of property of the assessee in the credit standing in their favour and accordingly directed the respondent to either open the online portal so as to enable the petitioner to file the rectified TRAN-1 form electronically, or to accept the same manually with correction on or before 2.10.2019.

14.10 It was accordingly urged that petition deserves to be allowed and that the respondent be directed to grant input tax credit in terms of section 140 of the CGST Act read with rule 117 of CGST Rules.

15.On behalf of the respondents, Mr. Nirzar Desai, learned senior standing counsel, submitted that the petitioner seeks to carry forward the transitional credit amounting to Rs.83,99,136/-, that is, the balance cenvat credit under ER-1/ER- 2 in terms of sub-section (1) of section 140 of the CGST Act. It was submitted that in terms of section 140 of the CGST Act, a registered person C/SCA/19951/2018 JUDGMENT is entitled to avail transitional credit of balance cenvat credit, which is available in the return on the appointed day. As per rule 117 of the CGST Rules, to avail the transitional credit, the assessee has to file FORM GST TRAN-1 within the prescribed time limit. It was submitted that though the petitioner had filed the original FORM GST TRAN-1 on 23th December, 2017, it had incorrectly filed the form which resulted in receipt of credit of Rs.8,64,055/- instead of Rs.92,63,191/- and had thereby received less credit of Rs.83,99,136/-. It was submitted that in terms of rule 117(1) of the CGST Rules, every registered person entitled to take credit of input tax under section 140 is required to submit declaration electronically in FORM GST TRAN-1 on the GSTN within ninety days of the appointed day, specifying the amount of input tax credit that he is entitled to under the provisions of the said section.

15.1 It was submitted that in the facts of the present case, the petitioner filed the declaration in FORM GST TRAN-1 on 23th December, 2017, which was only four days before the last date of filing FORM GST TRAN-1, viz. 27th December, 2017. It was pointed out that the original declaration was incorrectly filed by the petitioner; however, the Government has given an C/SCA/19951/2018 JUDGMENT opportunity to revise FORM GST TRAN-1 as per rule 120A of the CGST Rules; but the petitioner has not made any revision/correction of the original declaration during the period allowed for necessary corrections.

15.2 It was argued that the petitioner, after the expiry of approximately two months from the last date of filing FORM GST TRAN-1 viz. 27th December, 2017, had requested the department on 19th February, 2018, to correct the mistake in the declaration filed in FORM GST TRAN-1. It was submitted that as time to revise FORM GST TRAN-1 has already expired on 27th December, 2017, the petitioner cannot be permitted to amend FORM GST TRAN-1 on the portal. It was emphatically argued that wide publicity and awareness campaigns were run by the department informing taxpayers regarding filing and revision of declaration.

15.3 According to learned senior standing counsel, there is no provision under the CGST Act and rules to revise FORM GST TRAN-1 after the last date of revision i.e. 27th December, 2017. Hence, the correct filing of details in FORM GST TRAN-1 as per rule 117 of the CGST Rules is a substantial condition/requirement for claiming transitional credit under section 140 of the CGST C/SCA/19951/2018 JUDGMENT Act and such credit cannot be claimed in absolute terms.

15.4 It was further submitted that the availment of transitional credit is dependent upon fulfillment of the conditions of sub-section (1) of section 140 of the CGST Act read with rules 117 and 120A of the CGST Rules. It was pointed out that the Government had also provided an opportunity to people like the petitioner to revise/correct the FORM GST TRAN-1 in terms of rule 120A of the CGST Rules in case any assessee had made a mistake and filled in wrong figures in the form or mentioned/declared amount in the wrong column. It was submitted that therefore, the petitioner had ample opportunity to revise or correct the mistake within the time prescribed, but it failed to do

so and hence, the request of the petitioner to grant input tax credit under sub-section (1) of section 140 of the CGST Act does not merit consideration.

15.5 Next, it was submitted that rule 117 of the CGST Rules provides for transition of credit by filing of FORM GST TRAN-1 within a period of ninety days from the appointed day, that is, 1st July, 2017, subject to an extension of the last date by a further period not exceeding ninety C/SCA/19951/2018 JUDGMENT days. Thus, the law provided for a period of ninety days for filing of FORM GST TRAN-1 which could be extended by another ninety days and, therefore, the intention of the legislature is to provide a maximum window of one hundred and eighty days to allow the filing of FORM GST TRAN-

1. It was pointed out that the last date of filing of FORM GST TRAN-1 came to be extended from time to time and was lastly extended till 27th December, 2017, to submit that therefore, a reasonable period of time was provided to taxpayers keeping in view their constraints to file as well as revise FORM GST TRAN-1.

15.6 It was further contended that the petitioner accepts the fact that the credit could not be claimed due to an inadvertent mistake committed by it and wants the court to grant relief for granting input tax credit. It was submitted that the language used in FORM GST TRAN-1 is quite clear and that thousands of assessees had filed such form and availed of the credit. It was submitted that the credit in FORM GST TRAN-1 was immediately reflected in the credit ledger of the petitioner when the declaration was filed and submitted by it on the GST portal. It was submitted that when the petitioner had filed the FORM GST TRAN-1 return on 23th December, 2017, it was incumbent upon it to verify the credit ledger C/SCA/19951/2018 JUDGMENT to ensure that the entire credit due to it had been transferred or otherwise. However, the petitioner communicated the problem to the respondents only on 19th February, 2018 after the expiry of approximately two months from the last date, that is, 27th December, 2017, when the facility of revising FORM GST TRAN-1 had already been exhausted. Thus, it is due to the apparent mistake on the part of the petitioner, which has resulted in disentitlement to get transitional credit. It was submitted that the claim of input tax credit by the petitioner, although a substantive right, is not an absolute right and that the petitioner having failed to file the correct details within the prescribed time limit, is not entitled to any relief as claimed in the petition. It was accordingly urged that the petition being devoid of merits, deserves to be dismissed.

16.From the facts as emerging on record, it can be seen that in terms of rule 117 of the CGST Rules, FORM GST TRAN-1 was required to be filed within the prescribed time limit. Such time limit was extended by the Central Government from time to time and was lastly extended till 27th December, 2017. It is an admitted position that the petitioner had filed the FORM GST TRAN-1 within the time prescribed in the rules. However, as C/SCA/19951/2018 JUDGMENT noted hereinabove there was an inadvertent mistake on the part of the petitioner in not mentioning the details of Rs.83,99,136/- in column 6 of Table 5a and instead of which the petitioner had uploaded the details in column 5 of Table 5a due to misunderstanding of the form. It is only when it was noticed by the petitioner that due to inadvertent error, the form had not been correctly filled in, resulting the petitioner being denied input tax to the extent of Rs.83,99,136/-, that the petitioner sought to revise the form and

sought the advice of the department. The petitioner, accordingly, addressed several communications to the respondents in respect of his genuine grievance; however to no avail.

17.Before adverting to the merits of the rival contentions, it may be germane to refer to the decisions of the Delhi High Court on which reliance has been placed by the learned advocate for the petitioner inasmuch as, such decisions have been rendered in context of a similar set of facts.

18.In the case of Bhargava Motors v. Union of India rendered on 13th May, 2019 in WP(C) 1280/2018, the Delhi High Court held as under:

C/SCA/19951/2018 JUDGMENT "10. The GST System is still in a 'trial and error phase' as far as its implementation is concerned. Ever since the date the GSTN became operational, this Court has been approached by dealers facing genuine difficulties in filing returns, claiming input tax credit through the GST portal. The Court's attention has been drawn to a decision of the Madurai Bench of the Madras High Court dated 10th September, 2018 in W.P. (MD) No. 18532/2018 (Tara Exports vs. Union of India) where after acknowledging the procedural difficulties in claiming input tax credit in the TRAN-1 form that Court directed the respondents "either to open the portal, so as to enable the petitioner to file the TRAN1 electronically for claiming the transitional credit or accept the manually filed TRAN1" and to allow the input credit claimed "after processing the same, if it is otherwise eligible in law".

11. In the present case also the Court is satisfied that the Petitioner's difficulty in filling up a correct credit amount in the TRAN-1 form is a genuine one which should not preclude him from having its claim examined by the authorities in accordance with law. A direction is accordingly issued to the Respondents to either open the portal so as to enable the Petitioner to again file TRAN-1 electronically or to accept a manually filed TRAN-1 on or before 31st May, 2019. The Petitioner's claims will thereafter be processed in accordance with law.

12. With a view to ensure that in future such glitches can be overcome, the Court C/SCA/19951/2018 JUDGMENT directs the Respondents to consider providing in the software itself a facility of the trader/dealer being able to save onto his/her system the filled up form and also a facility for reviewing the form that has been filled up before its submission. It should also permit the dealer to print out the filled up form which will contain the date/time of its submission online. The Respondents will also consider whether there can be a message that pops up by way of an acknowledgement that the Form with the credit claimed has been correctly uploaded."

19.Following the above decision, the Delhi High Court in M/s Blue Bird Pure Pvt. Ltd. v. Union of India (supra), in the context of facts similar to the present case, held thus:

> "12. In the present case, the Court is satisfied that, although the failure was on the part of the Petitioner to fill up the data concerning its stock in Column 7(d) of Form TRAN-1instead of Column 7(a), the error was inadvertent. The Respondents ought to have provided in the system itself a facility for rectification of such errors which are clearly bona fide. It should be noted at this stage that although the system provided

> for revision of a return, the deadline for making the revision coincided with the last date for filing the return i.e. 27th December, 2017. Thus, such facility was rendered impractical and C/SCA/19951/2018 JUDGMENT meaningless.
>
> 13. The Court also notes with some concern that the representations repeatedly made by the Petitioner were not attended to by the Respondents which resulted in the Petitioner having to approach this Court for relief. The apprehension of the Respondents that orders of the kind in Bhargava Motors (supra) and Kusum Enterprises(supra) can open the 'flood gates' can easily be allayed by the Respondents themselves if they provide a robust Grievance Redressal Mechanism that can address such genuine grievances of the traders instead of compelling every trader to approach this Court for relief."

Having regard to the facts of the present case, this court reiterates the concern expressed by the Delhi High Court in paragraph 13 of the above decision namely that the representations repeatedly made by the petitioner remained unattended by the respondents leaving no option to the petitioner but to approach this court for relief.

20.The above decision came to be followed by the Delhi High Court in a subsequent decision in the case of M/s Aadinath Industries vs. Union of India (supra). The court further observed that the credit standing in favour of an assessee is property and the assessee could not be deprived C/SCA/19951/2018 JUDGMENT of the said property save by authority of law in terms of article 300A of the Constitution of India. The court also observed that no law was brought to its notice which extinguishes the said right to property of the assessee in the credit standing in their favour and directed the respondent therein to either open the online portal so as to enable the petitioner to file the rectified TRAN-1 form electronically or to accept the same manually with correction.

21.Adverting to the facts of the present case, considering the averments made in the affidavit-in-reply filed on behalf of the respondents, it is manifest that it is an admitted position that the petitioner was entitled to credit of Rs.83,99,136/- in addition to credit of Rs.8,64,055/- (which came to be allowed as it was correctly mentioned). The only reason for denying credit of such a huge amount of Rs.83,99,136/- is that the time limit for filing a revised TRAN-1 form has elapsed on 27th December, 2017.

22.It may be pertinent to note that the last date of filing the FORM GST TRAN-1 was 27th December, 2017, which was also the last date for filing a revised FORM GST TRAN-1. In the present case, the petitioner filed the FORM GST TRAN-1 on 23rd C/SCA/19951/2018 JUDGMENT December, 2017 and by the time it noticed the inadvertent error in filing the form, the last date for filing revised FORM GST TRAN-1 had elapsed. The stand of the respondents is that the last date for filing revised FORM GST TRAN-1 having elapsed, the petitioner is not entitled to transitional credit of such amount.

23.In this case, it is not as if the petitioner has not filed FORM GST TRAN-1 within the time provided by the respondents under the rules. The petitioner had filed the form, but on account of

not properly understanding the nature of the columns provided in the form, due to inadvertent error, did not mention the details of Rs.83,99,136/- in column 6 of Table 5a and instead uploaded the details in column 5 of Table 5a in FORM GST TRAN-1. Now the substantive right of the petitioner to claim transitional credit of such amount is sought to be denied on the ground that the time limit for filing revised FORM GST TRAN-1 has elapsed.

24.In the opinion of this court, as held by the Delhi High Court in M/s Blue Bird Pure Pvt. Ltd. vs. Union of India (supra), the respondents ought to have provided in the system itself a facility for rectification of such errors which are C/SCA/19951/2018 JUDGMENT clearly bona fide. Besides, although the system provided for revision of a return, the deadline for making the revision coincided with the last date for filing the return, that is, 27th December, 2017. Thus, such facility was rendered impractical and meaningless.

25.This court is further of the view that retention of the amount of Rs.83,99,136/- by the respondents which the petitioner is otherwise entitled to get by way of transitional credit would be directly hit by article 265 of the Constitution of India which provides that no tax shall be levied or collected except by authority of law. The respondents have no legal authority to retain the amount of credit to which the petitioner is duly entitled and retention of the same is violative of article 265 of the Constitution of India. Therefore, when the petitioner is entitled to credit of Rs.83,99,136/-, non grant of the same is bad in law.

26.In the light of the above discussion, the action of the respondents in denying transitional credit of the sum of Rs.83,99,136/-, which even according to the respondents, the petitioner is otherwise entitled by way of transitional credit, C/SCA/19951/2018 JUDGMENT cannot be sustained.

27.The petition, therefore, succeeds and is accordingly, allowed. The respondents are directed to either open the online portal so as to enable the petitioner to again file the rectified FORM GST TRAN-1 electronically or accept the manually filed FORM GST TRAN-1 with corrections on or before 30th November, 2019.

28.Rule is made absolute accordingly to the aforesaid extent with no order as to costs.

(HARSHA DEVANI, J) (SANGEETA K. VISHEN,J) BINOY B PILLAI