

Mr. R.S. Chimanka, Sr. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE B.P. ROUTRAY

ORDER

16.09.2021

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Dr. S. Muralidhar, CJ.

1. The prayer in the present petition is for a direction to the Opposite Parties to accept the GST TRAN-1 form from the Petitioner in terms of Rule 117 of the Central Goods and Services Tax Rules, 2017 (CGST Rules) and allow the Input Tax Credit (ITC) claimed by the Petitioner.

2. The background facts are that the Petitioner is a partnership firm which is in the business of sale of motorcycle, scooters, spare parts. It is trading in the name of M/s. Sunny Motors in Cuttack. The Petitioner has a registration certificate under the Goods and Services Tax Rules of Odisha.

3. Under Rule 117 of CGST Rules, only a registered person is entitled to get credit of input tax under Section 140 of the

Order No.

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W.P.(C) No.9348 of 2020

M/s. Sunny Motors

.... *Petitioner*
Mr. R.P. Kar, Advocate

-versus-

*Central Board of Indirect Taxes
and Customs (CBIC), Department
of Revenue, Govt. of India and
others*

.... *Opp. Parties*

CGST Act if such person, within 90 days from the appointed day, submits a declaration electronically in Form GST TRAN-1, duly signed, on the common portal specifying therein, separately, the ITC amount to which the person is entitled. The last date of submission of the GST TRAN-1 was extended from time to time and the last extension was up to 27th December, 2017.

4. The Petitioner was unable to upload the GST TRAN-1 form on account of “some unavoidable and unforeseen circumstances”. It is in the background that the Petitioner has filed the present petition.

5. A representation was made by the Petitioner on 12th June, 2019 to the Secretary, Goods & Service Tax Council (CGST Council) praying that he should be permitted to submit the GST TRAN-1 application manually. This representation was made pursuant to the order passed by this Court on 3rd April, 2019 in W.P.(C) No.9269 of 2018.

6. It appears that on 8th July, 2020 the office of the Superintendent, Cuttack-1 GST wrote to the Petitioner asking him to submit invoices in original and proof of payment of Central Excise duty. An immediate response was sought.

7. The Petitioner replied on 17th July, 2020 reminding the Opposite Parties that by that date almost all the documents as

required had already been submitted. The Petitioner prayed that the TRAN-1 form should be accepted.

8. According to the Petitioner, it did not hear from the Opposite Parties thereafter. It may be mentioned that in response to the notice issued in the present petition, a counter affidavit has been filed by the Opposite Parties in which *inter alia*, it is stated that the 32nd GST Council meeting the case of the Petitioner was taken up. The Petitioner was not allowed the facility of ITC since “as per GST system log, there are no evidences of error or submission/filing of TRAN-1”. It is accordingly submitted that the case of the Petitioner cannot be considered.

9. This Court heard the submissions of Mr. R.P. Kar, learned counsel for the Petitioner and Mr. Chimanka, learned Sr. Standing Counsel for the Opposite Parties.

10. It is seen that the near identical circumstances the Delhi High Court by the judgment dated 21st November, 2019 in W.P. (C) No.1329 of 2019 (*Aagman Services Private Limited v. Union of India*) permitted the Petitioner in that case to submit his TRAN-1 form either electronically or manually. In that case too, the Petitioner’s case was considered in the meeting of the GST Council. The Delhi High Court relied on an earlier decision dated 29th July, 2019 in W.P.(C) No.13772 of 2018 (*M/s. Blue Bird Pure Pvt. Ltd. v. Union of India*

2019 SCC Online 9250 and allowed the petition. Against the above decision of the Delhi High Court in *Aagman Services Private Limited (supra)* a Nodal Officer, Delhi State GST Department filed Special Leave Petition (Civil) Diary No.22386 of 2020 which was dismissed by the Supreme Court on 7th January, 2021 both on the ground of delay as well on merits. A copy of the said order is placed before the Court.

10. Earlier thereto on 4th November, 2019 the High Court of Punjab and Haryana delivered a judgment of *Adfert Technologies Pvt. Ltd. v. Union of India and others*, (2020) 73 GSTR 267 holding the similar reasons adopted and adduced by the Petitioner by that day for not filing the TRAN-1 form. It was observed by Punjab & Haryana High Court particularly in note of sub-rule 1A of Rule 117 of the GST Rules that permitted the Commissioner to extend the date of submitting the declaration electronically on account of technical difficulties on the common portal and in respect of whom the council has made a recommendation for such extension. Punjab & Haryana High Court likewise directed the Opposite Parties to permit the Petitioner to file or revise where already filed incorrect TRAN-1 either electronically or manually on or before 30th November, 2019 granting liberty to the Opposite Parties to verify the genuineness of claim of the Petitioner adding that “no body shall be denied to carry forward legitimate claim of ITC on the ground of non-filing of TRAN-1 by 27th December, 2017.” This judgment was upheld

by the Supreme Court of India while dismissing the SLP (C) No.4408 of 2020 (*Union of India and others v. Adfert Technologies Pvt. Ltd.*) on 28th February, 2020. With the aforementioned both the judgments - one delivered by High Court of Delhi and other by High Court of Punjab and Haryana and upheld by the Supreme Court, this Court feels no reason in the present case to similar by the Punjab and Haryana High Court should not be granted.

11. Accordingly, in the present case a direction is issued to the Opposite Parties to either open the portal and permit the Petitioner to file TRAN-1 form electronically on or before 1st November, 2021 or accept the TRAN-1 form from the Petitioner manually before that date. It will be open to the authorities to verify the genuineness of the claim of the Petitioner in accordance with law and pass appropriate orders.

12. The writ petition is disposed of in the above terms.

13. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)

Chief Justice

(B.P. Routray)

Judge