

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.04.2021

CORAM

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

W.P.(MD)No.7712 of 2019

Tvl.Innovative Motors,
Represented by its Partner,
M.Balamurugan, aged about 44 years,
S/o, M.S.Muthusamy,
No.7B1, A.R.Buildings,
Thiruvananthapuram Road,
Palayamkottai,
Thirunelveli – 627 002.

Petitioner

Vs.

1.The Goods and Service Tax Council,
Secretariat, V Floor, Tower-II,
Bharathi Building,
Janapath Road,
Connaught Place,
New Delhi – 110001.

2.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

3.The Nodal Officer/
The Joint Commissioner (ST),
O/o The Commissioner, State Tax,
Ezhilagam, Chepauk,
Chennai – 600 005.

4.The Joint Commissioner,
GST & Central Excise,
O/o The Commissioner of GST & Central Excise,
C.R.Building, Lal Bahadur Shastri Road,
Bibikulam,
Madurai – 625 002.

5.The Assistant Commissioner (ST),
Palayamkottai Assessment Circle,
Commercial Tax Building,
Reserve Line Road,
Palayamkottai,
Thirunelveli District – 627 002.

Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to reopen the GST Portal and to allow access to the portal to enable us to file Form GST TRAN – 1.

For Petitioner : Mr.B.Rooban

For Respondents : Mrs.S.Ragaventhre

Junior Panel of Central Excise

ORDER

This Writ Petition has been filed by the petitioner to direct the respondents to reopen the GST Portal and to allow access to the portal to enable us to file Form GST TRAN – 1.

2. According to the petitioner, he is the partner of the business concern, in the name and style of M/s. Innovative Motors, situate in No. 77B1, A.R.Buildings, Thiruvananthapuram Road, Palayamkottai, Tirunelveli, engaging in sale of Yamaha motorcycles and registered with the fifth respondent, holding GSTIn.33AACF10974R1ZZ and had certain un-utilised amounts to its credit. Due to introduction and implementation of new tax regime, namely Goods and Service Tax on 01.07.2017, the credits as aforesaid were liable to be transitioned and carried forward, for which purpose a Form in TRAN-1 and 2, was to be uploaded in the portal of the Department. The last date stipulated as per Rule 117 of the Central Goods and Service Tax Rules, 2017 (CGST Rules) was 27.12.2017. There were, admittedly manifold glitches in accessing the website and uploading the Form. In fact, Courts all over the country have been dealing with matters where assesseees have vented grievances and difficulties in uploading the Forms and relief has been granted in several matters directing the Department to permit access and allow the petitioner therein to upload the declaration Forms.

3.The learned counsel for the petitioner would submit that the petitioner has been filing regular monthly returns, but has been unable to seek the benefit of carry forward credit, since TRAN-1 form was not uploaded in time. On 03.04.2018, the Central Board of Indirect Taxes and Customs issued a circular bearing No.39/13/2018-GST in F.No. 267/7/2018-CX.8, dealing with the subject of setting up of an IT Grievance Redressal Mechanism to address the grievances of assesseees facing technical glitches on GST Portal. He would submit that denial of legitimate claim by restricting the petitioner from filing TRAN -1 is highly unjustified and against the principles of natural justice.

4. The learned panel counsel appearing for the respondents reiterated the contentions set out in the counter affidavit. She would submit that though the Government has given sufficient time to the petitioner to carry forward the input tax credit to the new GST regime, the same was not utilized by the petitioner due to negligence and the facility extended by the Government for filing TRAN -1 was withdrawn with effect from 28.12.2017 and hence the petitioner is not entitled to avail the input tax credit and this Writ Petition is liable to be dismissed.

5. Heard the learned counsel appearing for the petitioner and the learned Panel counsel appearing for the respondents.

6. On perusal of records, it is to be noted that on 03.04.2018, the Central Board of Indirect Taxes and Customs issued a circular bearing No.39/13/2018-GST in F.No.267/7/2018-CX.8, dealing with the subject of setting up of an IT Grievance Redressal Mechanism to address the grievances of assesseees. It is thus clear that the officials of the Department of Goods and Service Tax were well aware of the existence of such glitches. Notwithstanding this, at paragraph 5, the Board places the onus upon the assessee to establish a demonstrable glitch in the portal. Such requirement does not figure in the Act prior to 03.04.2018 and thus an assessee has not been put to notice that he would have to collect evidence of difficulty/technical glitch in uploading forms.

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7. That apart, Rule 117 was amended by insertion of sub-rule (1A) on 10.09.2018, extending the due date for uploading of TRAN Declaration Form to 31.03.2019. This date has since been extended to

31.03.2020 by Notification issued by the Central Board of Excise

Customs bearing No.02/2020. Rule 117 (1A) reads as follows:-

'[1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN -1 by a further period not beyond 31st March 2019, in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension]'

8.The requirement for an assessee to establish technical difficulty as expressed in Circular dated 03.04.2018, is reiterated in the provision. I am however, unable to understand as to how the assessee would have anticipated this requirement in order that it collects proof by way of screen shots and otherwise establish the factum of technical glitches. Though Goods and Service Tax has been introduced to streamline multiple revenue enactments, the mass litigation that Rule 117 has generated, has defeated the very object and purpose of the enactment. Transition, by itself, does not vest any right in the assessee. It is only

utilisation of credit that does, and such utilisation is subject to verification and assessment by an Assessing Officer. It is thus vital that the distinction between transition of a credit and utilisation of such credit after verification by an officer is taken note of in the proper perspective.

9. In fine, I am inclined to allow the Writ Petition, drawing support from the following three decisions.

- i. Adfert Technologies Pvt Ltd Vs. Union of India (CWP No. 30949 of 2018 (O& M) dated 04.11.2019 of the Punjab and Haryana High Court.
- ii. Avante Tablewares Throughs V. The Nodal Officer (C/SCA/5758/2019 dated 06.09.2019 of the Gujarat High Court and
- iii. Siddharth Enterprises V Nodal Officer (2019 (29) GSTL 664 of the Gujarat High Court.

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10.The exchange of communications between 12.02.2019 to 26.03.2019 reveal that the petitioner has been diligent in making efforts to open the portal and upload the forms. In the light of the above, the respondents are directed to do the needful forthwith to enable the petitioner to upload the requisite forms.

11.With the above direction, the Writ Petition is allowed. No costs.

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15.04.2021

Note:

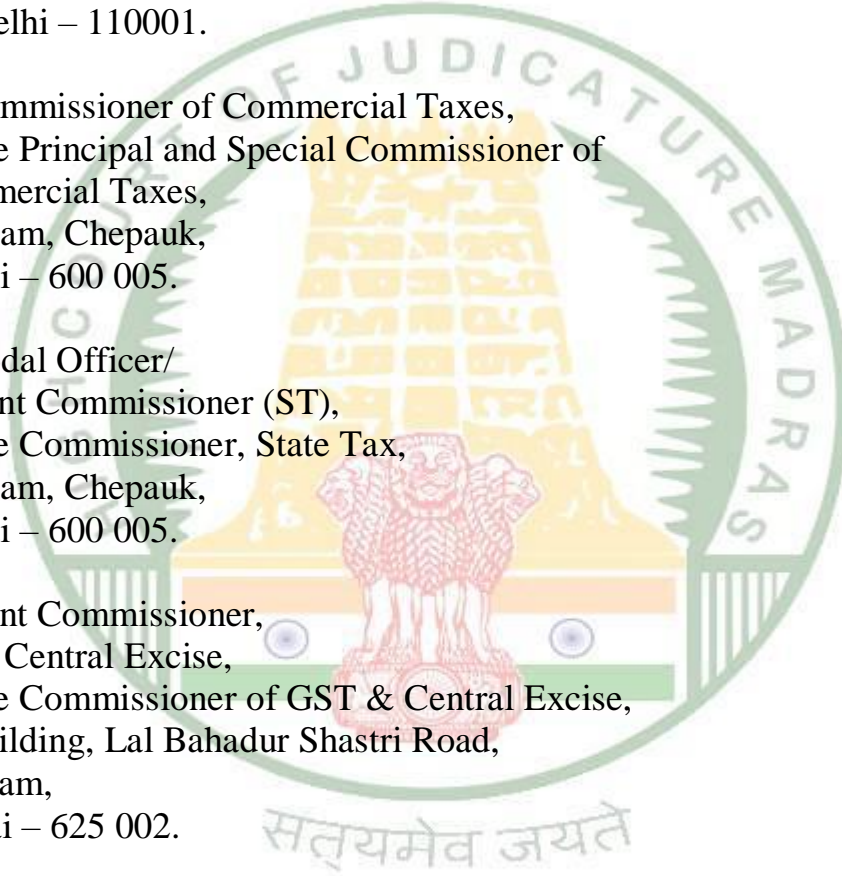
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To

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J.NISHA BANU, J.

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Order made in
W.P.(MD)No.7712 of 2019

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Dated 15.04.2021