



HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (T) No. 31 of 2020

M/s Jagadamba Hardware Stores, Proprietor Anup Kumar Agrawal, S/o Shri Balbhadra Prasad Agrawal, Aged 54 Years, Dabhara Road, Kharsia, District Raigarh (Chhattisgarh).

---Petitioner(s)

Versus

1. Union of India Through Deptt. of Central Revenue, Its Principal Director General of Central Tax At North Block, New Delhi.
2. The Chairman, G.S.T. Council Govt. of India, Tower-II, 5th Floor Jeevan Bharati Building, New Delhi 110001.
3. The Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, North Block, New Delhi.
4. State of Chhattisgarh, Through Its Principal Secretary, Mantralaya, Mahanadi Bhavan, Naya Raipur, Chhattisgarh.
5. The Commissioner of State Tax Chhattisgarh, Mahanadi Bhavan Sector-19, Atal Nagar, Naya Raipur (Chhattisgarh).

---Respondents

For Petitioner	:	Shri Moolchand Jain, Advocate.
For State	:	Shri Ayaz Naved, Govt. Advocate.
For U.O.I.	:	Shri B.Gopa Kumar, Asstt. Solicitor General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

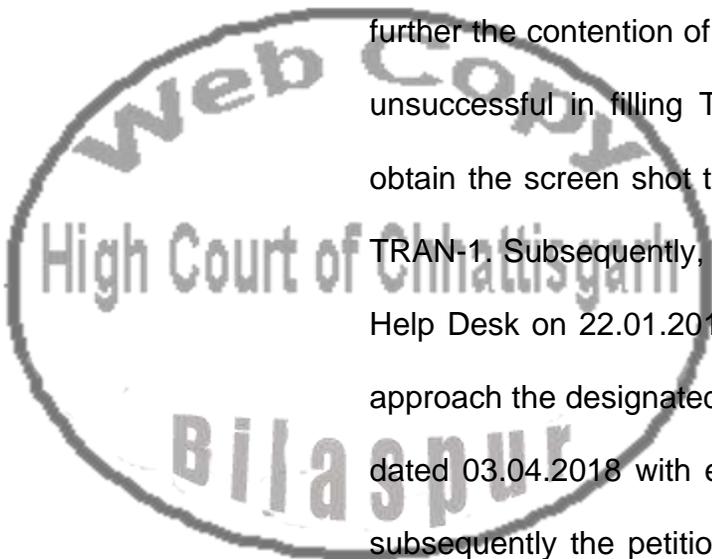
27.01.2020

1. The relief sought for by the petitioner in the present writ petition is for issuance of a writ to the respondents granting permission to the petitioner to submit TRAN-1 form electronically by opening electronic portal or in the alternative allow the petitioner to tender the form manually and thereafter the petitioner's claim be assessed for input tax credit in accordance with law.
2. Brief facts which led to the filing of the present writ petition is that, the petitioner is a Trader dealing in Pipes, Container Tanks, Pumps, Hardware Goods and Paints etc. and falls within the definition of a trader under Goods and Service Tax Act (in short, the GST Act). The said GST Act came into force w.e.f. 01.07.2017. Under Section 140(3) of the GST Act,



the petitioner was entitled to avail input tax credit. In order to avail the input tax credit under Rule 117 of the Central Goods and Service Tax Rules, 2017, the petitioner was to submit a declaration electronically in form GST TRAN-1 duly signed on the common portal. When the rules were framed, the said TRAN-1 was to be filled by the traders by 30.09.2017. Later on, the time was extended till 30.11.2017 and then it was further extended till 27.12.2017.

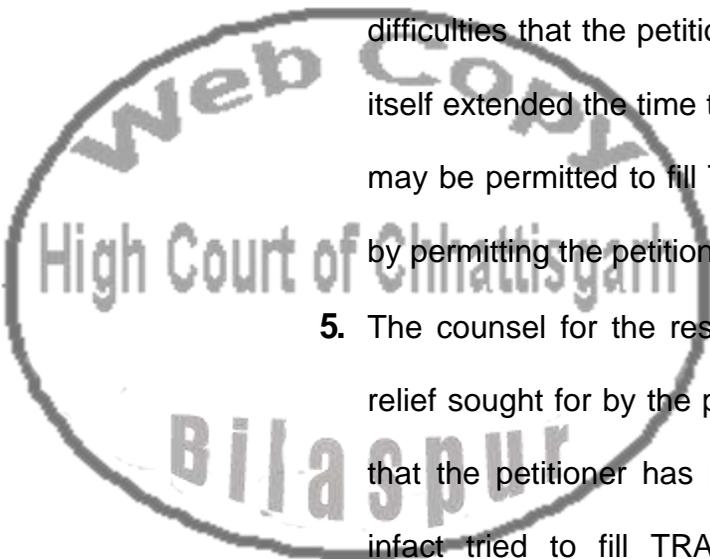
3. The contention of the petitioner is that, during the relevant period, the petitioner tried to fill TRAN-1 but because of the technical glitches and error it could not be filled online on the portal of the department. It was further the contention of the petitioner that because of the petitioner being unsuccessful in filling TRAN-1 online on the portal, he could not even obtain the screen shot to show the proof of his having attempted to fill in TRAN-1. Subsequently, the petitioner is said to have approached the GST Help Desk on 22.01.2019 who vide Annexure P/4 asked the petitioner to approach the designated Nodal Officer as per circular No.39/13/2018-GST dated 03.04.2018 with evidence of technical glitches/error. It is said that subsequently the petitioner approached the Nodal Officer on 06.05.2019 requesting to permit the petitioner to submit TRAN-1 manually which was however not accepted which has led to the filing of the present writ petition seeking for a relief of a direction to the respondents to permit submission of TRAN-1 through online by opening the portal or permitting the petitioner to submit the same manually.
4. The counsel for the petitioner submits that the Govt. of India realizing the difficulties which are faced by the traders had issued a circular on 03.04.2018 wherein it was directed that the tax payers shall approach the Field Officer or the Nodal Officer demonstrating the difficulties on the





common portal on account of which due process as envisaged in law could not be completed. Subsequently, the Nodal Officer shall forward the same to the GSTN who, in turn, would examine and after due verification of the records shall forward the same to the IT Grievance Redressal Committee with suggested solution for resolution of problem. The circular also reflects that so far as tax payers who could not fill TRAN-1 because of IT glitches, they were permitted to fill the same after showing the evidence of their having attempted, but were unsuccessful in filling TRAN-1, would be permitted to fill TRAN-1 afresh by 31.04.2018. Thus, according to the petitioner, since the Govt. of India themselves have realizing the technical difficulties that the petitioner and similarly placed traders were facing, had itself extended the time till 31.04.2018, therefore, the petitioner herein also may be permitted to fill TRAN-1 electronically by opening up the portal or by permitting the petitioner to submit TRAN-1 manually.

- 5.** The counsel for the respondents, on the other hand, submitted that the relief sought for by the petitioner cannot be granted for the simple reason that the petitioner has not adduced any evidence to show that he had in fact tried to fill TRAN-1 electronically online on the portal of the department. Nor is there any evidence of the petitioner having approached the department or any of the officers promptly showing his difficulties in filling up of TRAN-1. In the absence of any such proof or evidence, the relief sought for by the petitioner cannot be granted.
- 6.** It was further contention of the respondents that initially the government had extended the period till 30.09.2017, thereafter it was extended till 31.11.2017 and again uptill 27.12.2017. In spite of these extensions being granted, the petitioner did not make any attempt to fill in TRAN-1. Further, even after issuance of the circular dated 03.04.2018 whereby the portal

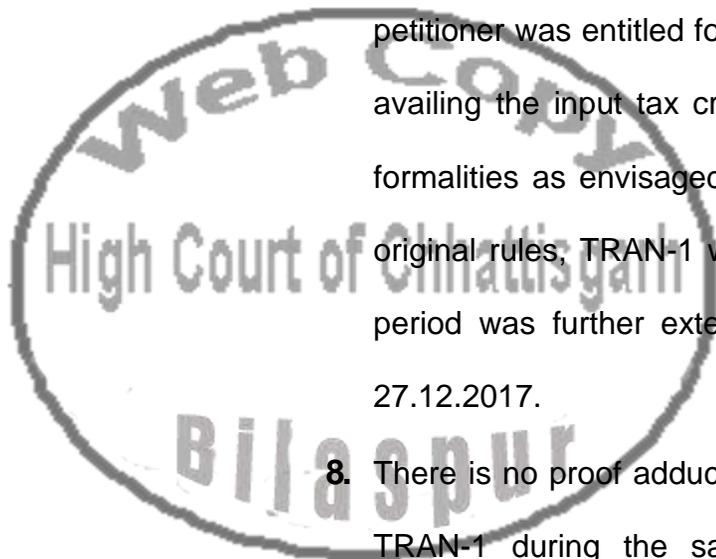




was opened for such traders who had attempted but failed to fill in TRAN-1 electronically by 31.04.2018, during the said period also the petitioner did not take any initiative in completing the pre-requisite as is required under Rule 117 enabling the petitioner the benefit of input tax credit. Thus, prayed for rejection of the writ petition.

7. Having heard the contentions put forth on either side and on perusal of records, it would be relevant at this juncture to appreciate the fact that the GST Act came into force w.e.f. 01.07.2017. The rules also were framed under the said law. The petitioner is a trader as defined under the provisions of the GST Act. Under Section 140(3) of the GST Act, the petitioner was entitled for availing input tax credit. That, for the purpose of availing the input tax credit, the petitioner was required to complete the formalities as envisaged under Rule 117 of the CGST Rules. Under the original rules, TRAN-1 was required to be filled by 31.09.2017. The said period was further extended till 31.11.2017 and again extended up till 27.12.2017.

8. There is no proof adduced by the petitioner of his having attempted to fill TRAN-1 during the said extended period up till 27.12.2017. As is discussed in the earlier paragraph, the Govt. of India itself vide their circular dated 03.04.2018 permitted filling up of TRAN-1 by the 31.04.2018, the said extended period of 31.04.2018 was however for only those who have in the past attempted but failed to fill up TRAN-1. There is no evidence made available by the petitioner of having tried to fill up TRAN-1, but was unsuccessful for availing the facilities so provided under circular dated 03.04.2018. What is also surprising is that the petitioner also has not mentioned anything in respect of having approached any of the competent authorities in the department raising his concern about his



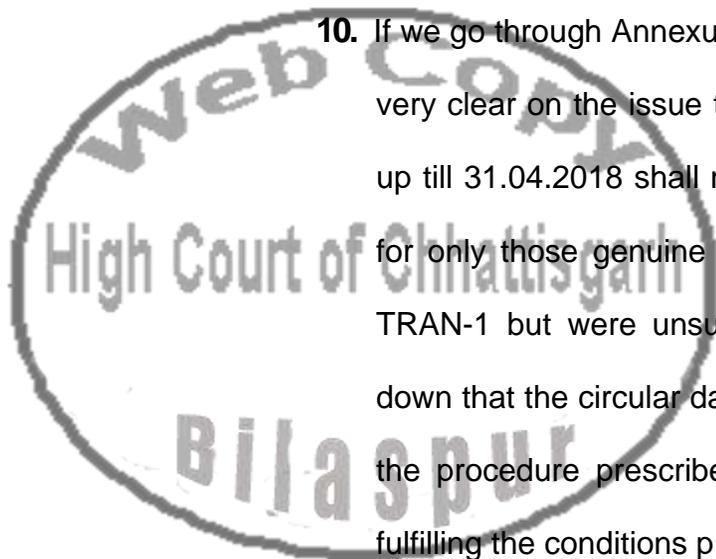


inability in filling up of TRAN-1.

- 9.** From Annexure P/4 it reflects that for the first time the petitioner had approached the GST Help Desk only on 22.01.2019. There is no proof either oral or documentary to establish or substantiate his contention of having tried to fill TRAN-1 electronically on the portal of the department. What is clearly to be understood is that the Govt. of India realizing the difficulties of genuine traders had issued a circular on 03.04.2018 permitting those traders, who were unsuccessful in filling up of TRAN-1, to do so after showing proper evidence in respect of their attempts and failure.

- 10.** If we go through Annexure P/3, it clearly reflects that the Govt. of India was very clear on the issue that the last date of filling up of TRAN-1 extended up till 31.04.2018 shall not be applicable in general, but would be entitled for only those genuine tax payers who had in the past attempted to fill TRAN-1 but were unsuccessful. The circular also very clearly had laid down that the circular dated 03.04.2018 would be implemented in line with the procedure prescribed under circular dated 03.04.2018 and also on fulfilling the conditions prescribed therein.

- 11.** So far as two judgments referred to by the petitioner in case of Siddharth Enterprises Vs. Nodal Officer, from Gujrat High Court and also in case of Krish Automotors Pvt. Ltd. Vs. Union of India & Others, from the Delhi High Court are concerned, both the judgments would not come to the rescue of the petitioner for the simple reason that there is no iota of evidence or proof produced by the petitioner to show that he has bonafidely attempted to fill up TRAN-1 and was unsuccessful because of the technical glitches and errors. Moreover, the petitioner also does not seem to have approached any officer in the department showing concern





about his difficulties in filling up of TRAN-1 for a considerable period of time of almost 1 and ½ years. Both the aforesaid judgments were in respect of genuine assesseees who had established of having bonafidely tried to fill TRAN-1 but were unsuccessful unlike the present case where there is no proof or evidence available. Thus, both the judgments are distinguishable on facts itself.

12. Another aspect which requires to be borne in mind is that, the relief sought for by the petitioner cannot be extended to those cases where the assessee defaults in not filling up of TRAN-1 even within the extended period up till 27.12.2017. The petitioner also failed to establish of having approached any of the officers in the department, nor is there any proof in his possession. There is also no document to show any correspondence made with any of the officers in the department in this regard. The writ benefit cannot be extended to such indolent persons who sleeps over their rights and duties without any plausible explanation and justification and now at the belated stage woke up from slumber and is trying to get a relief from the High Court without any bonafide ground.

13. All the aforesaid fact compels this court to draw an inference that the petitioner had infact never tried to fill TRAN-1 within the stipulated period or within the extended period and also was not able to take advantage of circular dated 03.04.2018 if at all if he had bonafidely tried to fill TRAN-1.

14. For all the aforesaid reasons, this court is of the opinion that no strong case is made out by the petitioner for issuance of any sort of writ to the respondents. The writ petition fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge