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W.P. No.9821(W) of 2018

**Mrinal Ghosh.
Versus
Union of India & Ors.**

Mr. Saurabh Bagaria,
Mr. Indranil Banerjee,
Mr. Arup Mandal,
Mr. Anindya Sil ... For petitioner.

Mr. Vipul Kundalia,
Mr. Tapan Bhanja For Union of India.

Mr. Somnath Ganguly,
Mrs. Sanjukta Gupta,
Ms. Sabnam Basu For respondent nos. 3 to 5.

Petitioner has mounted vires challenge against rule 117 in Central Goods and Services Tax Rules, 2017 being ultra vires of section 140 of Central Goods and Services Tax Act, 2017, as the rule makes it condition precedent for an assessee to file GST TRAN – 1 within the specified period, to be able to carry forward credit of eligible duties on stock as on 30th June, 2017. Alternative prayers are for relief of saving accrued credit, denied by petitioner's omission to file in time.

Mr. Saurabh Bagaria, learned advocate appears on behalf of petitioner and draws attention to letter, he submits, was written and delivered on 9th January, 2018, addressed by his client to Senior Joint Commissioner, Commercial Taxes. First paragraph in the letter is set out below:-

“Your honour is well aware that TRAN – 1 was supposed to be replaced within 27/12/2017. But because of our internal system failure from 25th December, 2017 to 02nd January, 2018 we could not upload the same as our whole system had crashed. As the due

date for filing of declaration in TRAN – 1 is not available now as the due date is over your tax payer is now in problem as a huge amount of transitional ITC is involved. But because of system failure we could not avail the chances of taking ITC.”

He then relies on observations made in order dated 21st June, 2019:-

“Vires challenge will be heard on adjourned date. Mr. Bagaria can obtain from his client’s system, forensically or otherwise, evidence to show attempt at uploading was not successful by reason of the system.”

He draws attention to supplementary affidavit filed by his client, which discloses report signed on 30th July, 2019 by Senior Scientific Officer, State Forensic Laboratory, Home, Police, Department, Government of West Bengal. Following from the report is reproduced below:-

“Finding: *In the TRAN – 1 Transitional ITC /Stock statement the blank for field: whether all the returns required under existing law for the period of six months immediately preceding the appointed date have been furnished was in “YES” state. It could not be changed or edited at the time of examination.*

Inference: *It may be opined that the attempt of furnishing return of TRAN – 1 of GST was attempted before the ultimatum.*

A copy of the downloaded portal has been attached with this report in support of the inference.”

Mr. Bagaria submits, acquired credit cannot be denied on technicality. He submits, there have been several orders passed by different High Courts. He relies on Division Bench **judgment dated 4th November, 2019** of Punjab and Haryana in **CWP 30949 of 2018 (Adfert Technologies Pvt. Ltd. – Versus – Union of India & Ors.)**, paragraphs 10 and 12 in support of his client's claim for relief.

Mr. Somnath Ganguly, learned advocate appears on behalf of respondent nos.3, 4 and 5 and hands up instructions received by email dated 7th November, 2019. The instructions are as follows:-

“This is to inform you on the captioned subject matter. The proper technical analysis considering the claims raised by the petitioner was done and it was found that in the case of the petitioner, no evidences of error or submission / filing of TRAN – 1 prior to due date. In view of the above, necessary submission before the Court may kindly be made through counsel that the petitioner did not face any technical glitch in respect of TRAN – 1 filing on GST portal.”

Mr. Kundalia, learned advocate appears on behalf of Union of India and submits, Mr. Ganguly is to answer. In addition he submits, the forensic report is vague.

In **Adfert Technologies Pvt. Ltd.** (supra), the Division Bench quoted extensively from judgment by a Division Bench of Gujarat High Court in **Siddhartha Enterprises – Versus – The Nodal Officer**. Paragraph 42 of the Gujarat Division Bench judgment, extracted

therein, is reproduced below:-

“42. Article 300A provides that no person shall be deprived of property saved by authority of law. While right to the property is no longer a fundamental right but it is still a constitutional right. CENVAT credit earned under the erstwhile Central Excise Law is the property of the writ-applicants and it cannot be appropriated for merely failing to file a declaration in the absence of Law in this respect. It could have been appropriated by the government by providing for the same in the CGST Act but it cannot be taken away by virtue of merely framing Rules in this regard.”

Based, inter alia, on such reliance, the Division Bench of Punjab and Haryana High Court went on to allow the writ petitions containing for prayer for similar reliefs.

On facts, case of petitioner is that it could not attempt to file GST TRAN -1 form on GST portal because his own system was down. On 9th January, 2018, deadline having expired on 27th December, 2017, petitioner said so to Revenue. Petitioner then has obtained a report, upon forensic examination of his system, having provided password, which report confirms petitioner's contention. Less said about the instructions, in context of such facts, as being removed from them, the better.

The writ petition is allowed. Concerned respondents in Revenue will allow petitioner to file GST TRAN - 1 form to enable him to obtain credit accrued in his favour prior to the transition, on his stock as on 30th

June, 2017. This direction be carried out forthwith as in interest of Revenue.

Writ petition is disposed of.

(Arindam Sinha, J.)