IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.437 OF 2020

Nuvoco Vistas Corporation Ltd. …..Petitioner

Vs.

The Union of India and Ors. …..Respondents

Mr. Nand Kishore i/b. DSK Legal for petitioner.
Mr. Anjani Kumar Singh for respondent no.1 – UOI.
Mr. S.S. Chandrashekhar for respondent nos.2 to 5.

CORAM : K. R. SHRIRAM &
A. S. DOCTOR, JJ.
DATED : 17th NOVEMBER 2022

P.C. :

1 The present petition has been filed in relation to the procedural difficulties/objections raised with regard to distribution and eligibility of Input Service Distributor (ISD) credit of Service Tax under Section 140 of the CGST Act 2017.

2 It is petitioner's case is that when petitioner attempted distribution of credit transitioned/reporting of the distributed credit by the ISD registration to their units/offices. However, they were not able to distribute/recognise and report the distribution, as there were procedural and functional difficulties in relation to the GST forms and portal.

3 The objection of respondent is that :

(i) Petitioner has wrongly migrated the erstwhile ISD registration to the GST regime and transitioned the credit which is prohibited as per the CGST Act, 2017;

(ii) ISD registration under the GST regime does not enjoy the status of an assessee obtaining registration under GST for carrying out its business;

(iii) ISD registered under GST is not eligible for ITC under Section 16 as it is not using the inputs in the course of or furtherance of its business for making taxable supplies as ISD can neither be transitioned directly into the Electronic Credit Ledger (ECL) maintained under the GST regime; and

(iv) That petitioner has erred in comparing the erstwhile ISD with the normal Service Tax assessed in light of Section 140 (Transitional arrangements for input tax credit) of the CGST Act read with Rule 39 ('Procedure for distribution of input tax credit by Input Service Distributor') of the CGST Rules.

4 This Court vide order dated 23rd August 2022 in the batch matters led by Unichem Laboratories Limited V/s. Union of India & Ors. (Writ Petition No.109 of 2020) and vide a separate order in Apar Industries Limited V/s. Union of India & Ors. (Writ Petition No.11539 of 2019) dated 23rd August 2022 had granted appropriate reliefs to petitioners therein who were facing similar issues with respect to transition and distribution of ISD

credit.

5 The Hon’ble Apex Court, to aid the assessees to overcome the procedural/technical hurdles, by an order dated 22nd July 2022 in petition(s) for Special Leave to Appeal(C) No(s).32709-32710 of 2018 and other matters in Union of India & Another V/s. Filco Trade Centre Pvt. Ltd. & Another directed the GST Network to open the common portal to file/rectify TRAN-1 and TRAN-2 for a period of two months, i.e., with effect from 1st September 2022 to 31st October 2022 to enable the different private parties to avail Transitional Credit. The order reads as under :

> “*Permission to file Special Leave Petition(s) is allowed.*
>
> *Delay condoned.*
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> *Having heard learned Additional Solicitor General, learned counsel appearing for different States and learned counsel appearing for different private parties and having perused the record, we are of the view that it is just and proper to issue the following directions in these cases : 1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.*
>
> *2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).*
>
> *3. GSTN has to ensure that there are no technical glitch during the said time.*
>
> *4. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.*

> *5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.*
>
> *6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims. The Special Leave Petitions are disposed of accordingly. Pending applications, if any, also stand disposed of."*

6 We also intend to adopt the same approach in the present petition. In the circumstances, directions given below would meet the ends of justice :

> (a) Petitioner, through its respective units/offices registered under CGST Act and/or State Acts, as the case may be, can avail this window and file GST TRAN-1/revised GST TRAN-1 at the units/offices in terms of the Hon'ble Supreme Court's order in *Filco Trade* (Supra).
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> (b) The GST TRAN-1/revised GST TRAN-1 filed by the units/offices will be basis the manual ISD invoices issued/to be issued by ISD of petitioner subject to aggregate credit cumulatively not exceeding the ISD credit available with petitioner of Rs.13,43,92,019/- (Indian Rupees Thirteen Crores Forty Three Lakh Nine Two Thousand and Nineteen Only) as stated by petitioner in its petition.
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> (c) The Central Board of Indirect Taxes and Customs (CBIC), keeping in mind the problems faced by various parties, has already issued a clarification dated 10th November 2022, in relation to the distribution/ reporting of ISD credit.
>
> (d) The concerned officers are given 90 days thereafter to verify the veracity of the claim/Transitional Credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.

7 Petition disposed accordingly.

(A. S. DOCTOR, J.) **(K. R. SHRIRAM, J.)**