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

WP-LD-VC-85 OF 2020

BMW India Financial Services Pvt. Ltd.,]
previously at: DLF Cyber City,]
Phase-II, Building No.10, Tower C,]
14th Floor, Gurugram 122 002.]
Haryana.]
presently at : The Oberoi Corporate]
Tower Building No.11, 11th Floor,]
DLF Cyber City, Phase II,]
Gurugram 122 002.]
Haryana.] ... Petitioner

v/s.

1 Union of India]
represented by its Secretary]
Ministry of Finance, Department]
of Revenue, Room No.46, North]
Block, New Delhi 110 001.]

2 State of Maharashtra]
represented by its Secretary]
Finance Department, Government]
of Maharashtra, Secretariat,]
Mumbai Maharashtra 400 001.]

3 Goods and Service Tax Council]
represented by its Secretary]
Office of the GST Council Secretariat]
5th Floor, Tower II, Jeevan Bharti]
Building, Janpath Road, Connaught]
Place, New Delhi 110 001.]

4 Goods and Services Tax Network]
(GSTN) East Wing, 4th Floor, World]
Mark, 1 Aerocity, New Delhi 110 037.]

5 GST Maharashtra Commissionerate]
Nodel Division 7, 27, Nesbit Road,]
Maharana Pratap Chowk, Tadwadi]
Mazagaon, Mumbai]
Maharashtra 400 001.] … Respondents

Mr. Karthik Sundaram with Ms. Ashwini, Ms. Chandni Tanna and Ms. Shrushti Relekar i/b. India Law Alliance, for the Petitioner.
Mr. Pradeep S. Jetly, Sr. Advocate with Mr. J. B. Mishra, for Respondent Nos.1,3 & 4.
Mr. Dushyant Kumar, AGP for Respondent Nos.2 & 5-State.

CORAM: UJJAL BHUYAN &
ABHAY AHUJA, JJ.
RESERVED ON : 20th OCTOBER, 2020.
PRONOUNCED ON : 29th OCTOBER, 2020.

(THROUGH VIDEO CONFERENCING)

P.C:- (Per Abhay Ahuja, J.)

Heard. On the request of the learned Counsel for the parties, the matter is being taken up for final hearing.

2 Petitioner is aggrieved by denial of transitioning the credit of Rs.17,07,673/- after the submission of declaration in Form GST TRAN-1 on 27th December, 2017 in time on Goods and Services Tax Network ("GSTN") viz. Respondent No.4 and admitted successful filing of the same by the Respondent authorities. Petitioner has, therefore, challenged the action of the Respondents as being violative of Articles 14, 265 and 300-A of the Constitution of India.

3 This Petition has been filed under Article 226 of the Constitution of India for the following substantive relief:-

> *"(i) That it is just, equitable and in the interest of justice that this Hon'ble Court may be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order or direction ordering and directing the Respondents jointly/ collectively and their sub-ordinate officers to forthwith to take such actions as may be necessary for transitioning the credit of Rs.17,07,673/- as filed by the Petitioner in FORM GST TRAN -1 on 27.12.2019 into the Petitioner's electronic credit ledger in FORM GST PMT- 2 including by way of permitting the Petitioner to resubmit Form GST TRAN-1 electronically or manually, or in the alternative by permitting the Petitioner to avail the credit of Rs.17,07,673/- in FORM GSTR 3B, and, accept the same, and, pass such further or other orders as this Hon'ble Court may deem fit in the facts and circumstances of the present case."*

4 It is submitted that the Petitioner is a Non-Banking Financial Company registered under the Reserve Bank of India Act, 1934 and is engaged in financing automobiles in the form of loans and financial leases to various customers in addition to acting as a corporate insurance agent for some insurance companies. It is submitted that Petitioner is registered with the Goods and Services Tax ("GST") authorities in 14 States across India.

5 Petitioner submits that it has entered into leasing contracts with various customers in the erstwhile indirect tax regime, which have been continuing post introduction of Goods and Services Tax Act, 2017, i.e. post 01.07.2017. On such contracts, the Petitioner had paid Service tax on 10% of the interest portion of such contract and had upfront deposited 100% Value Added Tax ("VAT") in the first month of the contract itself, on the entire value of rentals as per specific provisions. It is

entitled to carry forward the VAT paid in terms of section 142(11)(c) of the Maharashtra GST Act, 2017 ("MGST") which is *pari materia* with section 142 (11)(c) of the Central Goods & Services Tax Act, 2017 ("CGST") Act as State Credit/VAT. The transitional VAT credit is also required to be reflected in FORM GST TRAN-1 as set out under rule 118 read with rule 117 of the MGST Rules 2017. It is submitted that the proportionate VAT amount of Rs.17,07,673/- pertaining to the period post 01.07.2017, but paid upfront before 30.06.2020 was to be transitioned to GST regime. The amount is reflective of the VAT paid which is eligible to be carried forward as State Tax Credit in terms of Section 142(11)(c) of the MGST Act.

6 It is the case o5-wp-ld-vc-85-2020 f the Petitioner that on 27th December, 2017 it had submitted declaration in Form GST TRAN-I for the unit in Maharashtra for transitioning credit of Rs.17,07,673/- and had also received acknowledgment of the same bearing ARN AA2711179105657. Petitioner has submitted that post filing of the Form, it also received a confirmation e-mail from 'do not reply @gst.gov.in in confirming the successful filing of the transition Form by the Petitioner. However, the entire credit of VAT/State tax of Rs.17,07,673/- as reported in column 11 of the Form GST TRAN 1 was not reflected on the electronic credit ledger as the credit could not be transitioned despite submitting the form on time on the GSTN – common electronic portal in time. Petitioner submits that the said failure is due to the technical glitches in the Respondents GSTN portal as GSTN has been beset with technical glitches which has defeated the Petitioner's substantive right to transition tax credit for no fault of the Petitioner.

7 Petitioner submits that to resolve this issue, it raised query/ entered into correspondence with GST Help Desk, CEO GSTN, GSTN as well as correspondence with GST Maharashtra Commissionerate, Mumbai. Petitioner has also set out the sequence of relevant dates and events from the filing of the TRAN -1 form and the various correspondence exchanged between the Petitioner and the Respondents/ Help Desk along with Screen Shots as a follow up for resolution of its grievance.

8 Petitioner further submits that it had faced similar grievances in the States of Delhi and Haryana at the time of filing of TRAN-1 forms. However, qua the Petitioner, the portal was re-opened for filing Form of GSTN TRAN-1 by the authority in those States upon grievances raised by the Petitioner. Petitioner submits that the technical glitches faced by the Petitioner in the State of Maharashtra are identical to what was faced in Delhi and Haryana and thus when the appropriate relief has been given to the Petitioner in those States, the same can be extended to the Petitioner in State of Maharashtra as well.

9 Petitioner has also averred that once it has sought for transition of credit by filing Form GST TRAN – 1 within the prescribed time a vested right accrues in its favour and the same cannot be taken away by reason of mere technical lapses not attributable to the Petitioner.

10 Petitioner is, therefore, seeking a Writ of Mandamus as above, directing the Respondents to take such actions as may be necessary for transitioning the credit of Rs.17,07,673/- as filed by the Petitioner in Form GST TRAN-1 on 27.12.2017 to avail the credit of Rs.17,07,673/- either electronically or manually.

11 Respondents have filed affidavits in reply and the Petitioner has also filed its rejoinders to the same.

12 In paragraph 5 of the affidavit in reply filed on behalf of Respondent Nos.1, 3 and 4, it is submitted that the GSTN viz: Respondent No.4 herein has informed that the GSTN had completed technical analysis of the Petitioner's / tax payer's case and forwarded it to 1st IT Grievance Redressal Committee ("ITGRC") in line with CBIC Circular No.39/13/2018 dated 3rd April, 2018 for appropriate decision. It is further submitted that the Petitioner's case was not approved for TRAN-I filing in the 1st ITGRC meeting as it was observed that *"The taxpayer has successfully filed TRAN-I and no technical errors has been found. This include cases in which the taxpayer was unable to file as they were stuck in submit and have subsequently filed."* It is submitted that the Petitioner's case was dealt with by GSTN in accordance with the Circular No.39/13/2018 dated 03.04.2018 and there is no action pending on GSTN. The GSTN has no authority to allow/ not allow TRAN-1 filing after the due date i.e. 27.12.2017. Petitioner had raised ticket No. 201801021932139 on GST Help-desk on 01.02.2018 wherein TRAN-1 filing issue was reported. This ticket was closed on 01.04.2018. Thereafter, the same ticket was again re-opened on 13.08.2018. The ticket was then closed on 30.08.2018 based on the resolution provided to the Petitioner based on telephonic conversation.

13 In the reply filed on behalf of Respondent Nos. 2 and 5, it is submitted that Petitioner has not produced any evidence to validate its claim of technical glitch. Still the application was timely forwarded to MAHAVIKAS Branch of the Maharashtra GST Department through proper

channel and also to the GSTN. They have also reiterated that the Petitioner's application was put up before the 1st meeting of ITGRC but the same was not approved. Learned Counsel for the Respondents has also drawn our attention to the remarks of the Respondents in Ex. D to the affidavit in reply of Respondent Nos.2 and 5 at page 100 where in the remarks column – there is a following observation:-

"As per dealers contention he had successfully filed TRAN -1 on 27.12.2017, but the credit claimed in the filed TRAN -1 is not reflected in his electronic ledger. In this case dealer has not submitted any evidence which proves that he had successfully filed TRAN-1 application."

14 In the rejoinder, the Petitioner has reiterated its submission made in the Petition.

15 We have heard learned Counsel Shri Karthik Sundaram, for the Petitioner, Shri Pradeep S. Jetly, learned Sr. Counsel for Respondent Nos.1, 3 and 4 and learned Counsel Shri Dushyant Kumar, AGP for Respondent Nos. 2 & 5. We have also perused the papers and proceedings in this Petition.

16 Learned Counsel for the Petitioner has relied upon the decision of the Delhi High Court in ***Bhargava Motors v/s. UOI 2019 (26) GSTL 164 (Del.)*** to submit that in the case of Bhargava Motors (supra), there was a similar issue wherein the Petitioner in that case had filed Form GST TRAN-1 on 27th December, 2017 and also received a confirmation e-mail from the GSTN portal. However, the credit was not reflected in its electronic ledger. Delhi High Court directed the Respondents to either open a portal to enable the Petitioner to again file TRAN-1 or accept manual filing of TRAN-1 within prescribed date. He further submits that

unutilized credit has been recognized as a vested right and property in terms of Article 300A of the Constitution of India and has relied upon the decision of the Punjab & Haryana High Court in the case of ***Adfert Technologies Pvt. Ltd., v/s. Union of India 2019- VIL-537- P & H*** to enable the Petitioner to again file TRAN-1 electronically or to accept a manually filed TRAN-1.

17 Learned Sr. Counsel for the Respondent Nos. 1, 3 & 4 – Shri Jetly has relied on the decision of this Court in ***NELCO Limited v/s. Union of India and Others (W. P. No. 6998 of 2018)*** to submit that unless there is a technical glitch from the GSTN side, which according to the ITGRC is not the case, the portal cannot be re-opened. He submits that there is a clear finding on this aspect and the 1st ITGRC has not approved the Petitioner's case. He submits that, therefore, the NELCO's decision is clearly applicable and not the decision in the case of Bhargava Motors (supra). He further submits that this Court in the case of NELCO (supra) has already considered the decision of Bhargava Motors (supra) and has not placed reliance on the same.

17.1 Learned Counsel for Respondent Nos.2 & 5 has reiterated what is stated in his affidavit and deferred to the stand taken by Shri Jetly.

17.2 With respect to the issue of Transitional CENVAT Credit / Input Tax Credit being substantive/ vested rights, it is submitted that CENVAT Credit/ Input Tax Credit/ VAT Credit is not a vested right but a mere concession and cannot be claimed as a matter of right. Learned Senior Counsel has relied upon the decision of this Court in the case of ***JCB India Ltd., v/s. Union of India 2018 – TIDL-23-HC – Mum- GST*** as well as the decision in the case of NELCO (supra). With respect to the

Petitioner's reliance on the case of M/s. Adfert Technologies (supra), it is submitted that the said decision holds no binding precedence.

18 At the outset, we must say that it is not disputed that Petitioner's Form GST TRAN-1 filing on 27th December, 2017 was successful. The only issue is that the credit of Rs.17,07,673/- has not been transitioned in the Petitioner's electronic credit ledger despite the successful filing. It is also not in dispute that after filing TRAN-1, which filing was successful, the credit of Rs.17,07,673/- is not appearing in the Petitioner's electronic credit ledger/ register and despite making grievance to the authorities, as discussed earlier, Petitioner did not receive any positive response. We are unable to comprehend that even though, admittedly, the filing was successful, the credit is not being reflected in the Petitioner's ledger and merely on the ground that no technical error has been found on the GSTN, the grievance of the Petitioner has not been addressed.

19 With respect to Shri Jetly's reliance on the decision in the case of NELCO (supra), we are of the view that the facts of this case and NELCO (supra) are clearly distinguishable. NELCO was a case where the Petitioner had attempted to file TRAN-1 Form on 27th December, 2017. However, it could not file the same, as according to the Petitioner, there were problems on the common portal run of GSTN for which NELCO was seeking extension of time. Therefore, despite the official complaints, as there was no response for the resolution of the Petitioner's grievance, NELCO filed a Petition not only challenging the said action but also challenging Rule 117 of the Central Goods and Service Tax Rules, 2017 (CGST Rules) as ultra vires Sections 140 (1), (2), (3) & (5) of the CGST

Act to the extent that it prescribes a time limit for filing of TRAN-1 Form. Whereas in the case at hand, it is an admitted fact that Form GSTN TRAN-1 was successfully filed on 27th December, 2017. Moreover, in this case, there is no constitutional / vires challenge.

20 It is not necessary for us to dwell on the case of Bhargava Motors (supra) as although there also as in this case the TRAN-1 was filed on 27th December, 2017 and the duty credit was not reflected in its electronic credit ledger, the fact that satisfied the Court was that the Petitioner had difficulty in filling up correct credit amount in the TRAN-1 form, which does not appear to be the fact in the case at hand. In fact, in this case, the filing of Form TRAN-1 on 27th December, 2017 has been found to be successful and there is no reference to any difficulty in filling up the correct credit amount.

21 In this case, we are not examining the issue whether the Petitioner is entitled to VAT tax credit as claimed by the Petitioner which will be examined by the authorities. What we are concerned with is that despite the admitted successful filing of Form TRAN-1 by the Petitioner on 27th December, 2017, the request of the Petitioner for transitioning of credit has not been approved by the ITGRC merely on the basis that there were no technical glitches on the GSTN side. There is no further explanation or clarification or evidence on the issue by the Respondents. Even the learned Sr. Counsel for the Respondents has only reiterated this stand during his submission.

22 The whole objective of digitization is to convenience the tax payers and not to harass them. We are conscious that the GST system is still evolving in its implementation. We are of the view that merely because there were no technical glitches in the GSTN with respect to

the Petitioner's TRAN-1 which was admittedly filed in time, the claim of the Petitioner, if it was otherwise eligible in law, cannot be rejected for no apparent fault on the part of the Petitioner. This cannot be the objective of the GST system or digitisation. Such a situation cannot be countenanced as it would be wholly unfair and unjust.

23 We are, therefore, of the view that this is a fit case for invocation of our writ jurisdiction.

24 Accordingly, we direct the Respondents to consider the case of the Petitioner and after looking into the merits of the claim and physically or otherwise verifying the amount of VAT as claimed by the Petitioner take such actions as may be necessary for transitioning the credit of such amount into the Petitioner's credit ledger/ electronic credit ledger within four weeks from the date of this order.

25 We make it clear that we have not examined the merits of the case nor the Petitioner's claim to VAT credit.

26 Petition is accordingly allowed in the above terms. However, there shall be no order as to costs.

27 This order will be digitally signed by the Private Secretary of this Court. Sheristedar of this Court is permitted to forward to the Petitioner copy of this order by e-mail. All concerned to act on a digitally signed copy of this order.

(ABHAY AHUJA,J.) **(UJJAL BHUYAN,J.)**

Smita R. Joshi

Digitally signed by Smita R. Joshi
Date: 2020.10.29 14:30:23 +0530