IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

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THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 5TH DAY OF JULY 2021 / 14TH ASHADHA, 1943

WA NO. 570 OF 2021

AGAINST THE JUDGMENT IN WP(C) 26557/2020 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

1 UNION OF INDIA
REP. BY FINANCE SECRETARY,
NORTH BLOCK,
NEW DELHI-110 001.

2 GST COUNCIL,
REP. BY ITS SECRETARY,
5TH FLOOR, TOWER II, JEEVAN BHARAI BUILDING,
JANPATH ROAD, CONNAUGHT PALACE,
NEW DELHI-110 001

3 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
REP. BY ITS SECRETARY,
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE,
NO. 137 NORTH BLOCK
NEW DELHI-110 001.

4 GOODS AND SERVICES TAX NETWORK,
REPRESENTED BY ITS MANAGING DIRECTOR,
EAST WING, 4TH FLOOR, WARD MARK 1,
AEROCITY, NEW DELHI 110 037.

5 THE COMMISSIONER,
GAT AND CENTRAL EXCISE,

CENTRAL REVENUE BUILDING, IS PRESS ROAD,

KOCHI-682 018

6 DEPUTY COMMISSIONER,
CENTRAL TAX AND CENTRAL EXCISE,

CENTRAL REVENUE BUILDING, IS PRESS ROAD,

KOCHI-682 018

BY ADV P.R.SREEJITH

RESPONDENT/PETITIONER:

M/S MERCHEM INDIA PVT. LTD,
V/722B, INDUSTRIAL ROAD, EDAYAR,

UNION CHRISTIAN COLLEGE, ERNAKULAM,

KERALA-683 102,

REPRESENTED BY ITS DIRECTOR, JOLLY THOMAS.

BY ADV A.KUMAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 05.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 5th day of July, 2021

Bechu Kurian Thomas, J.

Appellant is aggrieved by the direction of the learned Single Judge to the IT Redressal Committee of the GST Council to consider petitioner's request for the transition of unavailed input tax credit in accordance with law.

2. The writ petition was filed by the respondent herein, seeking a direction for credit of the input tax balance lying in the writ petitioner's CENVAT Credit Ledger as on 30-06-2017 to its Electronic Credit Ledger under the GST regime. It was pleaded that, to avail the transitional benefit of transfer of unavailed CENVAT credit to the electronic credit ledger under the GST regime, the writ petitioner had attempted to file GST TRAN-1 Form on 26-09-2017, as per Ext.P3, though without success. Further attempts also ended in failure resulting in the writ petitioner unable to take credit of the input tax balance lying in its CENVAT credit ledger as on 30.6.2017 to the electronic credit ledger. Petitioner had received the communication "processed with error" while attempting to submit TRAN-1 Form and

thereafter a complaint was sent by email to helpdesk@gst.gov.in. It was alleged that there was no reply and hence the writ petition was filed.

3. A statement was filed on behalf of respondents 5 and 6 pointing out that the attempt of the writ petitioner was to subvert the statutory limitation and that as per Rule 117 of the CGST Rules 2017, the electronic filing of Form TRAN-1 ought to have been done within the stipulated period of 90 days from 21-07-2017. It was further stated that, even though the last date for filing of the form was extended from time to time, the present attempt was highly belated. It was further stated that there was nothing on record to suggest that throughout the period from 01-07-2017 to 27-12-2017, petitioner had made any effort to file the TRAN-1 declaration.

4. As mentioned earlier, the learned Single Judge disposed of the writ petition directing the IT Redressal Committee of the GST Council to take a call on the writ petitioner's request after taking into consideration the provisions under section 140 of the Central Goods and Service Tax Act, 2017 within a period of 45 days from the date of receipt of the judgment after affording an opportunity of hearing.

5. We have heard Adv.P.R.Sreejith, learned Senior Standing

Counsel for the appellants as well as Adv.A.Kumar on behalf of the respondent.

6. It is seen from the statement filed by the respondents that there was an IT-related glitch that was noticed by the Department. The said technical glitch prevented bonafide attempts to comply with the process of filing forms or returns all over the country. It was for this purpose that a Redressal Committee was formed. On a perusal of Ext.P3, it is seen that petitioner had, in fact, emailed to the help desk at GST along with the screen shot of the error pointed out, requesting their assistance to complete the filing process. Ext.P3 email is dated 26-09-2017. In view of Ext.P3, the statement of the appellant that there was nothing on record to suggest that the petitioner had made efforts to file the declaration between the period 01-07-2017 to 27-12-2017 is not entirely correct.

7. Under section 140 of the CGST Act, registered persons are eligible to carry forward unutilized CENVAT credit and credit of duties or taxes paid on inputs/capital goods. No time limit is specified under the said provision to carry forward unutilized credit. However Rule 117 of CGST Rules provide for a period of 90 days from the appointed day, i.e, 01-07-2017. This period was extended till

27-12-2017 and thereafter by Rule 117(1A) the Commissioner's were given the power to extend the time till 31.08.2020.

8. It is significant to note that the statute does not provide for any provision for lapsing of unutilized input tax credit for non filing of TRAN-1. The input tax credit is required by law to be credited to the electronic credit ledger of an assessee. Failure to credit the input tax credit is an infraction of section 140(1) and to Rule 117(3) of the GST Rules. Input tax credit is an asset in the hands of the dealer. A registered dealer had a statutory right under the VAT regime to get refund. Unutilized input tax credit of the erstwhile regime can be denied from being credited to the electronic credit ledger only under the contingencies mentioned in the proviso to section 140(1). On all other situations, this statutory right cannot be defeated by any procedural rules under the GST regime. In this context, we bear in mind the salutary principles enshrined in Article 265 and Article 300A of the Constitution of India also.

9. It is axiomatic that computer literacy has not reached its pinnacle in our country. Technical glitches at the transition stage to GST should not affect above said statutory right of dealers. Attempt must always be made not to deprive a dealer from a bonafide claim,

through technicalities. In the wake of the transition period to GST and the switching over to the electronic portal, admittedly glitches had occurred. In such instances, the department should have, while assisting the assessees, acted with alacrity and promptness rather than deny bonafide claims.

10. The issue raised in this writ appeal being technical in nature, it is only in the interest of all that such technical issues do not stand in the way of rendering justice. Keeping in perspective the contentions in the case, we are of the view that the impugned judgment does not reflect any error of law warranting an interference by this Court in appeal. In fact, the impugned judgment of the learned Single Judge being an innocuous one, we are constrained to observe that the respondents ought not to have pursued the same in appeal, wasting judicial time and energy.

11. It is profitable in this context to refer to certain observations of the High Court of Punjab & Haryana in **Adfert Technologies Pvt. Ltd. v. Union of India and others** (2019 SCC OnLine P&H 5701) wherein it was held as follows:

> *"14.....Various reasons assigned by Petitioners seem to be plausible and we find ourselves in consonance with the argument of Petitioners that unutilized credit arising on account of duty/tax paid under erstwhile Acts is vested right which cannot be taken away on procedural or technical grounds. The Petitioners*

who were registered under Central Excise Act or VAT Act must be filing their returns and it is one of the requirements of Section 140 of CGST Act, 2017 to carry forward unutilized credit. The Respondent authorities were having complete record of already registered persons and at present they are free to verify fact and figures of any Petitioner thus inspite of being aware of complete facts and figures, the Respondent cannot deprive Petitioners from their valuable right of credit.

15. During the course of arguments, counsel for the Petitioners submitted various judgments and we find that a Division Bench of Gujrat High Court in the case of Siddharth Enterprises v. The Nodal Officer 2019 TIOL 2068 has dealt with issue involved at length. It has been held that denial of credit of tax/duty paid under existing Acts would amount to violation of Article 14 and 300A of Constitution of India. Unutilized credit has been recognized as vested right and property in terms of Article 300A of the Constitution of India. We deem it appropriate to reproduce relevant extracts as below:

> *"33. In our opinion, it is arbitrary, irrational and unreasonable to discriminate in terms of the time-limit to allow the availment of the input tax credit with respect to the purchase of goods and services made in the pre-GST regime and post-GST regime and, therefore, it is violative of Article 14 of the Constitution.*
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> *34. Section 16 of the CGST Act allows the entitlement to take input tax credit in respect of the post-GST purchase of goods or services within return to be filed under Section 39 for the month of September following the end of financial year to such purchase or furnishing of the relevant annual return, whichever is earlier. Whereas, Rule 117 allows time-limit only up to 27th December 2017 to claim transitional credit on pre-GST purchases. Therefore, it is arbitrary and unreasonable to discriminate in terms of the time-limit to allow the availment of the input tax credit with respect to the purchase of goods and services made in pre-GST regime and post-GST regime. This discrimination does not have any rationale and, therefore, it is violative of Article 14 of the Constitution.*
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> *xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx*
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> *38. By not allowing the right to carry forward the CENVAT credit for not being able to file the form GST Tran-1 within the due date may severely dent the writ-applicants working capital and may diminish their ability to continue with the business. Such action violates the mandates of Article 19(1)(g) of the Constitution of India."*

12. We concur with the observations in the above quoted

judgment. The special leave petition against the above referred judgment has also been dismissed.

13. Granting an opportunity of hearing is only to enable the process of decision-making simpler. It is one of the basic principles of natural justice. In the process of rendering justice, an opportunity of hearing is a basic postulate. The challenge now raised by the appellant against the opportunity of hearing directed to be afforded by the learned Single Judge in the impugned judgment is therefore not tenable.

In the said circumstances, we do not find any merit in this writ appeal and the same is dismissed.

Sd/-

S.V.BHATTI
JUDGE

Sd/-

BECHU KURIAN THOMAS
JUDGE

vps