

CGST/Kerala State GST: Where assessee had failed to upload Form GST TRAN-1 because of some system error, it was directed to apply to Nodal Officer in this regard, who would look into issue and facilitate assessee's uploading Form GST TRAN-1

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[2018] 96 taxmann.com 409 (Kerala)

HIGH COURT OF KERALA

Smartuff Glass Ltd.

v.

Union of India*

DAMA SESHADRI NAIDU, J.

W.P. (C) NO. 12592 OF 2018

JULY 24, 2018

Section [140](#) of the Central Goods and Services Tax Act, 2017 read with [rule 117](#) of the Central Goods and Services Tax Rules, 2017 - Transitional provisions - Input tax credit - Transitional arrangement for (NR) - Assessee had failed to upload Form GST TRAN-1 because of some system error - It filed a writ petition seeking directions to enable it to take credit of available input tax - Whether in view of Circular No. 39/13/2018-GST, dated 3-4-2018 issued by Government of India, assessee was to be directed to apply to Nodal Officer in this regard, who would look into issue and facilitate assessee's uploading Form GST TRAN-1 - Held, yes [Para 5][In favour of assessee]

Circulars and Notifications: [CBEC Circular No. 39/13/2018-GST, dated 3-4-2018](#)

FACTS

- The assessee had failed to upload Form GST TRAN-1 because of some system error.
- It filed a writ petition seeking directions to enable it to take credit of the available input tax.

HELD

- The Government of India has issued Circular No. 30/13/2008-GST, dated 3-4-2018 for 'setting up an IT Grievance Redressal Mechanism to address the grievances of tax payers due to technical glitches on GST Portal.' Paragraph 5 of the Circular outlines the procedure the Nodal Officer is to follow. [Para 3]
- Not only the present assessee but also many other people faced this technical glitch and approached this Court. Both the counsels submitted that this Court on earlier occasions permitted the petitioners to apply to the Nodal Officer for the issue resolution. [Para 4]
- So the assessee may apply to the Nodal Officer. The assessee applying, the Nodal Officer will look into the issue and facilitate the assessee's uploading Form GST TRAN-1 without reference to the time frame. [Para 5]
- If the uploading of Form GST TRAN-1 is not possible for reasons not attributable to the assessee, the Nodal Officer will also enable it to take credit of the input tax

available at the time of its migration. [Para 6]

M. Unnikrishna Menon, Adv. *for the Petitioner.* **P.R. Sreejith**, SC and **Dr. Thushara James**, Govt. Pleader *for the Respondent.*

JUDGMENT

1. The petitioner, a registered dealer under the Kerala Value Added Tax Act, has now migrated to the Goods and Services Tax regime. To use the input tax available to its credit at the time of migration, the petitioner had to upload FORM GST TRAN-1 within the stipulated time. The petitioner asserts that though it attempted to upload form within the time, it failed because of some system error. The petitioner, therefore, seeks directions to enable him to take credit of the available input tax.

2. Heard the learned counsel for the petitioner as well as the learned Government Pleader, besides perusing the record.

3. There is a circular issued by the Government of India for "setting up an IT Grievance Redressal Mechanism to address the grievances of taxpayers due to technical glitches on GST Portal." Paragraph 5 of the circular outlines the procedure the Nodal Officers is to follow. It reads:

"5. Nodal officers and identification of issues 5.1 GSTN, Central and State government would appoint nodal officers in requisite number to address the problem a taxpayer faces due to glitches, if any, in the Common Portal. This would be publicized adequately.

5.2 Taxpayers shall make an application to the field officers or the nodal officers where there was a demonstrable glitch on the Common Portal in relation to an identified issue, due to which the due process as envisaged in law could not be completed on the Common Portal.

5.3 Such an application shall enclose evidences as may be needed for an identified issue to establish bona fide attempt on the part of the taxpayer to comply with the due process of law.

5.4 These applications shall be collated by the nodal officer and forwarded to GSTN who would on receipt of application examine the same. GSTN shall after verifying its electronic records and the applications received, identify the issue involved where a large section of tax payers are affected. GSTN shall forward the same to the IT Grievance Redressal Committee with suggested solutions for resolution of the problem. "

(italics supplied)

4. Not only the petitioner but also many other people faced this technical glitch and approached this Court. Both the learned counsel submit that this Court on earlier occasions permitted the petitioners to apply to the additional sixth respondent for the issue resolution.

5. So, in this case also, the petitioner may apply to the Nodal Officer. The petitioner applying, the Nodal Officer will look into the issue and facilitate the petitioner's uploading FORM GST TRAN-1, without reference to the time-frame. Ordered so.

6. I may also observe that if the petitioner applies within two weeks after receiving this judgment, the Nodal Officer will consider it and take steps within a week thereafter. If the uploading of FORM GST TRAN-1 is not possible for reasons not attributable to the petitioner, the authority will also enable it to take credit of the input tax available at the time of its migration.

With these directions, I dispose of the Writ Petition.

s.k. jain

*In favour of assessee.