

GIB/TN/INNOVATIVE MOTORS/15.04.2021/HC-177

High Court Category : FILING OF FORM GST

State : Tamil Nadu

Order No.: GIB/TN/INNOVATIVE MOTORS/15.04.2021/HC-177

Name of Entry :

TVL. INNOVATIVE MOTORS

Date : 15-04-2021

Breif Issue :

FACTS AND ISSUE OF THE CASE:

In this case petitioner is the partner of the business concern, in the name and style of M/s. Innovative, engaging in sale of Yamaha motorcycles and had certain un-utilized amounts to its credit. Due to introduction and implementation of new tax regime, namely Goods and Service Tax on 01.07.2017, the credits as aforesaid were liable to be transitioned and carried forward, for which purpose a Form in TRAN-1 and 2, was to be uploaded in the portal of the Department. There were admittedly manifold glitches in accessing the website and uploading the Form. In fact, Courts all over the country have been dealing with matters where assesseees have vented grievances and difficulties in uploading the Forms and relief has been granted in several matters directing the Department to permit access and allow the petitioner therein to upload the declaration Forms.

The learned counsel for the petitioner would submit that the petitioner has been filing regular monthly returns, but has been unable to seek the benefit of carry forward credit, since TRAN-1 form was not uploaded in time. The learned panel counsel appearing for the respondents reiterated the contentions set out in the counter affidavit. She would submit that though the Government has given sufficient time to the petitioner to carry forward the input tax credit to the new GST regime, the same was not utilized by the petitioner due to negligence and the facility extended by the Government for filing TRAN -1 was withdrawn with effect from 28.12.2017 and hence the petitioner is not entitled to avail the input tax credit and this Writ Petition is liable to be dismissed.

This Writ Petition has been filed by the petitioner to direct the respondents to reopen the GST Portal and to allow access to the portal to enable us to file Form GST TRAN – 1.

Decision of Advance Ruling Authority :

DECISION:

It is to be noted that on 03.04.2018, the Central Board of Indirect Taxes and Customs issued a circular bearing No.39/13/2018-GST in F.No.267/7/2018-CX.8, dealing with the subject of setting up of an IT Grievance Redressal Mechanism to address the grievances of assesseees. It is thus clear that the officials of the Department of Goods and Service Tax were well aware of the existence of such glitches. Notwithstanding this, the Board places the onus upon the assessee to establish a demonstrable glitch in the portal. Such requirement does not figure in the Act prior to 03.04.2018 and thus an assessee has not been put to notice that would have to collect evidence of difficulty/technical glitch in uploading forms.

The requirement for an assessee to establish technical difficulty as expressed in Circular dated 03.04.2018 is reiterated in the provision - Though Goods and Service Tax has been introduced to streamline multiple revenue enactments, the mass litigation that Rule 117 has generated, has defeated the very object and purpose of the enactment. Transition, by itself, does not vest any right in the assessee. It is only utilisation of credit that does, and such utilisation is subject to verification and assessment by an Assessing Officer. The exchange of communications between 12.02.2019 to 26.03.2019 reveals that the petitioner has been diligent in making efforts to open the portal and upload the forms. In the light of the above, the respondents are directed to do the needful forthwith to enable the petitioner to upload the requisite forms - Petition allowed.