

GIB/GUJ/SIDDHARTH/06-09-2019/HC-68

High Court Category : TRAN-1

State : Gujarat

Order No.: GIB/GUJ/SIDDHARTH/06-09-2019/HC-68

Name of Entry :
SIDDHARTH ENTERPRISES

Date : 06-09-2019

Breif Issue :

ISSUE INVOLVED :

whether the petitioner is entitled to carry forward CENVAT credit balance as on 30th June 2017 under section 140 of the CGST Act 2017, in the absence of form TRAN-1 which is not filed.

FACT OF THE CASE :

- The Writ applicant is a partnership firm registered under CGST Act having its registered office at Bharuch ,state of Gujrat having the business of import and export and housewares.
- Due to some reasons the petitioner was unable to file form GST TRAN-1. However the nodal officer has been informed that applicant can't be permitted to file form GST TRAN-1 ,because as per the GST system logs the tax payer has neither tried for saving/ submitting or filing the form GST-TRAN 1.

THE PETITIONER HAS MENTIONED THE FOLLOWING REASONS FOR WHICH THE WRIT HAS BEEN FILED :

- Form GST TRAN-1 could not be filed on account of the technical glitches in terms of poor connectivity and other technical difficulties of common portal.
- The right to carry forward the CENVAT credit is a constitutional right.
- The liability to pay GST on sale of stock carry forward from the previous tax regime without corresponding input tax credit would lead to double taxation on the same subject matter and therefore it is irrational.

Decision of Advance Ruling Authority :

DECISION:

- The court also relied on the judgements in case of the Krish Automotors Pvt. Ltd. Vs UOI and

others.

- Hon'ble Gujrat HC directed the respondents to permit the petitioners to allow filing of declaration in form GST TRAN-1 and GST TRAN-2 ,as they can claim transitional credit of the eligible duties in respect of the inputs held in stock of the appointed day in terms of section 140(3) of the Act.
- It has also been contented that transitional credit is procedural in nature and thus should not be construed as a mandatory provision, according to the due date contemplated under Rule 117 of the CGST Rules.