IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.172 of 2024

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M/S Graphite India Limited having its office at Village Phulwaria, P.O.-Barauni, District-Begusarai- 851112, Bihar through its authorized representative Shri Alok Chandak, Aged about 54 years, s/o Late Sushil Chand Chandak, resident of Village- Phulwaria, P.O. Barauni, District - Begusarai.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Commissioner, Commercial Taxes Department, Government of Bihar, Patna.
2. The Joint Commissioner of State Tax (Audit), Commercial Taxes Department, Darbhanga.
3. The Assistant Commissioner of State Tax (Audit), Commercial Taxes Department, Darbhanga.
4. The Assistant Commissioner of State Tax (Adm), Commercial Tax Office, Teghra, Begusarai.
5. The Joint Commissioner of State Tax (I/C), Commercial Tax Office, Teghra, Begusarai.

... ... Respondent/s

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Acts/Sections/Rules:

- Section 140 and 142(8)(b) of CGST Act, 2017
- Section 18 of the GST Act
- Rule 117 of the CGST Rules 2017
- Bihar VAT Act 2005

Cases referred:

- Adfert Technologies Pvt. Ltd. v. Union of India; AIR Online 2019 Punjab and Haryana 1155

Writ petition - filed for refund of Input tax credit accrued to the petitioner under the Value Added Tax (VAT) regime.

Petitioner had a total claim of ITC coming to Rs.1,88,60,453.42/-. Under the new GST regime, assessees were conferred with the benefit of carrying over the ITC of the VAT regime. The carry forward claimed was of Rs.1,68,78,801/-. The difference of Rs.19,81,652/- was not claimed by the petitioner, admittedly, since the petitioner did not have the statutory forms to substantiate the claim at that point of time.

Assessment was done and the entire claim as raised was allowed by the Assessing Officer. The Assessing Officer also allowed the excess ITC of Rs.19,81,652/- which, however, when sought as a refund was not permitted. The claim made specifically was rejected.

Held - It is wrong to say that if any ITC was available and the same was not adjusted in the output tax for reason of it being not claimed for carry forward, then there could be a refund in cash. Amount of ITC available as carry forward could only be claimed as set off against the out-put tax payable. What is available by the very nomenclature, is only ‘credit’ to be set off and not to be refunded as cash. In the present case, admittedly, the ITC was shown in the assessment order, in its entirety as enabled for carry forward. But the portion not claimed for carry forward cannot be allowed for set-off since only a lesser portion was claimed for carry forward in GSTR TRAN-1. The petitioner having not claimed Rs.19,81,652/- for carry forward, this would dis-entitle the petitioner from claiming any refund in cash or for set-off as ITC. In that circumstances, sub-clause (b) of Section 142(8) has absolutely no application on the claim raised by the petitioner herein. (Para 8)

Writ petition is dismissed. (Para 17)

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Appearance :
For the Petitioner/s : Mr. Nikhil Kumar Agrawal, Advocate
Ms. Aditi Hansaria, Advocate
Mr. Yash Sahay, Advocate
For the Respondent/s : Mr. Vikas Kumar, Standing Counsel (11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-07-2024

The petitioner, an assessee under the CGST Act, 2017, claims for refund of Input Tax Credit (ITC) accrued to the petitioner under the Value Added Tax (VAT) regime; when the petitioner was an assessee under the Bihar Value Added

Tax Act, 2005.

2. We heard Sri Nikhil Kumar Agarwal for the petitioner and Sri Vikas Kumar, learned counsel for the State.

3. The petitioner's contention is that during the VAT period, the petitioner had a total claim of ITC coming to Rs.1,88,60,453.42/-. On the Goods and Services Tax (GST) regime coming into effect on 01.07.2017, the assessees were conferred with the benefit of carrying over the ITC of the VAT regime to be availed under the new GST regime. The petitioner had filed the returns under the VAT Act in 31.06.2017 and also sought for the carry forward as per Annexure-P/2, in Form GSTR TRAN-1 as stipulated in the statute. The carry forward claimed was of Rs.1,68,78,801/-/. The difference of Rs.19,81,652/- was not claimed by the petitioner, admittedly, since the petitioner did not have the statutory forms to substantiate the claim at that point of time.

4. Later, assessment was done and the entire claim as raised in Annexure-P/2 was allowed by the Assessing Officer. The Assessing Officer also allowed the excess ITC of Rs.19,81,652/- which, however, when sought as a refund was not permitted. The claim made specifically was rejected as per Annexure-P/7 order.

5. The learned counsel for the petitioner argued on the basis of the provisions for carry forward of ITC as available in the statute specifically under Section 140 and 142(8)(b). Section 140 is the transitional arrangement for ITC claims and the petitioner had made a claim under sub-section (2), as is evidenced from Annexure-P/2. The petitioner's contention based on Section 143(8)(b) is that when an assessment is carried out and a refund is ordered then necessarily, the same shall be refunded to the assesee as per clause (8)(b) of Section 142.

6. Section 142 deals with miscellaneous transitional provisions and sub-section (1) specifically deals with goods on which duty has been paid not being earlier than 6 months prior to the appointed day having returned to any place of business on or after the appointed date making the registered persons eligible for refund of the duty paid under the existing law; when the return is made within a period of 6 months from the appointed day and the goods are identifiable to the satisfaction of the Proper Officer. Each of the sub-sections deal with different contingencies and the emphasis laid is on Section (8) (b). Sub-clause (a) of Section 8 enables the tax authorities to recover any tax, interest, fine or penalty

recoverable as per the earlier existing law through the provisions of the CGST Act, 2017, which amount will not be available for claiming ITC. While clause (a) enables the Department to make such recovery and prohibits any ITC claim on such recovery made, clause (b) of Section 142(8) is a benefit granted to the assessee.

7. As per clause (b) of Section 142(8) when an assessment under the earlier existing law, initiated before, on or after the appointed date of the CGST Act is completed then, any amount of tax, interest, fine or penalty which becomes refundable to the person shall be refunded to him in cash under the said law. The argument is that, what is stated therein is with respect to any assessment or adjudication proceedings completed under the VAT Act, whether it is instituted before, on or after the appointed date, wherein any refund is enabled, it has to be refunded in cash. According to the learned Counsel this this would only indicate that, if any ITC was available and the same was not adjusted in the output tax for reason of it being not claimed for carry forward, then there could be a refund in cash.

8. The argument is clearly fallacious since the amount of ITC available as carry forward could only be

claimed as set off against the out-put tax payable. What is available by the very nomenclature, is only ‘credit’ to be set off and not to be refunded as cash. In the present case, admittedly, the ITC was shown in the assessment order, in its entirety as enabled for carry forward. But the portion not claimed for carry forward cannot be allowed for set-off since only a lesser portion was claimed for carry forward in GSTR TRAN-1. The petitioner having not claimed Rs.19,81,652/- for carry forward, this would dis-entitle the petitioner from claiming any refund in cash or for set-off as ITC. In that circumstances, sub-clause (b) of Section 142(8) has absolutely no application on the claim raised by the petitioner herein.

9. The learned Government Pleader has also pointed out from the counter affidavit that, in addition to the 40 days provided for carry forward, a further period, following the Hon’ble Supreme Courts directive, was made available from the 01.10.2022 to 30.11.2022 to make claims under Section 140. The petitioner having not availed of the said window of relief to make the further claim, which was left out to be claimed under Annexure-P2, cannot now seek refund by way of cash.

10. The learned counsel for the petitioner before

us placed a judgment of the Hon'ble High Court of Punjab and Haryana in *Adfert Technologies Pvt. Ltd. v. Union of India; AIR Online 2019 Punjab and Haryana 1155. Adfert Technologies* (supra) is one in the year 2019 before the window of two months was provided between 01.10.2022 to 30.11.2022 to upload TRAN-1/TRAN-2 forms for the purpose of carrying forward the input tax credit. In the cited decision, the Division Bench of the P&H High Court highlighted & categorized the grievances of the petitioners into two; (i) of the registered persons who did not file TRAN-1 by 27.12.2017 and have no evidence of an attempt to load TRAN-1 within the stipulated period and (ii) of registered persons who uploaded TRAN-1 by 27.12.2017 wherein there had been occasioned a mistake which they desired to revise. The Division Bench took note of the fact that initially, the carry forward of un-utilized items under Section 140 of the CGST Act was allowed for a period of 90 days from the appointed date under Rule 117 of the CGST Rules 2017. This was extended from time to time, and ultimately the last date was fixed as on 27.12.2017. The Division Bench found that there was a legitimate expectation, in a running concern, that when the tax regime changed, they would be allowed to carry

forward the credit as available to them under the previous regime. It was found that denying such a vested right would be contrary to Article 14 and runs in conflict with the essence of *'doctrine of legitimate expectation'*. It is on this reasoning that a direction was issued to the respondents to permit the petitioner therein to either submit Form TRAN-1 electronically by opening the electronic portal for that purpose or allowing the petitioner to tender the said form manually on or before 15.10.2019 to enable proper processing of the claim for input tax credit; especially considering the teething problems inherent, in the assesses familiarizing themselves with the new regime and the procedure for transition from the old to the new regime.

11. We cannot but notice that those difficulties were reckoned by the Hon'ble Supreme Court when directions were issued to enable transitional claims even after the time provided in the Statute. This resulted in the window of relief, of two months, i.e. between 01.10.2022 and 30.11.2022 when such claims could have been uploaded.

12. The decision of the Punjab and Haryana High Court has no application in the present case. In the present case, the petitioner had uploaded a TRAN-1 form claiming Rs.1,68,78,801/- as against the total

claim available of Rs.1,88,60,453/-. What was not claimed in the form uploaded was voluntary and related to amounts which had no substantiating statutory forms. The petitioner was conscious of the fact that he had no valid claim for Rs. 19,81,652/-; hence, the petitioner had voluntarily not included the claim for carry forward. It is also pertinent that the petitioner, having uploaded the statutory form which facilitates carry forward of the ITC in the earlier regime, did not revise it at any time before 27.12.2017 when the Rules provided for the same. Later, as we noticed from the counter affidavit of the State, a further time was provided between 01.10.2022 and 30.11.2022; which was also not availed of by the petitioner. In such circumstances, it has to be emphasized that the petitioner did not voluntarily include Rs.19,81,652/- in Form TRAN-1, nor did he attempt to revise the claim when a window of two months was provided. There is no question of the petitioner being not acquainted with the transitional provisions or having faced any technical snag or troubled by lack of expertise, in making the demand for carry forward. Substantial claim was made as per Form GSTR TRAN-1, which was uploaded and the entire amounts claimed, was allowed set-off in the output tax.

13. Eligibility and conditions for taking ITC is statutorily enabled by Section 16 of the Goods and Services Tax Act, 2017. The provision enables every registered person, subject to such terms and conditions and restrictions prescribed and in the manner specified in Section 49, to take credit of input tax charged on any supply of goods or services to him, which are used or intended to be used in furtherance of his business by crediting it to the electronic cash ledger. The benefit hence can be claimed only in the manner provided in the statute, as a credit, or not at all and not in any event as a refund in cash. Section 49 (2) provides for ITC claimed on self-assessment to be credited to the electronic ledger and sub-section (4) provides for the amount available in the electronic credit ledger to be used for making payment towards output tax payable under the GST.

14. Section 18 of the GST Act has the nominal heading *'Availability of credit in special circumstances'*. Section 18 (1) & (2) reads as under; -

> *18. Availability of credit in special circumstances.—*
>
> *(1) Subject to such conditions and restrictions as may be prescribed—*
>
> *(a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to*

registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

(b) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

(c) where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

(d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage

points as may be prescribed.

(2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

15. Sub-section (a) of Section 18 is the enabling provision, which benefit is reflected in the Transitional Provisions under Section 140, permitting a business registered under the VAT provisions; in which regime too there existed ITC, to carry forward that credit to be availed as set off under the GST regime for the inputs held in stock; whether it be in the semi-finished or finished form, as on the date the business becomes liable to pay tax under the GST regime. Sub-section (2) prohibits any credit to be availed after the expiry of one year from the date of issue of tax invoice relating to such supply. As far as the transitional claims are concerned there is a further limitation prescribed as on 27.12.2017 and then ofcourse, as per the Hon'ble Supreme Court's directions there was a window of two months provided. Unless the claim is made in Form GSTR TRAN-1 within the time initially provided or that provided later, to get over the teething problems, there can be no claim raised even for credit of input

tax and its set off and never of a refund in cash.

16. We find absolutely no reason to interfere with the order rejecting the claim for refund, which refund in any event is not applicable, and the petitioner can only claim ITC as set-off against the output tax.

17. The writ petition would stand dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

sharun/aditya

AFR/NAFR	**AFR**
CAV DATE	
Uploading Date	18.07.2024
Transmission Date	