

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3380 OF 2022

Euro Pratik Sales CorporationPetitioner

Vs.

Union of India and Ors.Respondents

Mr. Shreyash J. Shah a/w. Mr. Udayan Mukherjee and Ms. Kavita Singh for petitioner.

Mr. V.A. Sonpal a/w. Mrs. Jyoti Chavan, AGP and Mr. Himanshu B. Takke, AGP for State.

Mr. Shravan Kumar Pabatti, Assistant Commissioner of CGST, Div VI & VII, Mumbai West Commissionerate present.

Mrs. Neeta Masurkar a/w. Mr. Satyaprakash Sharma for respondent nos.2,3 and 4.

CORAM : K. R. SHRIRAM &
A. S. DOCTOR, JJ.

DATED : 17th NOVEMBER 2022

PC. :

1 Prayer clauses – (a) and (b) of the petition read as under :

(a) This Hon'ble Court may be pleased to issue a Writ, order or direction including a Writ in the nature of mandamus directing the respondents (or such of the respondents as this Hon'ble Court may deem fit) to re-open the GSTN portal to enable the petitioner to file revised Form GST TRAN-1 online or accept the manual copy of the revised Form GST TRAN-1 as the declaration under Section 140(3) of the CGST Act read with Rule 117 of the CGST Rules, in order to enable the petitioner to rectify the error/mistake committed by the petitioner while filing Form TRAN-1;

(b) This Hon'ble Court may be pleased to issue a writ/order or direction including a Writ of Mandamus directing the respondents (or such of the respondents as this Hon'ble Court may deem fit) to allow the petitioner to file Form TRAN-2 in order to enable the petitioner to avail/claim the Credit of Rs.39,13,025/- which he is entitled to.

2 Considering the issue at hand, by consent, we decided to dispose the petition at this stage itself.

3 Petitioner was registered for the purpose of GST and his GST registration number was 27AQNPS5698H1ZV. Petitioner closed his business and applied for cancellation of registration which was granted by an order dated 18th July 2019.

4 At the time of cancellation, it is petitioner's case that petitioner had to his deemed excise credit a sum of Rs.39,13,025/-. It is petitioner's case that petitioner was entitled to claim transition credit in Form GST TRAN-1 under sub-section 3 of Section 140 of the Central Goods and Services Tax Act, 2017 (CGST Act). Petitioner applied for transition but due to various reasons, petitioner's transition could not take place.

5 Considering the documents annexed to the petition and the documents handed over across the bar with copy to respondents' counsel, it appears that petitioner is unable to transit the credit because petitioner's registration has been cancelled. Sub-section 1 of Section 29 of CGST Act provides for a party to apply for cancellation on his own motion. Sub-section 2 of Section 29 provides for the proper officer to cancel the registration of a person on certain situations mentioned therein. Sub-section 3 of Section 29 provides cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act

or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation. Therefore, it is imperative for petitioner to be permitted to transition the credit to new GST regime.

6 Section 30 of CGST Act provides for revocation of cancellation of registration but that only envisages situations where a registration is cancelled by the proper officer on his own motion. It does not factor in a situation as in the present case that is a registered person has applied for cancellation and an application for revocation of such a cancellation or restoration of the registration.

7 Mr. Shah submitted that it is for this reason that the portal, which is the common portal for State GST as well as Central GST, in its manual for revocation of cancelled registration provides “How can I apply for revocation of cancellation of registration done by the Tax Official suo motu?” There is no provision for application for revocation of the cancellation of registration or restoration of the registration in circumstances similar to the case at hand.

8 Mrs. Masurkar submitted that petitioner is registered with the State GST and in the petition only the Central Authorities have been made parties and not the State GST.

9 Here is a case, in our view, petitioner cannot be permitted to forgo a sum of Rs.39,13,025/- which according to petitioner is entitled to deemed excised credit particularly when under sub-section 3 of Section 29 his liability will continue even after cancellation of registration.

10 It will be wholly unfair if petitioner ends up having to forgo the deemed excise credit of a substantial amount of Rs.39,13,025/-. Hence, we pass the following order :

(a) petitioner shall, by 4.30 p.m. on 18th November 2022, submit the physical application for restoration of the registration;

(b) the application, subject to paying all necessary fees and filing requisite documents, shall be considered and registration shall be restored by not later than 22nd November 2022.

We are giving this short time since pursuant to the order passed by the Hon'ble Apex Court, the window for TRAN-1 and TRAN-2 migration is open till 30th November 2022;

(c) after restoration of registration, the Nodal Officer shall forward the restoration order to GSTN and GSTN shall on receipt of the order ensure that the portal is open in such a way that petitioner will be able to apply for migration under TRAN-1 and TRAN-2 before 30th November 2022.

(d) if online restoration is not possible, the order will be passed manually and the Nodal Officer shall forward all those documents to GSTN and GSTN shall consider the said order as if filed online/properly filed and give effect to that in its portal.

(e) if it is not resolved by 28th November 2022, petitioner is permitted to file manually for migration of

TRAN-1 and TRAN-2 and the Nodal Officer shall consider the same.

11 Petition disposed accordingly.

(A. S. DOCTOR, J.)

(K. R. SHRIRAM, J.)