9THE HIGH COURT FOR THE STATE OF TELANGANA

*** THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**
AND
THE HON'BLE SRI JUSTICE P. KESHAVA RAO

+ WRIT PETITION No.46792 of 2018

% Date: 15.04.2019

Between:

M/s. Magma Fincorp Limited,
Ameerpet, Hyderabad,
represented by Associate Vice President. … Petitioner

v.

$ State of Telangana, represented by Principal Secretary,
Finance Department, Secretariat Buildings,
Hyderabad and others. ... Respondents

! For Petitioner : Sri J.K. Mithra appearing for
Sri P. Anil Mukerji

^ For Respondents : G.P. for Finance & Planning
G.P. for Women & Child Welfare
G.P. for Commercial Tax
Sri J. Anil Kumar, Standing Counsel
for Commercial Tax.

< Gist :

> Head Note :

? Cases Referred : Nil

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THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.46792 of 2018

ORDER: ***(Per V. Ramasubramanian, J)***

Challenging the rejection of transitional relief in terms of sections 73 and 74 of the Telagnana Goods and Services Act, 2017 (for short 'the Act') read with Rule 121 thereto, and a consequential demand made for the alleged excess claim of transitional relief, the Dealer has come up with the above writ petition.

2. Heard Mr. P. Anil Mukharji, learned counsel appearing for the petitioner and Mr. J. Anil Kumar, learned Special Standing Counsel for the respondents.

3. The petitioner is engaged in the business of leasing and financing of vehicles and equipments. They were earlier registered under the Telangana Value Added Tax Act and now registered under the Central and State GST Acts.

4. According to the petitioner, they had an input tax credit to the tune of Rs.1,79,23,784/-, as on the date of bifurcation of the composite State of Andhra Pradesh, namely, 02.06.2014. In order to deal with the question of transfer of ITC, as between the bifurcated States that came into existence after reorganization, a circular dated 12.05.2015 was issued by the commissioner of Commercial Taxes. The circular prescribed that those dealers, who migrated from the State of Andhra Pradesh to the State of Telangana may claim Net Credit Carried

Forward (NCCF) in the State to which they have migrated after the appointed date. It was further stipulated that the formula shall be in tune with Section 56 of the Andhra Pradesh State Reorganization Act, 2014.

5. According to the petitioner, they migrated to the State of Telangana after bifurcation and the amount of total ITC available to their credit was shown in the Web Portal of the Department as Rs.1,77,65,101/-.

6. It is the case of the petitioner that there are no provisions available in the VAT return form to show such credit and the petitioner continued to use such credit. By June 2017, the petitioner had already used credit worth Rs.33,53,485/- leaving a balance credit of Rs.1,43,96,486/-, as on 01.07.2017, when the State and Central GST Law came into effect.

7. The petitioner claims to have filed all their returns up to 30.06.2017 under the Telangana VAT Act, 2005.

8. After the GST Law came into force with effect from 01.07.2017, the registered dealers were made entitled under Section 140 of the Telangana GST Act, 2017 to take in their electronic credit ledgers, the amount of credit carried forward in their returns, furnished under the existing law. As per this transitional arrangement, the petitioner filed TRAN-1 on 07.10.2017 under the Telangana Goods and Services Tax Act, 2017 for the transfer of ITC of Rs.1,43,96,486/- available as on 30.06.2017 under the State VAT Act. But, the officials attached to the office of the Assistant Commissioner (State Tax)

visited the premises of the petitioner on 13.03.2018 purportedly for the verification of TRAN-1 filed by them. Thereafter, a notice dated 28.05.2018 was issued advising the petitioner not to claim transitional credit and calling upon the petitioner to produce documentary evidences for the transitional relief.

9. The petitioner submitted a reply on 07.08.2018. Without passing any orders on the reply so filed, the Assistant Commissioner (State Tax) issued another notice dated 05.10.2018 and the petitioner again filed a reply on 07.11.2018.

10. A personal hearing was conducted on 16.11.2018 and thereafter an order dated 26.11.2018 was passed by the Assistant Commissioner (State Tax) rejecting the transitional relief and demanding payment of an equivalent amount on the ground that it was an excess claim. It is against the said order that the petitioner has come up with the above writ petition.

11. Assailing the impugned order of rejection of transitional relief, it is contended by Mr. Anil Mukharjee, learned counsel for the petitioner (1) that multiple notices by different persons holding the office at different points of time are bad in law, (2) that the impugned order has been passed on the basis of provisions of law which are inapplicable, (3) that in any case the simultaneous invocation of sections 73 and 74 of the Act was wrong (4) that Rule 120 cannot override the Act, (5) that the three conditions laid down in the proviso to Section 140(1) of the Act are not satisfied in this case, (6) that the respondents cannot rely upon the CCT circular dated 12.05.2015, as it

has no application to GST law, which came into effect only in 2017 and (7) that the impugned order does not deal with various contentions raised by the petitioner, in their reply.

12. In response to the above contentions, it is argued by Mr. J. Anil Kumar, learned Special Standing Counsel that the case on hand is a classic example of the difficulties posed by the transition from VAT regime to GST regime, even before the problems posed by the bifurcation of the State got resolved. According to the learned Special Standing Counsel, Section 140 of the Telangana GST Act does not deal with the question of apportionment between the bifurcated States and that a clear mechanism was provided in the VATIS system as to how a dealer could utilize the Net Credit Carried Forward (NCCF). According to the learned Special Standing Counsel, the petitioner ought to have claimed the benefit of 28 NCCF against the liabilities in the monthly returns in VAT 200 or CST-VI or the assessment liabilities under both VAT and CST. They also had the option to claim refund, but the Dealer did not avail these opportunities. In this case, the assessment for the period 2011-12 to 2013-14 was already completed and hence, the learned Special Standing Counsel contended that a Dealer, who failed to take advantage of the mechanism provided, cannot have any grievance.

13. We have carefully considered the above submissions.

14. It is seen from the impugned order that there is no dispute about the fact that there was excess credit carry forward (NCCF) to the tune of Rs.1,77,65,101/- as on 01.06.2014, immediately preceding

the day on which the State was bifurcated. It is also admitted in the impugned order that after the bifurcation, the petitioner paid taxes to the tune of Rs.93,38,148/-, in cash, instead of adjusting the 28 NCCF. Only a small portion of the credit available to them was adjusted towards tax. It is further admitted in the impugned order that one of the prescribed mode of utilizing 28 NCCF, was to claim refund. But, according to the respondents, the State GST Act does not provide for utilization of the 28 NCCF as transitional relief. Therefore, the second respondent concluded that the Assessing Authority has no such power beyond what is prescribed by the Statute and that the Dealer is always at liberty to adjust the liabilities in pending assessments under VAT and CST and thereafter claim refund.

15. In the light of the admitted facts reflected even in the impugned order, it is clear that the petitioner is not making an illusory or stale claim, but is making a claim for something that he is entitled, even according to the respondents, though in a different form.

16. To put it in simple terms, it is not the case of the respondents that the petitioner is claiming something that they are not lawfully entitled. All that is stated by the second respondent is that while the petitioner may be entitled either to adjust the available credit against any liabilities under the VAT regime or to claim refund, they are not entitled to seek transitional relief.

17. The provision for transitional relief is to be found in Section 140 of the Telangana GST Act, 2017. It reads as follows:

140. Transitional arrangements for input tax credit:- (1) A registered person, other than a person opting to pay tax Transitional under section 10, shall be entitled to take, in his electronic credit ledger, credit of the amount of Value Added Tax [and Entry Tax] carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law, not later than ninety days after the said day, in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:-
(i) where the said amount of credit is not admissible as input tax credit under this Act; or
(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date;

Provided further that so much of the said credit as is attributable to any claim related to section 3, sub-section (3) of section 5, section 6, section 6A or sub-section (8) of section 8 of the Central Sales Tax Act, 1956 (74 of 1956) that is not substantiated in the manner, and within the period, prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 shall not be eligible to be credited to the electronic credit ledger:

Provided also that an amount equivalent to the credit specified in the second proviso shall be refunded under the existing law when the said claims are substantiated in the manner prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957.

(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed input tax credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as input tax credit under the existing law and is also admissible as input tax credit under this Act.

Explanation.—For the purposes of this section, the expression — "unavailed ***input tax*** credit" means the amount that remains after subtracting the amount of ***input tax*** credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of ***input tax*** credit to which the said person was entitled in respect of the said capital goods under the existing law.

(3) A registered person, who was not liable to be registered under the existing law or who was engaged in the sale of exempted goods [or tax free goods] under the existing law but which are liable to tax under this Act [or where the person was entitled to the credit of input tax at the time of sale of goods], shall be entitled to take, in his electronic credit ledger, credit of the value added tax [and entry tax] in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions namely: —

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of such inputs; and

(iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of tax in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the sale of taxable goods as well as exempted goods [or tax free goods] under the existing law but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,-

(a) the amount of credit of the value added tax [and entry tax]carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and

(b) the amount of credit of the value added tax [and entry tax] in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods [or tax free goods] in accordance with the provisions of sub-section (3).

(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of value added tax [and entry tax] in respect of inputs received on or after the appointed day but the tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other taxpaying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that the said registered person shall furnish a statement, in such manner as maybe prescribed, in respect of credit that has been taken under this sub-section.

(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of value added tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:–

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is not paying tax under section 10;

(iii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of inputs; and

(v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(7) The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed."

18. Obviously, the above provision is intended to take care of the contingency where a registered person has credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day. Such a person is made entitled under sub-section (1) of Section 140 of the Act to take credit in his electronic credit ledger. There are three provisos to sub-Section (1) of Section 140 of the Act. The second and third provisos are not relevant for our purpose, as they relate to credit attributable to any claim related to certain provisions of Central Sales Tax Act, 1956.

19. But the first proviso, which may be relevant, stipulates that under two contingencies, a registered person shall not be allowed to take credit. These contingencies are (1) where the amount of credit is not admissible as Input Tax Credit under this Act and (2) where the registered person has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed day. It is not the case of the second respondent that the case of the petitioner would fall under any of the contingencies stipulated in the first proviso to sub-section (1) of Section 140.

20. Sections 16 to 21 of the Telangana GST Act, 2017 deal with Input Tax Credit. While Section 16 lays down the eligibility as well as the conditions for taking Input Tax Credit, Section 17 speaks about the apportionment of credit, when the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes. Section 18 takes care of certain circumstances such as the one where ITC was available in respect of

the inputs held in stock or semi finished or finished goods on the day immediately preceding the date from which a person became liable to pay tax under the GST Act. Section 19 deals with ITC in respect of Inputs sent for job work and Section 20 speaks about the manner of distribution of credit by input service distributor.

21. It is not stated in the impugned order that Section 140 does not have any application to the case on hand. All that is stated in paragraph 2 of the impugned order is that it is only the amount available as ITC in the VAT DCB for the month of June 2017 that the petitioner is eligible for claiming it as transitional relief. But, this is not supported by the provisions of Sections 16 to 21 of the TGST Act, 2017 so as to make the case of the petitioner fall under the first contingency contemplated in the first proviso to sub-section (1) of Section 140. There is also no complaint by the respondents that the petitioner failed to furnish all the returns required under the existing law for the period of six months immediately preceding the appointed day.

22. Even while rejecting the claim for transitional relief, the second respondent has not only admitted the availability of excess credit in favour of the petitioner, but has also conceded that he petitioner may either claim refund or adjust their liability against pending assessments under the VAT or CST Acts. But, it appears that no assessment is pending either under the VAT Act or under the CST Act. Therefore, the only way the petitioner can make use of this credit, even according to the second respondent, is to make a claim for

refund. But, we do not know what difference it would make for the respondents, whether the petitioner seeks refund or seeks adjustment of their liability under the GST regime.

23. Once it is admitted that credit was available to the petitioner on the date of switch over from VAT regime to GST regime and once it is admitted that the petitioner may be entitled to make a claim for this credit in other modes, we think that the second respondent ought to have given a purposive interpretation to Section 140 of the Act read with Sections 16 to 21 of the Telangana GST Act 2017. As he has failed to do the same, the matter requires reconsideration.

24. Therefore, the writ petition is allowed and the impugned order is set aside and the matter remanded back to the second respondent for a fresh consideration in the light of the observations contained in this order. The second respondent may pass fresh orders within a period of 4 weeks from the date of receipt of a copy of this order.

25. Consequently, miscellaneous petitions, if any pending, shall stand closed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

April 15, 2019

Note:

L.R. Copy to be marked.

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