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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 12.12.2019

+ W.P.(C) 8317/2019

VISION DISTRIBUTION PVT. LTD.

..... Petitioner

Through: Mr. Ruchir Bhatia and Mr. Rakesh
Kumar, Advocates.

versus

COMMISIONER, STATE GOODS & SERVICES TAX & ORS.

..... Respondents

Through: Mr. Anuj Aggarwal and Mr. Ankit
Monga, Advocates.
Mr. Harpreet Singh, Senior Standing
Counsel for R-1 & 2 with
Mr. Arunesh Sharma and Ms. Suhani
Mathur, Advocates.
Mr. Amit Bansal, SSC with
Mr. Aman Rewaria and Ms. Vipasha
Mishra, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (Oral):

1. We have heard learned counsels and proceed to dispose of the present petition. The Petitioner has preferred this petition to seek a direction to the Respondents to issue the refund of Rs. 3,05,09,355/- to the Petitioner. The case of the Petitioner is that it is engaged in the business of sale and purchase of mobile phones. The output supplies made by the Petitioner are also in the course of exports out of India. The Petitioner states that it was

registered under the provisions of Delhi Value Added Tax, 2014. When the Goods and Services Tax Act was enforced w.e.f. 01.07.2017, the Petitioner migrated to the said system of taxation. The Petitioner states that it was entitled to carry forward its electronic ledger account of unutilized Input Tax Credit (ITC) in terms of Section 140 of the CGST Act, 2017. As on 01.07.2017, in terms of Section 140 of the CGST Act, the Petitioner claims that it was entitled to CGST credit of Rs. 3,13,06,050/-. The Petitioner points out that in terms of rule 117 of the CGST Rules, the credit of input tax could be submitted in Form GST TRAN-1 within ninety days of the appointed date which was 01.07.2017. Consequently, the last date for submission of Form GST TRAN-1 was 28.09.2017. However, admittedly, the Form GST TRAN-1 was not made available on the web portal of the Respondents upto 25.08.2017. On account of the aforesaid lapse on the part of the Respondents, the Petitioner could not upload its Form GST TRAN-1 either in the month of July, 2017, or for most part of month of August 2017. However, the business activity of the Petitioner continued, namely, of undertaking exports. The Petitioner states that in the month of July, 2017 it made exports entailing deposit of tax in cash to the tune of Rs. 1,37,37,029/, even though the Petitioner was entitled to CGST credit of Rs.3,13,06,050/- as noticed hereinabove, as on 01.07.2017.

2. The grievance of the Petitioner is that due to the inaction of the Respondents and their failure to allow smooth migration of the credit standing in the Petitioner's account of unutilized input tax, the Petitioner could not use and exploit the Input Tax Credit while making exports in the months of July and August, 2017 and was forced to shell out the amount of

Rs. 1,37,37,029/-, which would not have been the case, had the Petitioner been able to utilize its Income tax Credit which had accumulated even prior to the enforcement of the GST regime.

3. The Petitioner has claimed the refund of the said amount of Rs. 1,37,37,029/- as also the Input Tax Credit earned on zero rated supplies made in the months of July and August, 2017 which were Rs. 50,42,831/- for the month of July 2017 and Rs. 1,17,29,495/- for the month of August 2017, aggregating to Rs. 3,05,09,355/-.

4. Mr. Harpreet Singh, learned Senior Standing Counsel for the Respondents submits that the Petitioner uploaded the Form GST TRAN-1 only in the month of December, 2017, even though it was possible for the Petitioner to upload the same from 28.08.2017 onwards. He does not dispute the fact that the Petitioner could not utilize the accumulated transitional credit which was accumulated prior to the coming into force of the GST regime, during the months of July and August, 2017. He submits that those who filed their Form GST TRAN-1 from 25.08.2017 onwards, got credit in their ITC ledger in the respective months, for utilization.

5. Mr. Singh further submits that under the GST regime, there is no provision for grant of refund of the accumulated ITC and the result of the Petitioner of paying the tax in cash to the tune of Rs. 1,37,37,029/- has been that the Petitioner has earned ITC for the equivalent amount which is lying credited in its ITC ledger from November 2017 onwards, and it is open to the Petitioner to utilize the same in future. Mr. Singh submits that for the

months of July and August, 2017 there was no unutilized credit lying in the ledger account of the Petitioner and, therefore, there is no question of granting any refund to the Petitioner at this stage in respect of any amount, including the amount claimed to have been deposited in cash of Rs. 1,37,37,029/-. He submits that under Rule 86 (3) of the CGST Rules, where a registered person claims refund on any unutilized amount from the electronic credit ledger in accordance with the provisions of Section 54, the amount to the extent of the claim is required to be debited in the said ledger. In case an assessee claims refund for the months of July and August, 2017, there has to be unutilized ITC credit lying in the electronic credit ledger of the assessee for the said months, which is not the case.

6. On a query by the Court, Mr. Ruchir Bhatia, learned counsel for the Petitioner points out that the ITC lying in the Petitioner's ledger account has swollen to the tune of more than Rs. 7 crores on account of lack of avenues for it to be utilized.

7. Having heard learned counsels, we are inclined to direct partial refund of the amount claimed by the Petitioner. We are of the view that the Petitioner cannot be made to suffer on account of failure on the part of the Respondents in devising smooth transition to GST regime w.e.f. 01.07.2017, from the erstwhile indirect taxation structure. The Petitioner, being an exporter under the GST regime is entitled to undertake zero rated supplies. The Petitioner claims to have undertaken exports in the months of July and August, 2017 and since its unutilized Input Tax Credit – to the tune of Rs. 3,13,06,050/-, which was accumulated up to June, 2017, was not reflected in

its ITC ledger as on 01.07.2017, it could not utilize the same w.e.f. 01.07.2017. The same resulted in the Petitioner having to shell out, in cash, Rs. 1,37,37,029/- which would not have been required, had the Respondents taken care to ensure that the Petitioner was able to utilize its accumulated Input Tax Credit in the said months. Even the Form GST TRAN-1 was made available on the portal of the Respondents only from 25.08.2017. The business activity in the country could not be expected to come to a standstill, only to await the Respondents making the GST system workable. The failure of the Respondents in first putting a workable system in place, before implementing the GST regime, reflects poorly on the concern that the Respondents have shown to the difficulties that the trade faced throughout the length and breadth of the country. Unfortunately, even after passage of over two years, the Respondents have not remedied their omissions and failures by taking corrective steps. They continue to take shelter of the limitations in, and the inability of their software systems to grant refund, despite the same being justified. The rights of the parties cannot be subjugated to the poor and inefficient software systems adopted by the Respondents. The software systems adopted by the Respondents have to be in tune with the law, and not vice versa. The system limitations cannot be a justification to deny the relief, to which the Petitioner is legally entitled. We, therefore, reject the hyper technical objections sought to be raised by the Respondents - to the effect, that no refund can be granted, because the system did not reflect any credit lying in the ITC ledger of the Petitioner for the months of July and August, 2017. If that is so, it is entirely the Respondents making. In fact, to permit the Respondents to get away with such an argument would be putting premium on inefficiency. We therefore,

reject the submission.

8. The Petitioner claims that it is entitled to a complete refund of Rs. 3,05,09,355/- as explained hereinabove. So far as the Petitioner's claim for refund of cash deposit to the tune of Rs. 1,37,37,029/- is concerned, that, in our view can certainly not be denied to him. For the aforesaid reasons, we direct the Respondents to refund the amount Rs. 1,37,37,029/- to the Petitioner within four week from today. While making the refunds, it shall be open to the Respondents to debit the Petitioner's ITC ledger by the same amount. This is also agreeable to the Petitioner. So far as the Petitioner's claim for the refund of the remaining amount is concerned, the Petitioner has already submitted the documents in that regard. The Respondents are directed to pass a reasoned order on the same within four weeks.

9. The petition is disposed on in the above terms.

VIPIN SANGHI, J

REKHA PALLI, J

DECEMBER 12, 2019

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