GST Update: Taxpayers can now avail transitional credit upto 30th June 2020 as per Delhi High Court decision

This update seeks to discuss about the transitional credit which was entitled to be carry forward by the taxpayers while migrating to GST from the erstwhile regime. The time limit for availing the benefit of carry forward of transitional credit is prescribed by Rule 117 which is being amended from time to time. The time limit for filing TRAN-1 in respect of persons who could not submit the declaration by due date on account of technical difficulties on the common portal was prescribed as 31st March, 2019 which was further extended to 31st December, 2019 and thereafter further extended to 31st March, 2020. However, this benefit of extension could be availed only by taxpayers who could not file declaration due to "technical difficulties on the common portal" and needless to mention that they are required to furnish proof of their attempt to file such declaration before 27th December, 2017. The technical problems and the non-preparedness of the IT infrastructure of GSTN is not hidden fact and this is evidenced from the numerous decisions rendered by various High Courts providing relief of transitional credit to the assessees. However, the decisions rendered are being perceived as "case specific" and are not being considered as judicial precedent by the revenue authorities while deciding the issues arising due to non-filing of TRAN-1 within the stipulated time period. In the present update, we wish to discuss the landmark decision pronounced by Hon'ble Delhi High Court on 5th May 2020 in the case of ***M/s Brandequity Treaties Limited v/s The Union Of India & Ors., M/s Micromax Informatics Ltd. v/s Union Of India & Anr., M/s Developer Group India Private Limited v/s The Union Of India & Ors. and M/s Reliance Elektrik Works v/s The Union Of India & Ors.*** as it is explicitly mentioned in the decision that the benefit of this ruling is to be extended to all assessees irrespective of the fact that they had attempted to file TRAN-1 before the prescribed due date or not.

The present writ petition also commented on the constitutional validity of Rule 117 of the CGST Rules, 2017. The Hon'ble High Court held that Rule 117 is arbitrary and unconstitutional and violative of Article 14 to the extent it imposes a time limit for

carrying forward the credit to the GST regime which is infact vested right of the assessee.

The Petitioners broadly argued that accumulated CENVAT credit was the property of the assessee and a constitutionally protected right under Article 300A of the Constitution. Such accrued or vested right could not be taken away on account of failure to fulfil conditions which are merely procedural in nature and especially when the GST system is in a nascent "trial and error" phase. Petitioners should not be made to suffer on account of inefficiency in the systems of the tax department. It was also pleaded that time to time extensions for filing TRAN-1 are clear indicator of technical difficulties on common portal and also substantiates that the time limit for filing TRAN-1 is procedural condition rather than substantive condition which is mandatory to be complied with.

Revenue on the other hand contended that the petitioners were not entitled to any relief as they failed to file the declaration Form TRAN-1 within the due date and the same was not attributable to any technical glitches while uploading the forms. It was also pleaded that the government can very well fix time frame for allowing the carry forward of transitional credit.

The Hon'ble High Court also observed that the initial 90 days time limit for filing TRAN-1 was extended by the Commissioner from time to time, largely on account of its inefficient network. Even the taxpayers required time to adapt to the new systems, which was introduced as a completely online system. The Hon'ble court also delved into the phrase mentioned in Rule 117 allowing extension due to "technical difficulties on the common portal". It was held that the Rule 117 is arbitrary and discriminatory in terms of Article 14 of the Constitution of India as it provides extension to file TRAN-1 only on account of technical glitches on GST portal. However, apart from the shortcomings in the system developed by GSTN, the assessees also faced the challenges due to low bandwidth and lack of computer knowledge and skill to operate the online system which may not result into creation of GST log in record. The Court held that CENVAT credit which stood accrued and

vested was the property of the assessee and a constitutional right under Article 300A of the Constitution and could not be taken away for mere non-filing of TRAN-1 within the stipulated period. The reference was also made to various decisions of Apex Court wherein it was held that procedural law should not act as an obstruction and rather should aid to justice. In simple words procedural irregularity cannot be grounds to deny substantive benefit. Reliance was also placed on the prior decisions such as ***M/s Blue Bird Pure Pvt ltd, Adfert Technologies Pvt Ltd.*** permitting filing of TRAN-1 whether the petitioner attempted to file or not even attempted to file such form earlier.

The High Court concluded that the purpose of transitory provisions is to allow smooth migration from the erstwhile tax regime to new GST regime and interpretation must be in consonance with the said purpose. Accordingly, it was held that Rule 117 prescribing time limit is to be considered as directory/procedural in nature and not mandatory and cannot result in forfeiture of right to carry forward. However, it was also held that at the same time, it cannot be concluded that right of availing transitional credit should be unlimited. Reliance was also placed on the general provisions contained in Limitation Act and it was held that the period of three years should be the guiding principle and thus a period of three years from the appointed date would be the maximum period for availing transitional credit.

The crucial aspect of this judgment is that the Hon'ble Court has directed the revenue department to publicise this decision and allow similar assessees to file TRAN-1 by 30th June 2020. The order would apply to all taxpayers who could not file TRAN-1 and claim input tax credit due to any reason whatsoever. However, the challenge before the assessees would be to file TRAN-1 online as this option is not open for all assessees as of now. It is pertinent to mention that the High Court has also stated that the department should allow filing TRAN-1 online or accept it manually but again, manual filing would be a big challenge to the assessees amidst the lockdown situation in the current pandemic. This decision is a boon to all the assessees who could not transition their credit into the GST regime but it is highly

probable that this decision would be challenged by the department before the Supreme Court.

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