

Case Study

Parekh Integrated services (P.) Ltd. v. Commissioner of GST & Central Excise, Chennai - [2019] 108 taxmann.com 215 (Madras)

Fact of the Cases:

The assessee had filed Form GST Tran-1 and received credit of Rs. 13.21 lakhs in its electronic credit ledger. It was entitled to credit of Rs. 83.20 lakhs. The assessee had again filed Form GST Tran-1 for which it received credit of Rs. 5.17 lakhs only. Actually the amount was entered in incorrect column. The assessee filed writ petition before High Court of Madras to seek relief in this regard.

Contention of appellant:-

The Honorable Court observed that the assessee had entered the details of stock in incorrect column of Form GST Tran-1 due to which less amount was credited in electronic credit ledger. The assessee had approached the revenue authorities to re-open the said form but had not received any response from them.

Decision By High Court:

The Honorable Court directed the assessee to appear before Nodal Officer and present all material facts. The Nodal officer would pass speaking order after considering submissions of the assessee.

Siddhart Enterprises Vs Nodal Officer (Gujrat High Court) dt 06.09.2019

Fact of the Case

Application has been filed to seeking appropriate writ, order or direction to the respondents for being permitted to the declaration in form GST Tran-1 and GST Tran-2 respectively to enable the writ applicants to claim transitional credit of the eligible duties in respects of input held in stock on appointed day in terms of section 140(3) of Central Goods and Service Tax Act, 2017.

In this case form GST Tran-1 could not be filed due to technical glitches in terms of poor net connectivity and other technical difficulties on common portal.

The writ applicant, in the alternative, have prayed for a declaration that the due date contemplated under rule 117 of the Rules to claim transitional credit is procedural in nature, and thus, merely directory and not a mandatory provision.

Judgement of the Court:

While referring and discussing many landmark judgement of the hon'ble Supreme Court including Collector of Central Excise, Pune vs Dai Ichikarkarla Ltd & Eicher Motors Ltd, vs Union of India, the court held as under:

Article 300A provides that no person shall be deprived of property saved by authority of law. While right to the property is no longer a fundamental right but it is still a constitutional right. CENVET credit earned under the erstwhile Central Excise Law is the property of the writ applicants and it cannot be appropriated for merely failing to file a declaration in the absence of law in this respect. It could have been appropriated by the Government by providing for the same in the CGST Act but it cannot be taken away by virtue of merely framing rules in this regard.

Comments:-

It is clearly held in above referred decisions that constitutional right of input tax credit cannot be taken away on technical breach of wrong filing or non-filing of declaration. Hence, the credit was allowed although declaration was not filed by the assessee. It has settled all the disputes relating to transitional credit. The earlier writ petition was allowed by High Courts in case the TRAN-1 could not be filed due to technical glitches. However, in these decisions, High Court went further and allowed the credit even in case of wrong filing or non-filing of TRAN-1. Thus, it is a big relief to all that the credit will be allowed to them. The department can come forward and issue circular in this regard and allow all the credit even though TRAN-1 or TRAN-2 is not filed by assessee. This will be trade friendly measure and welcomed by all. Otherwise, it will be allowed by Courts.
