L&S UPDATE
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GST UPDATE NO. 16 OF 2020

Transition of CENVAT to GST regime – GST Form TRAN-1 can be filed till June 30, 2020: Delhi High Court

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ISSUE

- Whether an assessee can avail Input Tax Credit (**"ITC"**) of accumulated CENVAT as on June 30, 2017 by filing GST Form TRAN-1 beyond the period of limitation prescribed under Rule 117 of CGST Rules, 2017?

FACTUAL BACKGROUND

- The Petitioners had duly declared the balance of CENVAT in their service tax/central excise returns filed for the month of June 2017 and were eligible to transition the same into the GST regime.

- However, due to various challenges such as lack of knowledge with respect to the statutory provisions, clerical errors as well as technical glitches, the petitioners failed to file Form GST TRAN-1 within the due date (i.e., December 27, 2017) prescribed under Rule 117 of the CGST Rules, 2017.

- The Petitioners then filed Writ Petitions before the Delhi High Court challenging the constitutionality of Rule 117 of the CGST Rules, 2017 on the ground that it is arbitrary, unconstitutional and violative of Article 14 to the extent it imposes a time limit for carrying forward the CENVAT to the GST regime.

FINDINGS OF THE COURT

- The Delhi High Court at the outset observed that the technical glitches have been a common feature in GST and that numerous assessees in the past have approached the High Court seeking to permit them to file GST Form TRAN 1 beyond the stipulated time period prescribed in Rule 117.

- The Court further observed that the Government, in order to mitigate the aforesaid deficiencies, had enacted Rule 117(1A) of CGST Rules, 2017 as a patchwork solution which conferred the power on the Commissioner to extend the due date of filing form TRAN-1 on account of technical difficulties on the common portal.[1]

- The High Court noted that the decision of the Government to extend the time limit for filing GST Form TRAN-1 only in case of "technical difficulties on common portal" is arbitrary, vague and unreasonable.

- Technical difficulties cannot be restricted only to a difficulty faced on the common portal. It would include within its purview any technical difficulties faced by the taxpayers as well. The taxpayers have faced various challenges posed by low bandwidth, lack of computer knowledge and lack of skill to operate the system. Further, the difficulties may also be offline, as a result of several other restrictive factors.

- The purpose of Rule 117(1A) was to save and protect the rights of taxpayers to avail of the CENVAT lying in their account and the same cannot be restricted by giving a narrow meaning to the word 'technical glitches'.

- The High Court further observed that once there is no statutory time limit which has been prescribed by the *Central Goods and Services Tax Act, 2017* (**"CGST Act"**), the right to avail the transition credit which is a vested right cannot be curtailed by the time limit prescribed under a delegated legislation. The function of the Rules is only to lay down the procedure for transition and such procedural provision cannot take away the substantive right to transition the credit prescribed in the CGST Act.

- Consequently, in the absence of any specific provisions providing for the time limit under the CGST Act, the High Court read down the provisions of Rule 117 as being directory in nature, insofar as it prescribes the time limit

1. The due date for filing TRAN-1 has been extended from time to time. The latest extension was till March 31, 2020.

for transitioning of credit and held that the same would not result in the forfeiture of the rights, in case the credit is not availed within the period prescribed.

- At the same time, the High Court also employed a word of caution by observing that taxpayers cannot avail transitional credit in perpetuity. Since the CGST Act does not stipulate any time period for availing transitional credit, in terms of the residuary provisions of the *Limitation Act, 1963*, assessees will be eligible to avail credit for a period of three years from the appointed date.

- Thus, the Petitioners have been allowed to file GST Form TRAN-1 by June 30, 2020, which is three years from the appointed date.

RATIO DECIDENDI

- The time limit prescribed in Rule 117 cannot take away the substantive right of the assessee to transition the closing balance of eligible CENVAT into the GST regime in terms of the provisions of Section 140 of the CGST Act.

- In addition to above, the High Court has directed the Government to publicise the judgment widely in order to ensure that taxpayers other than the petitioners are also informed and permitted to file Form GST TRAN-1 on or before June 30, 2020.

IMPLICATIONS AND COMMENTS

- In these difficult times, the High Court judgement has provided great relief to the taxpayers who could not transition the CENVAT balance into GST due to some technical or non-technical issues.

- As observed by the Court, all taxpayers should make use of this opportunity and file GST Form TRAN-1 immediately on or before June 30, 2020 wherever the same could not be filed previously.

- It will also be interesting to see whether the finding in the judgement will apply in equal force in cases wherein assessees want to file revised GST Form TRAN-1 as they were not able to fully transition the credit due to clerical errors, the first time around.

- However, the relief sought to be provided by the above judgement may be short-lived as *vide* Section 128 of the *Finance Act, 2020*, the legislature has proposed to insert the phrase **'within such time'** *as may be prescribed* in the provisions of Section 140 of the CGST Act retrospectively w.e.f July 1, 2017. However, as on date, Section 128 of the *Finance Act, 2020* has not been notified.

- Once notified, the time limit prescribed under Rule 117 will have a statutory backing of Section 140 and one will have to reassess the applicability of the judgement under consideration in such an eventuality. But it will still throw open further questions like whether the time limit prescribed under Rule 117 can be made valid for all times by a subsequent amendment to the Section which grants the power to the Rule-making authority to prescribe a time limit.

[*Brand Equity Treaties Limited v. Union of India* – Judgement dated May 5, 2020 in W.P.(C) 11040/2018 and Ors., Delhi High Court]

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