L&S UPDATE
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GST

TRAN-1 – Decision in *Brand Equity* applicable regardless of retrospective amendment to Section 140 of CGST Act

UPDATE NO. 24 OF 2020

Lakshmikumaran & Sridharan
attorneys

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all Law.

ISSUE

- Whether assessee is eligible to credit short transitioned due to a clerical error in filing TRAN-1, where revision was made beyond the time limit under Rule 117(1A) of the Central Goods and Services Tax Rules, 2017 (**"CGST Rules"**)?

FACTS AND ARGUMENTS

- TRAN-1 was filed before the time limit specified. Realising that there were some errors while keying in the credit details, the originally filed TRAN-1 was revised after the time limit specified under Rule 117(1A) of CGST Rules, showing the correct amount of credit. The amount of differential credit still did not reflect in the electronic credit ledger and was shown as blocked credit.

- Several representations were made to various authorities but to no avail. Subsequently, the Petitioner's claim was rejected by the IT Grievance Redressal Committee without specifying any reason for the same.

- The Petitioner relied upon various decisions including the latest decision of the Delhi High Court in *Brand Equity Treaties Ltd. and Ors.* v. *Union of India* [(2020) VIL 196 (Delhi)] (**"Brand Equity"**) on the point that Rule 117 of CGST Rules is directory in nature and cannot result in forfeiture of rights of taxpayers.

- The Department distinguished the decision of *Brand Equity* and other cases in the light of retrospective amendment to Section 140 of the *Central Goods and Services Tax Act, 2017* (**"CGST Act"**) as per which the power to prescribe time limit for filing TRAN-1 has been granted. It further argued that there was no 'technical error' in the present case and the Petitioner should not be provided any relief.

FINDINGS

- The stand of the Central Government, focusing on condemning the Petitioner for a clerical mistake and not redressing the grievance, is unsavoury and censurable. The Court noted that the aspect of how the advent of GST Laws has created challenges for the taxpayers because of the lack of understanding of procedures was discussed elaborately in the decision of *Brand Equity*.

- In spite of the amendment to Section 140 of the CGST Act, the decision in *Brand Equity* continues to apply in full rigour since the decision was not entirely resting on the fact that statute did not prescribe any time limit for availing the transition credit. There were several other grounds and reasons enumerated in the said decision to provide relief to the assessee.

- The time limit prescribed under Rule 117(1A) of the CGST Rules has been consistently extended by the Central Government and hence cannot be said to be sacrosanct.

- In *Brand Equity*, it was observed that the government has not ascribed any meaning to the words '*technical difficulties on the common portal*' and it cannot be interpreted in a restrictive manner. Rule 117 suffers from vagueness and arbitrariness in the absence of a criteria to determine as to what constitutes a 'technical difficulty'.

- The Rules have to be interpreted keeping in view the objective of the statute: to save the credit by allowing migration to the GST regime. Rule 117 is thus purely procedural and in the absence of a provision prescribing consequences for failure to adhere to the timelines, the provision has to be seen as directory. Further, the exclusion of non-technical cases under Section 117(1A) is also arbitrary and irrational.

- The original TRAN-1 Form was filed within the stipulated period and revision thereof, to correct an error, will relate back to the said date of filing. No convincing reason to hold the revision of the said return will be time-barred and be treated as a fresh return.

- In the absence of any definition to the term 'technical difficulty', it could be construed that Petitioner's difficulty is technical, as the short credit is reflected as blocked credit on the portal, with no provision to rectify the same electronically.

- The Petitioner was permitted to revise the TRAN-1 on or before June 30, 2020 and transition the entire credit.

IMPLICATIONS AND COMMENTS

- This decision lays to rest the doubts surrounding the applicability of decisions such as *Brand Equity* after the retrospective amendment to Section 140 of the CGST Act.

- Even though this decision was rendered in the context where TRAN-1 was filed originally within the specified time limit, the reasoning contained in the judgment can be applied even to cases where TRAN-1 could not be filed at all.

- Assessees can endeavour to use this decision for filing TRAN-1 or for rectification of mistakes contained in an already filed TRAN-1, on or before June 30, 2020.

[*SKH Sheet Metal Components* v. *Union of India & Ors.* - Judgment dated June 16, 2020 in W.P. (C) 13151/2019, Delhi High Court]

LOCATIONS

www.lakshmisri.com

NEW DELHI

5 Link Road, Jangpura Extension,
New Delhi 110 014
PHONE: 011-4129 9800

B-6/10, Safdarjung Enclave,
New Delhi 110 029
PHONE: 011-4129 9900
E-MAIL: lsdel@lakshmisri.com

MUMBAI

2nd Floor, CNERGY IT Park,
Old Standard Mill,
Appa Saheb Marathe Marg,
Prabhadevi,
Mumbai 400 025
PHONE: 022-2439 2500
E-MAIL: lsbom@lakshmisri.com

CHENNAI

2, Wallace Garden, 2nd Street,
Chennai 600 006
PHONE: 044-2833 4700
E-MAIL: lsmds@lakshmisri.com

BENGALURU

World Trade Center,
No. 404-406, 4th Floor, South Wing,
Brigade Gateway Campus,
No. 26/1 Dr. Rajkumar Road,
Malleswaram West,
Bengaluru 560 055
PHONE: 080-4933 1800
E-MAIL: lsblr@lakshmisri.com

HYDERABAD

'Hastigiri', 5-9-163, Chapel Road,
Opp. Methodist Church, Nampally,
Hyderabad 500 001
PHONE: 040-2323 4924
E-MAIL: lshyd@lakshmisri.com

AHMEDABAD

B-334, SAKAR-VII,
Nehru Bridge Corner, Ashram Road,
Ahmedabad 380 009
PHONE: 079-4001 4500
E-MAIL: lsahd@lakshmisri.com

PUNE

607-609, Nucleus,
1 Church Road, Camp
Pune 411 001
PHONE: 020-6680 1900
E-MAIL: lspune@lakshmisri.com

KOLKATA

2nd Floor, Kanak Building,
41, Chowringhee Road,
Kolkata 700 071
PHONE: 033-4005 5570
E-MAIL: lskolkata@lakshmisri.com

CHANDIGARH

SCO No. 59, 1st Floor,
Sector 26, Madhya Marg,
Chandigarh 160 026.
PHONE: 0172-492 1700
E-MAIL: lschd@lakshmisri.com

GURUGRAM

OS2 & OS3, 5th Floor,
Corporate Office Tower,
AMBIENCE Island, Sector 25-A,
Gurugram 122 001
PHONE: 0124-477 1300
E-MAIL: lsgurgaon@lakshmisri.com

PRAYAGRAJ (ALLAHABAD)

3/1A/3, (Opp. Auto Sales)
Colvin Road, Lohia Marg,
Prayagraj 211 001
PHONE: 0532-242 1037/242 0359
E-MAIL: lsallahabad@lakshmisri.com

KOCHI

1st Floor, PDR Bhavan,
Palliyil Lane, Foreshore Road,
Ernakulam,
Kochi 682016
PHONE: 0484-486 9018/486 7852
E-MAIL: lskochi@lakshmisri.com

Lakshmikumaran & Sridharan
attorneys

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SINCE 1985