L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

JULY 20, 2020

GST

TRAN-1 – Rule 117 of CGST Rules is *intra vires* Section 140 of CGST Act – Time limit provided therein is mandatory

UPDATE NO. 28 OF 2020

Lakshmikumaran & Sridharan
attorneys

exceeding expectations
SINCE 1985

all Law.

ISSUE

Whether Rule 117 of the Central Goods and Services Tax Rules, 2017 (**"CGST Rules"**) is *ultra vires* Section 140 of the *Central Goods and Services Tax Act, 2017* (**"CGST Act"**) and is liable to be construed as a directory provision and not a mandatory provision?

FACTS

Petitioner was unable to file TRAN-1 before the extended time limit of December 27, 2017 specified under GST law because of issues in the portal. Petitioner subsequently approached the Sales Tax Collection Inspector (**"STC Inspector"**) on December 29, 2017 and submitted a hard copy of TRAN-1 and received an acknowledgement. In spite of repeated follow ups, there was no response with regard to entitlement of the Petitioner to Transitional (**"Tran"**) Credit.

Consequently, a writ petition was filed before the Madras High Court, challenging Rule 117 of the CGST Rules as being *ultra vires* Section 140 of the CGST Act and violative of Articles 14 and 300-A of the Constitution of India. It was further prayed that Rule 117 should be read as a directory or permissive provision and not as a mandatory or peremptory provision.

RELEVANT ARGUMENTS ON BEHALF OF THE PETITIONER

The Petitioners did not press on the constitutional validity of Rule 117. The arguments in brief were:

- Rule 117 of the CGST Rules is *ultra vires* Section 140 of the CGST Act and, at a minimum, is liable to be construed as a directory provision in so far as it specifies a time limit for the submission of the declaration in TRAN-1.

- The tax authorities were fully cognizant of the fact that registered persons were unable to submit the TRAN-1 online within the prescribed period on account of technical glitches and that is the reason for extension of time limit up to March 31, 2020 by the government.

- This clearly indicates that the provision was intended to be directory and not mandatory notwithstanding the use of the word "shall" in Rule 117(1).

- Delhi High Court in *Micromax Informatics Ltd.* v. *Union of India* [WP(C) No. 196 of 2019], wherein Rule 117 was construed as directory and not mandatory, was relied upon.

RELEVANT ARGUMENTS ON BEHALF OF THE DEPARTMENT

- Input Tax Credit (**"ITC"**) is in the nature of a concession granted to registered persons and therefore any conditions, including time limits, subject to which such concessions are granted should be enforced strictly. In this regard, reliance was placed on decision of the Supreme Court in case of *Jayam and Company* v. *Assistant Commissioner and another* [(2016) 15 SCC 125] (**"Jayam and Company"**) and *ALD Automotive Private Limited* v. *Commercial Tax Officer* [(2019) 13 SCC 225].

- The judgment of the Delhi High Court has been stayed by the Supreme Court. Further, the division bench of the Bombay High Court in the case of *Nelco Limited* v. *Union of India* [2020 SCC Online Bom 437] (**"Nelco"**) has held to the contrary on this issue.

FINDINGS OF THE MADRAS HIGH COURT

- In light of the decision of the Supreme Court in *Jayam and Company*, the contention of the Petitioner that ITC is the property cannot be countenanced and it is to be construed as a concession.

- ITC cannot be availed without complying with the conditions prescribed thereto. Prior to the retrospective amendment to Section 140 of the CGST Act, the power to frame rules fixing a time limit was and continues to be traceable to Section 164, which is widely worded and imposes no fetters on rule making powers.

- In *SKH Sheet Metal Components* v. *Union of India Ors*, [2020 SCC online Del 650] (**"SKH Sheet Metal Components"**), the Delhi High Court concluded that the statute had not fixed a time limit for transitioning credit by referring to *interalia* the repeated extensions of time. Given the fact that the power to prescribe a time limit is expressly incorporated in Section 140 post amendment, the aforesaid view cannot be subscribed to.

- The Bombay High Court in *Nelco* was correct in holding that both ITC and Tran credit cannot be availed except within the stipulated time limit.

- The object and purpose of Section 140 clearly warrants the necessity to be finite. In effect, it is a time limit relating to the availing of a concession or benefit. On weighing all the relevant factors, which may not be conclusive in isolation, the **time limit is mandatory and not directory.**

- Since the Petitioner had not filed the TRAN-1 electronically but handed over in person to the STC Inspector, the prescription in Rule 117 is not satisfied. The Tran claim of the Petitioner is thus not admissible.

RATIO

- Rule 117 of CGST Rules is *intra vires* Section 140 of the CGST Act and the time limit specified thereunder is mandatory.

- This decision will not preclude the Petitioner from making such a claim if dispensations are granted by the tax authorities to avail Tran credit, whether by filing TRAN-1 or otherwise, and to which the Petitioner may be entitled.

IMPLICATIONS AND COMMENTS

- This decision runs contrary to the various decisions rendered in the context of the time limit for filing TRAN-1 form including that in the cases of *Brand Equity Treaties Ltd.* v. *Union of India* [(2020) Taxmann.com 415] and *SKH Sheet Metal Components* and concurs with the decision in case of *Nelco.*

- Though the Tran credit was disallowed to the assessee in this case, the court has kept open the scope for special dispensations which could be granted by the department to assessees.

[*P.R. Mani Electronics* v. *Union of India & Ors.* - Judgment dated July 13, 2020 in WP. No. 8890 of 2020 and WMP No. 10803 of 2020, Madras 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

exceeding expectations
SINCE 1985

DISCLAIMER: This update is meant for informational purpose only and does not purport to be advice or opinion, legal or otherwise, whatsoever. The information provided is not intended to create an attorney-client relationstip and is not for advertising or soliciting. Lakshmikumaran & Sridharan or its associates are not responsible for any error or omission in this update or for any action taken based on its contents.

To unsubscribe, please mail to **update@lakshmisri.com**