

GST UPDATE



TRAN-1: A RETROSPECTIVE AMENDMENT CURTAILING THE RIGHT OF TAX PAYERS ON TRANSITIONAL CREDIT

The Central Goods and Services Tax Act, 2017 by virtue of Section 140 allows registered taxpayers to carry forward accumulated CENVAT credit from pre GST era to GST regime. (State GST Act also provides for parallel provision for carry forward of VAT credit)

The section although had not prescribed any time limit for carry forward of such credit, however, Rule 117 of CGST Rules, 2017 imposed time limit of 90 days for filing declaration electronically in TRAN-1 to carry forward of such accumulated credit. This was further extended up to **27th December, 2017**.

Further, Rule 117(1A) was inserted to provide that the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond 30th June, 2020, in respect of registered persons who could not submit the said declaration by the due date on account of **technical difficulties** on the common portal and in respect of whom the Council has made a recommendation for such extension. The meaning of the technical difficulties was very narrow and conditional restricting the number of taxpayers who could avail the accumulated ITC.

In this junction, numerous judgments from different High courts have been passed some in favor allowing petitioners to carry forward accumulated ITC even after 27th December 2017 and some against not allowing the said carry forward.

Although recent judgment “Brand Equity Treaties Ltd. & Ors. vs. Union of India” (W.P. (C) 11040/2018) of Delhi High Court pronounced on 05.05.2020 provided a big relief to the taxpayers by allowing the carry forward of the accumulated CENVAT to the petitioners and also instructed the respondents to publish the judgement widely including by way of publishing the same on their website so that others who may not have been able to file TRAN-1 till date are permitted to do so on or before 30.06.2020 on the ground and facts that the limitation as prescribed in Rule 117 is directory in nature and any such limitation cannot deprive the vested right of the taxpayers. Also, stated that in absence of any specific provisions under the Act, in terms of the residuary provisions of the Limitation Act 1963, 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 of such credit.

However, the retrospective amendment in Section 140 of CGST Act, 2017 w.e.f. 01.07.2017 by notifying Section 128 of Finance Act, 2020 which inter alia added “within such time” has again raised questions on various favorable judgments. Now question is how far the benefit of Delhi High Court judgement would be available to the taxpayers and whether such retrospective amendment would stand the test of legality before the constitutional courts.

On the concluding note, it is apt to say that it would not be so easy for the taxpayers to claim carry forward of transitional credits on the ground of vested right as upheld by Delhi High Court Judgement after retrospective amendment in Section 140. This will cause more litigations in the Constitutional courts in times to come.

For more details, Read the Judgement from the link below:-

<https://taxguru.in/wp-content/uploads/2020/05/Brand-Equity-Treaties-Limited-Vs-The-Union-of-India-Ors-Delhi-High-Court.pdf>

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