

GST UPDATE

**Delhi High Court Allowing
Petitioner to Carry Forward
Transitional Credits Despite
Retrospective Amendment**



Recent ruling of Delhi High Court in the case of SKH Sheet Metals Components (W.P. (C) 13151/2019) allowing petitioner to carry forward Transitional Credits by 30th June, 2020 despite Retrospective Amendment

Relevant Legal Provisions:

1. Taxpayers were mandated to file TRAN-1 form for carry forward of tax credits pertaining to earlier indirect tax regime by 27th December, 2017 as per Rule 117 of CGST Rules (subordinate legislation).
2. Rule 117(1A) was introduced which stated that commissioner on the recommendation of GST council can extend the date for filing TRAN-1 *only* in respect of taxpayers who could not file TRAN-1 due to technical glitches.

Ruling of Delhi HC in the case of Brand Equity Treaties Limited (W.P. (C) 11040/2018) on 5th May, 2020 allowing filing TRAN-1 till 30th June, 2020:

Above timeline of 27th December, 2017 was challenged before various high courts including in Delhi HC, wherein it was held by Delhi HC in the case of Brand Equity Treaties Limited that neither timeline of 27th December, 2017 was provided in Section 140 of CGST Act (i.e. principal legislation) *nor any power to prescribe the timeline by rules was provided*. Thus the timeline provided in Rule 117 is only directory and not mandatory. It was further observed that Rule 117(1A) should not be limited only to taxpayers who faced technical glitches. **Erstwhile Tax Credits represents vested right. It was ruled that GST department should either accept TRAN-1 either electronically or manually for all taxpayers and not just for petitioners.**

Retrospective Amendment W.E.F. 1st July, 2017 on 18th May, 2020:

Section 140 was amended retrospectively W.E.F. 1st July, 2017 on 18th May, 2020 to add words “within such time”. **These words were added to signify that there is power to prescribe timeline as emanating from Section 140 and Rule 117 correctly prescribes timeline of 27th December, 2017.**

Ruling by Delhi HC:

HC in the case of SKH Sheet Metals Components (W.P. (C) 13151/2019) on 16.06.2020 giving effect to its earlier ruling in the case of Brand Equity, regardless of above stated Retrospective Amendment:

Delhi HC on 16th June, 2020 has allowed petitioner to file (revise) TRAN-1 form by 30th June, 2020. It was inter alia observed that the ruling of 5th May 2020 is not entirely resting on the fact that *Section 140 did not provide any power to prescribe the timeline for filing of TRAN-1*. There were several other grounds as well (including vested right, no powers to lapse ITC, technical glitches, etc.) on which ruling of 5th May 2020 rests. **It was specifically observed that the ruling allowing filing of TRAN-1 by 30th June, 2020 continue to apply with full rigour even today, regardless of the retrospective amendment.** It is relevant to note that Delhi HC did not decide upon the validity of retrospective amendment as the said question was not called on before it.

For more details, Read the Judgment from the Link given below:

<https://gst.taxmann.com/topstories/22233000000020706/transitional-credits-tran-1-can-be-filed-till-30-june-2020-despite-retrospective-amendment-delhi-hc-news.pdf?Id=22233000000020706&mode=home&Page=CIRNO>

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