

Rajasthan HC allows petitioners to make application before the GST Council to avail transitional credit

Background

With a batch of writ petitions, petitioners approached the Rajasthan High Court (HC) for:

- Allowing them to file Form TRAN-1 thereby enabling them to avail transitional credit; and
- Asking the tax department to allow legitimate tax credit by giving effect to Form TRAN-1 that had been submitted manually.

Further, a few petitioners also challenged the constitutional validity of the transitional credit provisions under the Goods and Services Tax (GST) law.

The HC order

The HC granted liberty to the petitioners to submit application to the GST Council. The application should seek the Council's recommendation along with requisite particulars, evidence and a certified copy of the order from the GST Council forthwith.

The HC further directed that if the petitioners' assertion is found to be correct, the GST Council shall issue necessary recommendation to the commissioner to enable the them to claim credit within stipulated time.

Our comments

The Delhi HC, in a recent case, held that the time limit prescribed under the GST law for claiming transitional credit is 'directory' in nature. Contrary to this, the Madras HC in another case had held that transitional credit is mandatory and not directory and such credit must be availed within the stipulated time.

The tax department had filed a Special Leave Petition (SLP) against the order of Delhi HC arguing that the time limit prescribed for availing transitional credit is 'mandatory', 'rational' and 'reasonable'. The Supreme Court (SC) had stayed the operation of the Delhi HC order and the SC's verdict in this regard is awaited.

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