

Tax alert: Punjab and Haryana HC holds unutilised credit of pre-GST regime a ‘vested right’

Issued on: 20 November 2019



Summary

The Punjab and Haryana High Court (HC), allowing writ petitions filed before it, has held that the unutilised credit of duty/tax paid under the erstwhile indirect tax regime is a vested right and cannot be taken away on account of procedural or technical grounds.

The HC observed that the absence of any time period under the GST law indicates that there is no intention of the legislature to deny carry forward of such unutilised credit on the ground of time limit. It, thus, directed the Revenue to permit the Petitioner to file or revise Form TRAN-01, either electronically or manually, by 30 November 2019.

Facts of the case

- The Petitioner¹ sought direction² from the HC to permit carry forward of unutilised CENVAT credit of duty paid³ and input tax credit (ITC) of VAT paid⁴. These credits could not be carried forward on account of non-filing or incorrect filing of prescribed statutory form, i.e., TRAN-1, by the stipulated last date, i.e., 27 December 2017.

Petitioner's contentions

- **Vested right:** The Petitioner argued that unutilised CENVAT/ITC of duty/tax paid under the erstwhile regime is a vested right of the Petitioner which cannot be washed away. It further argued that any contrary interpretation would amount to violation of provisions⁵ of Constitution of India.
- **Complete record available with the Revenue:** The Petitioner contended that prior to July 2017, it was registered with the tax authorities under the erstwhile regime. Thus, it contended that the Revenue has a complete record of unutilised CENVAT/ITC and hence it has no authority to deny credit on technical or procedural grounds.

HC observations and ruling

- **No time period prescribed:** Perusing the relevant provisions, the HC observed that the absence of any time period prescribed under the GST law⁶ indicates that there is no intention of the government to deny the carry forward of unutilised credit of duty/tax already paid on the ground of time limit.
- **No denial on account of procedural or technical grounds:** The HC further pointed out that with GST being a new law and there being several steps and columns in filing of TRAN-01 forms, there may be bona fide mistakes by the Petitioner. The HC further reiterated that the unutilised credit has been recognised as vested right and property⁷. The HC thus held that unutilised credit cannot be taken away on account of procedural or technical grounds.
- **Direction to Revenue:** The HC accordingly directed the Revenue to permit the Petitioner to file or revise Form TRAN-01, either electronically or manually, by 30 November 2019.

¹ Adfert Technologies Private Limited

² Under Article 226 of Constitution of India

³ Under Central Excise Act, 1944

⁴ Under Punjab VAT Act, 2005 or Haryana VAT Act, 2003

⁵ Article 14 as well 3000A of

⁶ Section 140 of the CGST Act, 2017

⁷ In terms of Article 300A of the Constitution of India

Our comments

This is a welcome judgement as it allows transitioning of erstwhile unutilised CENVAT credits/ITC into the GST regime even in case where Form TRAN-1 could not be filed by the due date. Interestingly, various HCs like the Madras HC, Kerala HC and Delhi HC have pronounced similar⁸ judgements from time to time.

Further the CBIC has also recently extended the due date for filing the Form TRAN-1 till 31 December 2019 and TRAN-2 till 31 January 2020 to provide taxpayers sufficient time to file their claim.

⁸ Madras HC in the case of Tara Exports, Kerala HC in the case of Smartstuff Glass Ltd., and Delhi HC in the case of M/s Blue Bird Pure Pvt. Ltd.

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