

Time limit prescribed for claiming transitional credits is mandatory and not directory – Madras HC

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Summary

The Madras High Court (HC), in a recent case, held that the time limit prescribed under the GST law for claiming transitional credits is 'mandatory' and not 'directory' in nature. Further, it held that disregarding the time limit and permitting a taxpayer to avail transitional credits in perpetuity would render the provisions unworkable. In this regard, the HC highlighted that provisions related to transitional credits should be construed as a concession, which cannot be availed without complying with the conditions prescribed in relation thereto.

Facts of the case

- The petitioner¹ is a proprietary concern involved in the retail trading of mobile phones, electrical, electronic and other items.
- It filed a writ of mandamus² before the HC. The petitioner requested the HC to direct the tax department to permit it to avail transitional credit³ beyond the period provided under the GST law.
- Additionally, the petitioner also challenged the provision⁴ to the extent it imposes time-limit for carry-forward of CENVAT credit to the GST regime.

- The petitioner argued that the time-limit is arbitrary, unconstitutional and violative⁵. It contended that the time limit specified is procedural in nature, and not a mandatory provision and thus the period provided therein cannot be enforced to deprive it from availing their vested right.

Madras HC's observations and ruling

- **Provision unworkable:** In the context of transitional credits, disregarding the time limit and permitting the petitioner to avail transitional credits in perpetuity would render the provision unworkable.

¹ M/s P. R. Mani Electronics

² Writ Petition No.8890 of 2020 and WMP.No.10803 of 2020

³ as on 30 June 2017 by filing declaration in Form TRAN-1

⁴ Rule 117 of the Central Goods and Services Tax Rules, 2017

⁵ Of Article 14 of the Constitution of India

- **Credits cannot be availed except within stipulated time:** Both input tax credit (ITC) and transitional credits cannot be availed except within the stipulated time limit and such time limits may, however, be extended through statutory intervention⁶.
- **Extension of time limit does not mean there is no time limit:** The fact that time limit may be extended under circumstances does not imply that there is no time limit for transitioning the credit. The GST law⁷ itself imposes a time limit for availing ITC and further provides that it would lapse upon expiry thereof.
- **ITC must be construed as a concession:** ITC has to be construed as a concession and not a vested right. It is a time limit relating to the availing of a concession or benefit. If construed as mandatory, the substantive rights of the taxpayers would be impacted. If construed as directory, it would adversely impact the Government's revenue interest,

including the predictability thereof.

Thus, it cannot be availed of without complying with the conditions prescribed in relation thereto.

- **Time limit is mandatory:** Thus, the HC held that the time limit is mandatory and not directory. The HC further dismissed the petitioner's plea to declare the relevant provisions⁸ as ultra vires and direct the authorities to permit the Petitioner to file Form GST TRAN - 1 either electronically or manually to claim the transitional ITC.

⁶ Bombay HC decision in the case of Nelco Limited v. Union of India [2020 SCC Online Bom 437]

⁷ Section 19(3)(d) of TNVAT Act

⁸ Rule 117 of the CGST Rules, 2017 read with Section 140 of the CGST Act, 2017

Our comments

The Delhi HC⁹ had earlier held that the time limit prescribed under the GST law for claiming transitional credit is 'directory' in nature. It further stated that prescribing time limit would not result in the forfeiture of rights in case the credit is not availed within the period prescribed.

Contrary to this, the Madras HC has now held that transitional credit is mandatory and not directory and that 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. Accordingly, taxpayers will now have to wait for the SC's verdict in this regard.

⁹ M/s Brand Equity Treaties Limited

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