

No penal proceedings in case of wrongly reflected transitional credit: Patna HC

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Summary

The Patna High Court (HC) has, in a recent case, held that wrongly-reflected transitional credit in an electronic ledger on its own is not sufficient to draw penal proceedings until the same or any portion thereof is put to use so as to become recoverable. Accordingly, the HC quashed the proceedings initiated against the petitioner taxpayer in respect of the recovery of ineligible transitional credit, which was transitioned but not utilised.

Facts of the case

- The petitioner¹ had filed an application in Form TRAN-1 to avail credit of the surplus VAT and entry tax, and to carry forward the same in his electronic ledger for two prior years (2007-08 and 2011-12) which had been inadvertently missed in its return².
- The department rejected the above application³ and raised a demand for INR 42.74 lakh on which transitional credit was allegedly claimed, and imposed interest and penalty on such availment⁴.
- The petitioner filed a writ petition before the Patna HC to question the legality and validity of the department's order rejecting the transitional credit as claimed by the petitioner and initiating the proceedings for recovery of demand of INR 42.74 lakh.
- The petitioner had accordingly filed the application within the stipulated time to carry forward the ITC earned by it under the erstwhile laws.
- However, the department has acted in absolute abuse of statutory power while rejecting the said application, concluding that the petitioner has wrongly availed the ITC and in initiating the recovery proceedings.
- Even if the claim of transitional credit was not found lawfully sustainable, it was liable for rejection but certainly a rejection of such claim did not empower the department to convert the said proceedings into a recovery proceeding⁵ for assessment of liability as well as levy of interest and penalty. The two proceedings are independent to each other and could not have been amalgamated.
- Thus, the petitioner submitted that mere reflection of the transitional credit on the application filed by the petitioner would not amount to either availing or utilising the credit, nor would it be sufficient to invite a proceeding until such time that the department by reference to records is able

Petitioner's contentions

- The GST law enables the taxpayers to carry forward the Input Tax Credit (ITC) under the VAT and Entry Tax Act, as the case may be, to his electronic credit ledger and for which a period has been prescribed.

¹ M/s Commercial Steel Engineering Corporation in Civil Writ Jurisdiction Case No.2125 of 2019 before the Patna HC
² U/s 140 of the Bihar GST Act, 2017 (BGST Act)
³ Vide order dated 6 November 2018
⁴ U/s 73(1) of BGST Act

⁵ U/s 73 of BGST Act

to demonstrate that the said credit was either availed of or utilised by the petitioner.

Patna HC's observations and ruling

- The HC observed that the department has gotten confused to treat the transitional credit claimed by the petitioner as an availment of the said credit when in fact an availment of a credit is a positive act and unless carried out for reducing any tax liability by its reflection in the return filed for any financial year, it cannot be a case of either availment or utilisation.
- The HC stated that the petitioner has rightly argued that even if the department was of the opinion that the petitioner was not entitled to such transitional credit, at best the claim could be rejected. However, such rejection of the claim for transitional credit does not bestow any statutory jurisdiction upon the department to correspondingly create a tax liability especially when neither any such outstanding liability exists nor such credit has been put to use.
- The legislative intent reflected from a purposeful reading of the relevant provisions is that even a wrongly-reflected transitional credit in an electronic ledger on its own is not sufficient to draw penal proceedings until the same or any portion thereof, is put to use so as to become recoverable.
- The HC observed that the department has made a complete mis-appreciation of legal

position which lies at the foundation of the demand raised by the impugned order where by the credit amount reflected in the credit ledger has been treated as an outstanding tax liability against the petitioner to order for its recovery (together with interest and penalty), whereas the electronic credit ledger status confirms credit in favour of the petitioner, ie a negative tax liability.

- Accordingly, the HC set aside the department's order against the petitioner, holding the same as illegal and an abuse of the statutory jurisdiction.

Our comments

The Patna HC has made a very important observation that a rejecting an application for claiming transitional credit by a taxpayer and initiating recovery proceedings for incorrect availment of credit are two independent matters and the same cannot be clubbed together.

The imposition of interest on wrong availment of tax credit has always been a matter of litigation even under the erstwhile service tax legislation. This is a welcome ruling which provides some clarity in respect of pending cases for transitional credits on similar grounds.

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