

Delhi HC holds time limit prescribed for claiming transitional credit as ‘directory’ in nature

Issued on: 6 May 2020



Summary

The Delhi High Court (HC) has held that the time limit prescribed under the GST law for claiming transitional credit is 'directory' in nature. The HC further stated prescribing time limit would not result in the forfeiture of the rights in case the credit is not availed within the period prescribed.

The HC also held that the credit accrued and vested is the property of the taxpayer and is a constitutional right. Hence, the same cannot be taken away merely by way of delegated legislation by framing rules, without there being any overarching provision in the GST law.

Facts of the case

- The petitioners¹ filed writ petitions² before the HC asking it to direct the tax department to permit it to avail input tax credit (ITC) of accumulated credit as of 30 June 2017 beyond the period provided under the GST law.
- Additionally, the petitioners also challenged the provision³ under the GST law for being arbitrary, unconstitutional

and violative⁴ to the extent it prescribes a time limit for claiming transitional credit.

- The Petitioners contended that the time limit specified is procedural in nature, and not a mandatory provision, and thus period provided therein cannot be enforced so as deprive it from availing its vested right⁵.

¹ M/s Brand Equity Treaties Limited, M/s Micromax Informatics Ltd., M/s Developer Group India Private Limited and M/s Reliance Elektrik Works

² W.P.(C) 11040/2018 and C.M. No. 42982/2018, W.P.(C) 196/2019 & CM APPL. 965/2019, W.P.(C) 8496/2019 and W.P.(C) 13203/2019

³ Rule 117 of the Central Goods and Services Tax Rules, 2017

⁴ of Article 14 of the Constitution of India

⁵ Referred SC decision in the case of M/s SCG Contracts India Pvt. Ltd. vs. KS Chamankar Infrastructure Pvt. Ltd. (2019 SCC OnLine SC 226).

HC observations and order

- **CENVAT credit is a vested right:** The HC held that CENVAT credit accrued and vested is the property of the taxpayer and is a constitutional right⁶. The same cannot be taken away merely by way of delegated legislation by framing rules, without there being any overarching provision under the GST law.
- **Interpretation must be in consonance with purpose:** The HC stated that the purpose of the transitory provisions is to allow a smooth migration from the erstwhile service tax regime to the new GST regime and the interpretation must be in consonance with the said purpose. Further, the HC held that failure in claiming credit within prescribed time would not result in the forfeiture of the rights.
- **Provision is directory in nature:** Thus, the HC read down the provision as being directory in nature, as it prescribes the time-limit for transitioning of credit.

- **Provision is arbitrary and vague:** The HC further stated that the new provision⁷ restricting the benefit only to taxpayers, whose cases are covered by technical difficulties on common portal is arbitrary, vague and unreasonable.
- **CENVAT credit cannot be availed in perpetuity:** The HC also observed that CENVAT credit cannot be availed in perpetuity and ruled that in terms of the residuary provisions of the Limitation Act, the period of three years should be the guiding principle and thus a period of three years from the appointed date would be the maximum period for availing such credit. Accordingly, the HC held that the petitioners shall be entitled to avail ITC accruing to them and permitted filing of relevant **Form TRAN-01** on or before **30 June 2020** either manually or by opening the online portal.

⁶ under Article 300A of the Constitution of India

⁷ sub Rule (1A) to Rule 117 of the CGST Rules, 2017

Our comments

This is a landmark judgment by the Delhi HC that will not only help the petitioners but also other taxpayers unable to claim huge transitional credits due to reasons other than technical glitches on the GST portal.

As the HC has provided unmitigated relief to all the taxpayers for availing transitional credit till 30 June 2020, it may have a severe impact on the government's exchequer that is stressed due to COVID-19 pandemic. It will be interesting to see if the government approaches the apex court against this judgment.

Presently, there is no mechanism to file Form TRAN-1 online and due to the ongoing nationwide lockdown due to COVID-19, it may not be possible to file Form TRAN-1 manually. Hence, it will be imperative of the government to provide alternate options to claim transitional credits in case the lockdown gets extended.

Further, the government should issue a clarification on the treatment of taxes paid, pertaining to erstwhile regime, during the GST period.

Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI National Office Outer Circle L 41 Connaught Circus, New Delhi 110 001 T +91 11 4278 7070	NEW DELHI 6th floor, Worldmark 2, Aerocity, New Delhi – 110 037 T +91 11 4952 7400	AHMEDABAD 7th Floor, Heritage Chambers, Nr. Azad Society, Nehru Nagar, Ahmedabad – 380 015	BENGALURU 5th Floor, 65/2, Block A, Bagmane Tridib, Bagmane Tech Park, C V Raman Nagar, Bengaluru – 560 093 T+91 80 4243 0700	CHANDIGARH B-406A, 4th Floor, L&T Elante office Building Industrial area, Phase-I, Chandigarh 160 002 T +91 172 4338 000
CHENNAI 7th Floor, Prestige Polygon 471, Anna Salai, Teynampet Chennai - 600 018 T +91 44 4294 0000	DEHRADUN Suite No 2211, 2nd Floor Building 2000 Michigan Avenue, Doon Express Business Park, Subhash Nagar, Dehradun 248 002 T +91 135 264 6500	GURGAON 21st Floor DLF Square Jacaranda Marg, DLF Phase II, Gurgaon 122 002 T +91 124 462 8000	HYDERABAD 7th Floor, Block III White House Kundan Bagh, Begumpet Hyderabad 500 016 T +91 40 6630 8200	KOCHI 7th Floor, Modayil Centre Point, Warriam Road Junction, MG Road, Kochi 682 016 T +91 484 406 4541
KOLKATA 10C Hungerford Street 5th Floor, Kolkata 700 017 T +91 33 4050 8000	MUMBAI 16th Floor, Tower II Indiabulls Finance Centre SB Marg, Prabhadevi (W) Mumbai 400 013 T +91 22 6626 2600	MUMBAI Kaledonia, 1st Floor, C Wing (Opposite J&J office) Sahar Road, Andheri East, Mumbai - 400 069 T +91 22 6176 7800	NOIDA Plot No. 19A, 7th Floor Sector – 16A, Noida 201 301 T +91 120 4855 900	PUNE 3rd Floor, Unit No 309 to 312, West Wing, Nyati Unitree Nagar Road, Yerwada Pune- 411 006 T +91 20 6744 8800

For more information or for any queries, write to us at contact@in.gt.com



Follow us @GrantThorntonIN



© 2020 Grant Thornton India LLP. All rights reserved.

“Grant Thornton in India” means Grant Thornton India LLP, a member firm within Grant Thornton International Ltd, and those legal entities which are its related parties as defined by the Companies Act, 2013.

Grant Thornton India LLP is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001.

References to Grant Thornton are to Grant Thornton International Ltd (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered