

TAX FLASH NEWS

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Supreme Court dismisses petition filed against the High Court direction to re-open the portal for TRAN-1 submission

The Hon'ble Supreme Court have recently dismissed¹ special leave petition (SLP) filed against the order of the Delhi High Court directing to either re-open the portal to enable the filing of TRAN-1 electronically or to accept the forms manually.

Background

Earlier the Delhi High Court had observed² that transitional credit (TC) available in the account of the petitioner is a substantial sum and the petitioner is entitled to carry forward such TC and use it for payment of taxes under the Central Goods and Services Tax Act (CGST Act). It is not in dispute that there have been numerous glitches in the GST portal, making it difficult for uploading the TRAN-1 forms. Accordingly, the Court directed the revenue to either re-open the portal to enable electronic filing of TRAN-1 or to accept the forms manually.

Against the said order revenue had filed SLP which is now dismissed by the Hon'ble Supreme Court.

Our comments

Considering the fact that CGST Act did not prescribe any time limit for the transitioning of credit, earlier the Delhi High Court in case of Brand Equity³, had invoked the provision of the Limitation Act and had directed the revenue to open online portal or to accept manual filing of TRAN-1 till 30 June 2020. Subsequent to the said order retrospective amendment was made in section 140 of the CGST Act granting power to prescribe time limits for the transitioning of the credit. The High Court, however in case of SKH Sheet Metals Components⁴ has held that regardless of the retrospective amendment to section 140, the direction given in Brand Equity case would continue to apply in full rigour as the consequences for non-compliances are not indicated in the GST law. Thus, the provision contained in the CGST Act has to be seen as directory in nature.

Considering the above rulings by the High Court and the dismissal of SLP by the Supreme Court, taxpayers have an opportunity to transition the credit into the GST regime.

¹ Chogori India Retail Limited [TS-375-SC-2020]

² Chogori India Retail Limited [TS-639-HC-2019(DEL)-NT]

³ Brand Equity Treaties Limited [TS-256-HC-2020(DEL)-NT]

⁴ SKH Sheet Metals Components [TS-373-HC-2020(DEL)-NT]

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