

TAX FLASH NEWS

7 May 2020

Delhi High Court directs revenue to allow filing of TRAN-1 till 30 June 2020

The Delhi High Court has recently held¹ that the time limit prescribed in Central Goods and Services Tax Rules, 2017 (CGST Rules) for the transitioning of credit into the GST regime are directory in nature and therefore, the same would not result in any forfeiture of the rights, in case the credit is not availed within the time limit prescribed under the Rules.

Further, the Court has held that by virtue of the Limitation Act, the benefit of transitioning of accumulated credit into the GST regime, shall be available for a period of 3 years from the date of enactment of GST law.

Brief facts

Writ petitions were filed before the Delhi High Court seeking direction to allow filing of declaration in form TRAN-1 beyond the period prescribed under the CGST Rules.

It was contended by the petitioner that the GSTN system was at the relevant point in time at the nascent 'trial and error' phase. The accumulated CENVAT credit represents the property of the petitioner which is a vested right of the taxpayers and accordingly, such vested right cannot be taken away on account of failure to fulfil conditions which are merely procedural in nature.

The credit is the property of the assessee and constitutionally protected under Article 300A of the Constitution, which cannot be taken away by framing rules without there being a substantive provision in this regard under the Act. Further, the time limit prescribed in the CGST rules is procedural in nature and not a mandatory provision and thus the period provided therein cannot be enforced to deprive petitioner from exercising its vested rights.

High Court Order

On the fundamental question placed before the High court that whether the Government could curtail the accrued and vested right, and restrict it to 90 days by a subordinate legislation, the Court made the following observations

- Section 140(1) of the CGST Act, which deals with the transitory provision, permit carry forward of the accumulated credits. On enactment of the CGST Act, no mechanism was provided for the refund of the credit that existed on the said date. The only mechanism was for utilisation of such credit by migrating the same into the GST regime
- There is no provision in the GST Act, which prescribes the time limit for the transitioning of the accumulated credit, which is evident from the fact that time limit of 90 days prescribed under rule 117 was extended from time to time
- By virtue of the inserted sub-rule (1A), the power was granted to the commissioner to extend the time limit beyond the prescribed period of 90 days. This power was exercised by the Commissioner and as a matter of fact the time limit was extended till 29 December 2017
- Further, for a specific class of persons, the time limit for the transitioning of credit was extended even beyond the period originally envisaged.

Thus, the court held that the CGST Act does not restrict the transition of CENVAT credit into the GST regime by a particular date. There is no rationale for curtailing the said period, except under the law of limitation.

¹ TS-256-HC-2020(DEL)-NT

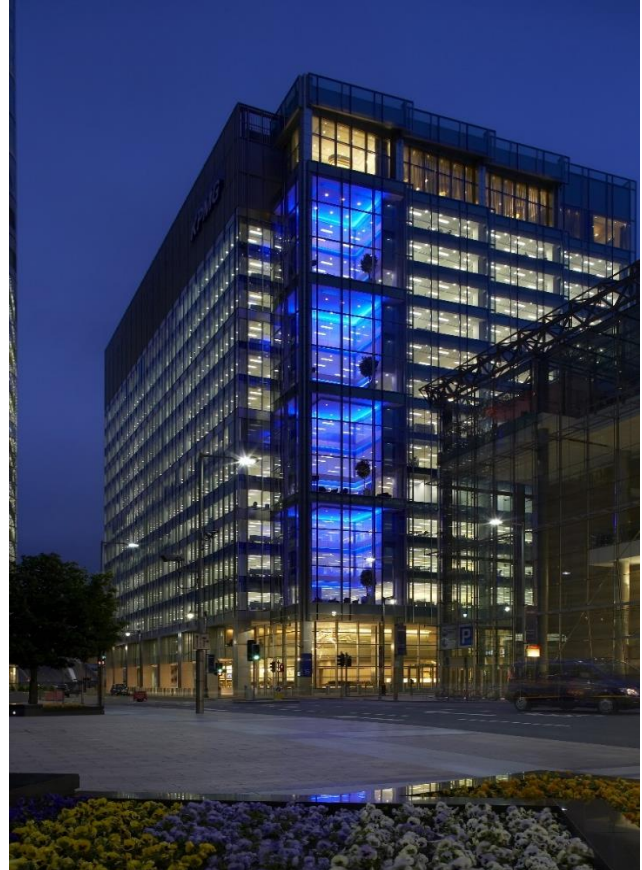
Further, the court held that, rule 117 is directory in nature in so far as it prescribes the time-limit for the transitioning of credit and therefore, the same would not result in the forfeiture of rights, in case credit is not availed within the period prescribed.

However, the Court also confirmed that the transitioning of credit cannot be allowed perpetually. Thus, in the absence of any specific provisions under the Act, the Court held that in terms of the residuary provisions of the Limitation Act, the period of three years from the appointed date should be the maximum period for transitioning the credit into the GST regime.

Accordingly, the Court directed the revenue to either open the online portal to enable the petitioner to file a declaration in TRAN-1 electronically, or to accept the same manually, till 30 June 2020.

Our comments

As has been held in several of the earlier judgments, the Delhi High Court has also allowed taxpayers to belatedly file declaration in TRAN-1 for transitioning CENVAT credit into the GST regime. The Court in the instant case has not only directed the revenue to allow the transitioning of the credit to those taxpayers who had faced technical glitches, but also to all taxpayers who could not file TRAN-1. Though the Court has directed the revenue to publicise the order so as to enable taxpayers who could not file TRAN-1 till date, it needs to be seen whether the said order will be challenged by the Government before the Supreme Court.



home.kpmg/in/socialmedia

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate
Road,
Pralhad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road, Bengaluru –
560071
Tel: +91 80 6833 5000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2,
Serilingampally Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

1st Floor, Lodha Excelus,
Apollo Mills,
N. M. Joshi Marg,
Mahalaxmi,
Mumbai – 400 011.
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2020 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

This document is meant for e-communication only