

GST – Another chance for claiming Transitional credit now

CA Madhukar N Hiregange

CA Venkata Prasad

GST laws contains Transitional provisions *inter alia* Section 140 of CGST Act, 2017 (similar provision in State GST laws) enables the taxpayer to carry forward the unutilized input credit under pre-GST regime and allow the credit of taxes paid on the stock as on 30.06.2017 as GST credit. For this, Rule 117 of CGST rules, 2017 as amended *inter alia* requires the taxpayers to file Form GST TRAN-1 electronically.

This was to ensure smooth transition from old laws (Central Excise, service tax, VAT) into GST, avoid the double taxation by way of cascading of taxes. The philosophy was that since GST rate was calculated to consider the new tax rate and the tax credits under the earlier regime which needed also to be transited.

The plain reading of the provisions makes it clear that the provisions are designed with the stated objective of avoiding double taxation and ensuring the smooth transition. However, practically the aforesaid purpose & objective was not achieved specifically the filing of Form GST Tran-01.

Various petitions had/are been/ being filed across the country and the Hon'ble High Courts have time & again directed the Government either to reopen the portal or to allow the manual filing of the forms. Some courts have suggested the Government to set up a redressal committee.

In light of these developments and acknowledging the genuine problems faced by the Taxpayers, the Government had provided a window enabling the taxpayers to file the Form Tran-1 till 31.03.2019 and which was now extended till 31.12.2019. This facility is available only to the persons who have digital evidence to prove the technical glitches while filing their Form GST Tran-1. Hence, taxpayers who have digital evidence like screenshots, help desk correspondence, etc., can take benefit of this date extension and avail the earlier missed out Transitional credit now. For this, an application shall be made to the Nodal officer of the IT redressal committee.

However, the Government has not given the opportunity to the taxpayers who could not file form Tran-01 for various other reasons such as:

- ✚ Attempted filing online but did not take the digital evidence like screenshots, help desk correspondence, etc as they/ their consultants were not tax savvy and the awareness of the massive implication on a procedure not followed was not known.
- ✚ Unawareness about the due date [which changed frequently]
- ✚ Mandatory e-filing system being new or Lack of computer system in place.
- ✚ Mistakes committed while filing online.
- ✚ Ignorance with the hope that due date would be extended (which is very frequent in GST) etc.,

All these categories of the taxpayers who lost out on carrying forward the just ITC do not have any option but to approach the High courts. In recent times, the series of decisions are delivered by the various High courts. Noted decisions are:

✚ **In Adfert Technologies Pvt Ltd v. UOI 2019-TIOL-2519-HC-P&H-GST** dealt with the two types of cases namely

- Taxpayers did/could not file Tran-1 by the due date and have no evidence of an attempt to load Tran-1
- Taxpayers loaded Tran-1 by the due date but there were mistakes and wanted to revise.

And it was held that

- ✓ The Introduction of Rule 117(1A) & Rule 120A and absence of any time period prescribed under Section 140 of the Act indicate that there is no intention of the Government to deny carry forward of unutilized credit of duty/tax already paid on the ground of time limit.
- ✓ GST is an electronic-based tax regime and most of the people of India are not well conversant with electronic mechanisms.
- ✓ Unutilized credit arising on account of duty/tax paid under erstwhile Acts is vested right which cannot be taken away on procedural or technical grounds.
- ✓ There were a number of steps and columns in TRAN-1 forms thus possibility of mistake cannot be ruled out.
- ✓ The revenue authorities were having a complete record of already registered persons and at present, they are free to verify facts and figures of any Petitioner thus in spite of being aware of complete facts and figures, the revenue department cannot deprive petitioners from their valuable right of credit.

✚ **In the case of Siddharth Enterprises Vs The Nodal Officer 2019-TIOL-2068-HC-AHM-GST** it was held that

- ✓ The right to carry forward credit is a right or privilege, acquired and accrued under the repealed Central Excise Act, 1944 (1 of 1944) and it has been saved under Section 174(2)(c) of the CGST Act, 2017 and, therefore, it cannot be allowed to lapse under Rule 117 of the CGST, 2017, for failure to file declaration form GST Tran-1 within the due date, i. e. 27. 12. 2017;
- ✓ The time limit prescribed under Rule 117 to allow the availment of the ITC with respect to the purchase of goods and services made in the pre-GST regime and post-GST regime is arbitrary, irrational and unreasonable and, therefore, it is violative of Article 14 of the Constitution;
- ✓ The due date contemplated under Rule 117 of the CGST Rules to claim the transitional credit is procedural in nature and thus merely directory and not a mandatory provision;
- ✓ By not allowing the right to carry forward the CENVAT credit for not being able to file the form GST TRAN-1 within the due date may severely dent the writ-applicants working capital and may diminish their ability to continue with the

business and such action violates the mandate of Article 19(1)(g) of the Constitution;

- ✓ The liability to pay GST on sale of stock carried forward from the previous tax regime without corresponding input tax credit would lead to double taxation on the same subject matter and is, therefore, arbitrary and irrational;
- ✓ The phrase “*technical difficulties on the common portal*” should be given a liberal interpretation because it is a settled principle of law that an interpretation unduly restricting the scope of a beneficial provision should be avoided so that it may not take away with one hand what the policy gives with the other;

✚ In the case of **Tara Exports v. Union of India — 2019 (20) G.S.T.L. 321 (Mad.)** it was held that the due date contemplated under the laws to claim the transitional credit is procedural in nature. In view of the GST regime and the IT platform being new, it may not be justifiable to expect the users to back up digital evidence. Even under the old taxation laws, it is a settled legal position that substantive input credits cannot be denied or altered on account of procedural grounds.

✚ In the case of **Uninav Developers Pvt. Ltd. v. UOI 2019-TIOL-1661-HC-DEL-GST**, it was held that

- ✓ The entire GST system is still in a trial and error phase and it will be too much of a burden to place on the assesseees to expect them to comply with the requirement of law where they are unable to even connect with the system on account of network failures or other failures.
- ✓ The IT Grievance Redressal Committee (ITGRC) to review the policy it has adopted in such cases and acknowledge instances of the petitioners are not able to link with the portal and, therefore, the fact of technical glitch is not able to be accounted for in the system.
- ✓ Directs the respondents to either open the portal to enable the petitioner to again file the TRAN-1 form electronically, failing which they will accept the manually typed TRAN-1 form

✚ In the case of **Tyre Plaza v. UOI 2019-TIOL-1902-HC-DEL-GST**, it was held that there appear to be technical errors or technical glitches of various kinds in the GST system, which is still in the ‘trial and error’ phase. If it was not able to even connect with the server, the fact of a failed attempt at filing a return may not even be registered on the system. Hence, directed to allow the filing of form Tran-1.

✚ In the case of **Blue Bird Pure Private Limited v. Union of India) = 2019-TIOL-1564-HC-DEL-GST** it was held that transitional credit cannot be denied due to inadvertent error and directed to allow the rectification of Form Tran-1.

In view of the unvarying series of judicial decisions, the taxpayers who have missed claiming transitional credits initially can now claim the same. The suggested course of action is as under:

- **Apply to the Nodal officer on or before 31.12.2019 for enabling the filing of Form GST Tran-1 online**



- If the application is rejected or not acted in a reasonable time, file a writ petition before the Jurisdictional HC for necessary directions.

This article was published in Taxguru at the below link:

<https://taxguru.in/goods-and-service-tax/gst-chance-claiming-transitional-credit.html>

For any further queries/comments please write to

madhukar@hiregange.com, venkataprasad@hiregange.com

Our Locations: Bangalore | Hyderabad | Visakhapatnam | NCR (Gurgaon) | Mumbai | Pune | Chennai | Guwahati |

www.hiregange.com

Team Hiregange