



Delhi HC reaffirms its decision to allow availment of transition credit by 30 June 2020

SKH Sheet Metals Components versus Union of India – Delhi High Court¹

The Delhi High Court in the case of *Brand Equity Treaties Limited versus Union of India*² examined the issue of validity of the time limit to avail transition credit under Rule 117 of the Central Goods and Service Tax Rules, 2017 (“the Rules”) and the extension given by the Government to assesses who faced a “technical difficulty on the common portal” while filing the TRAN - 1. The Court held that extending the time limit for a selective group was discriminatory and allowed all assesses to avail transition credit by filing TRAN – 1 by 30 June.

The Delhi High Court considered these issues taking into consideration the amendment to section 140 of the Central Goods and Service Tax Act, 2017 (“the Act”) and the restrictive applicability of Rule 117(1A) of the Rules. Section 140 of the Act was amended vide the Finance Act 2020, with retrospective effect to add the phrase “within such time” to enable and sanction the introduction of the time lines by the Government under rule 117(1) and rule 117(1A) of the Rules.

The Petitioner in this case had filed the TRAN – 1 well within the time period. However, the details were not disclosed in the correct column, owing to which the total transition credit was not reflected in the electronic credit ledger of the Petitioner. The Petitioner filed various letters and representations with the GST authorities and the IT Grievance Redressal Committee (“ITGRC”). The representation filed with the ITGRC on the direction of the Bombay High court³, denied the benefit of availment of transition credit to the Petitioner on the ground that the Petitioner did not face “technical difficulty on the common portal” while filing the TRAN -1 and that the total transition credit could not be availed by the Petitioner due to the mistake in disclosure made in the TRAN – 1.

The Delhi High court after evaluating the facts, held the following:

- Rule 117A of the Rules is not sacrosanct and the proviso to Rule 117 of the Rules is vague, as the concept of ‘technical difficulty on the common portal’ is not defined in the Act and discrimination on the basis of this criterion is bad in law. Thus denying availment of transition credit to the

¹ TS-373- HC-2020 (DEL)-NT

² W.P (C) 11040/2018 – Delhi High Court

³ Writ Petition No. 712/2018 – Bombay High Court



Petitioner on the ground that the Petitioner could not avail transition credit due to “human error” and not due to “technical difficulty on the common portal” was held to be unreasonable, arbitrary and in violation of Article 14 of the Constitution.

- The GST Council during its 32nd meeting recognized that there could be errors apparent on the face of the record that could be non-technical in nature and held that such cases merit leniency.
- The transition provisions and the language of section 140 even after the amendment manifest that the intention behind the said provision is to save the accrued and vested ITC under the existing law. If the legislature allows migration of the transition credit, the rules should be interpreted with this objective in focus. Keeping in mind this objective of the legislation, the courts have held that transition credit stood accrued and is a vested right and is protected by Article 300A of the Constitution and could not be taken away without the authority of law.

amendment to section 140 of the Act. This decision of the Delhi High Court has been challenged before the Supreme Court and the outcome remains to be seen.

Considering that it is unlikely that the portal will be opened before 30 June 2020, it is advisable to lodge a claim for the unavailed transition credit, by filing a letter with the authorities to state that the claim is being done in line with the decision of the Delhi High Court.

In the case of *Mangla Hoist Private Limited*⁴ the Delhi High Court has directed the GST department to open up the portal to enable filing of TRAN – 1 by 19 June 2020.

Dhruva Comments:

The decision of the Hon’ble Delhi High Court adds more force to the argument that transition credit has already accrued, is a vested right of assesses and is a Constitutionally protected right under Article 300A of the Constitution, and that substantive rights cannot be denied because of procedural issues.

The decision also contributes to the discussion on the Constitutional validity of the discrimination made only for taxpayers who have faced technical glitches, under Article 14 of the Constitution of India, and has consistently held such discrimination to be arbitrary.

The Hon’ble Delhi High Court has refrained from evaluating the validity of the decision of *Brand Equity Treaties Limited [supra]* remarking that the decision is not based merely on the fact that the Act does not prescribe a time limit for availment of transition credit, but that there are several other reasons in the decision that apply with full rigour even today, regardless of the

⁴ W.P (C) 3572/ 2020 – Delhi High Court





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