

Recently Hon'ble Delhi High Court has given a landmark judgment in the matter of "**Brand Equity Treaties Limited & Others Vs The Union of India & Others**" holding that **all the taxpayers** are allowed to the transitional claim of tax credit as available as on 30th June, 2017 under previous indirect tax regime (Central Excise, Service Tax & VAT) by filing form TRAN-1 till 30th June 2020. Hon'ble High Court has held that the statutory time limit given is directory and therefore, the period of limitation of 3 years under the Limitation Act would apply. We have analysed the aforesaid judgement in this update.

A. FACTS OF THE CASE

- In this Judgement, four separate writ petitions filed by various parties have been clubbed together and a common judgement has been passed since the issue is identical.
- One of the petitioners was in the business of advertising, brand promotion and public relation management, as a part of Bennett Coleman Group of companies [Times Group].
- It was registered under the provisions of Chapter V of the Finance Act, 1994 for service tax and was discharging its liability by way of filing service tax returns.
- Petitioner had CENVAT credit reflected in the service tax return for the period April 2017 to June 2017 and was eligible to carry forward the said CENVAT credit to GST regime by filing TRAN-1 form.
- Petitioner contended that it had been repeatedly trying to upload its claim for carrying forward the credit in form GST TRAN-1 but could not do so due to **error** in the **GSTN portal**.

B. ISSUE INVOLVED

Whether the Government could curtail the accrued and vested right of claiming CENVAT credit in GST regime, and restrict it to 90 days by a subordinate legislation and the arbitrary classification, introduced by way of sub Rule (1A) of Rule 117, restricting the benefit only to taxpayers whose cases are covered by "technical difficulties on common portal" subject to recommendations of the GST Council, is arbitrary, vague and unreasonable.

C. ARGUMENTS OF THE ASSESSEE

- GST system is in a nascent "trial and error" phase and has a lot of technical errors, for that assessee's should not be made to suffer on account of inefficiency in the systems.
- The assessee argued that that the CENVAT credit accumulated in the erstwhile regime represents the property of the petitioner which is a vested right in their favour.
- Such accrued or vested right cannot be taken away by the respondents on account of failure to fulfil conditions which are merely procedural in nature
- The accumulated CENVAT credit is the property of the assessee and a constitutionally protected right under Article 300A of the Constitution, which cannot be taken away by framing Rules without there being any substantive provision in this regard under the Act. On another note, it is urged that the time limit specified in Rule 117 of CGST Rules is procedural in nature, and not a mandatory provision.

D. ARGUMENTS OF THE GST AUTHORITIES

- Department argued that the petitioners do not deserve any sympathy from this Court, as the facts of each case exhibit a casual approach on their part.
- It is also pointed out that some of the petitioners attempted to file TRAN-1 for the first time after the expiry of the last date for filing TRAN-1, as admitted in the pleadings.
- Rule 117 of the CGST RULES,2017 empowers the Government to fix the time frame for availing the carry forward of input tax credit by transitioning the CENVAT credit into the GST regime
- It was also submitted that benefit of taking credit is not a vested right of an assessee and certainly cannot be claimed in perpetuity.

E. HIGH COURT RULING

- Hon'ble Delhi HC observed that Rule 117 of CGST Act,2017 as being **directory** in nature, in so far as it prescribes the time-limit for transitioning of credit and therefore, the same would not result in the forfeiture of the rights, in case the credit is not availed within the period prescribed.
- Transitional provisions, as the word indicates, must be given its due meaning. Transition from pre-GST Regime to GST Regime has not been smooth and therefore, what was reasonable in ideal circumstances could not be expected in the current situation.
- In absence of any specific provisions under the Act, Hon'ble HC hold 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 of such credit.
- It was also held that **other taxpayers** who are similarly situated should also be entitled to **avail** the **benefit** of this judgment.
- The court has further directed that it should be advertised that all taxpayers who have not filed TRAN-1 can do so by 30th June 2020.

F. OUR COMMENTS

Captioned order of Hon'ble Delhi High Court would certainly benefit many taxpayers who were not able to file TRAN-1 earlier due to any reason which has resulted in loss of tax credit. Hon'ble Court has further held that the period provided by the CGST rules is directory in nature and in this case, the limitation period prescribed under Limitation Act will be applicable. Now, the taxpayers can **file the Form TRAN 1 by 30th June 2020** and claim the transitional credit available to them under Pre-GST regime.

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