

CBIC amends GST Law retrospectively to disallow transitional credit claims

The Central Board of Indirect Taxes and Customs (CBIC) has notified retrospective amendments to Section 140 of CGST Act, 2017. The Central Government has appointed 18th day of May' 2020, as the date on which the provisions of Section 128 of Finance Act' 2020 shall be made applicable.

- ❖ Upon introduction of Goods and Service Tax ('GST'), the credit of taxes available in erstwhile law, i.e. Central Excise, Service Tax and Value Added Tax, was allowed to be carried forward as per the transitional provisions either as Central Goods and Service Tax ('CGST') or State Goods and Service Tax ('SGST') as the case may be.
- ❖ To ensure smooth transition, GST laws contained Transitional provisions inter alia Section 140 of CGST Act, 2017 (*similar provision in State GST laws*) enabling 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 30th June 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.
- ❖ The plain reading of the provisions made 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-1.
- ❖ Various petitions were 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.
- ❖ Considering these developments and acknowledging the genuine problems faced by the taxpayers, the Government has opened a window initially to enable the taxpayers to file the Form Tran-1 till 31.03.2018 and which was further extended till 31.03.2020. 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. For this, an application was required to be made to the Nodal officer of the IT redressal committee.
- ❖ Recently, the Hon'ble Delhi High Court has allowed all assesses to avail transitional credit till June 30, 2020, through an order passed on May 5, 2020. The High Court had ruled that time limit for transitional credit was only 'directory' in nature and not 'mandatory' and allowed three years' time limit from July 1, 2017 to claim the credits. The court reached the conclusion that in the absence of any specific provision under the Act, the residuary provisions of Limitation Act shall prevail and thus a period of three years from the appointed date shall be reckoned.

- ❖ The CBIC has issued Notification No. 43/2020-Central Tax dated 16th May 2020 and notified the 18th Day of May' 2020 as the day from which the retrospective amendment in section 140 of CGST Act' 2017 shall come into force effective from 1st July 2017 to negate the various litigations arising out of various interpretation of statutes and effects of various decisions of courts.

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