
TAXPAYERS ELIGIBLE TO CLAIM PRE-GST ACCUMULATED ITC IN A 60 DAY WINDOW: SUPREME COURT OF INDIA

I. Context

The Hon'ble Supreme Court of India in *Union of India & ANR. vs. Filco Trade Centre Pvt Ltd ANR*¹ granted an extended period in which taxpayers can claim credit of taxes of Pre-GST acts by filing GST Form TRAN-1 and TRAN-2.

The Respondent, *Filco Trade Centre Pvt Ltd*, challenged the constitutional validity of the condition imposed by clause (iv) of subsection (3) of section 140 of the Central Goods and Services Act, 2017 ('CGST Act').

The Respondent raised the following contentions:

- In the earlier tax regime, the first stage dealer was not burdened with excise duty paid on purchases. Further, there were no restrictions with respect to time limit within which the goods must be sold. The first stage dealer was thus put at par with the manufacturers. A registered manufacturer could avail CENVAT credit of tax paid on purchases which could be utilized towards duty liability of goods manufactured by him. As against this, a first stage dealer or an importer could pass on the credit of tax paid on their purchases to the customers who could utilize such credit against their duty liability on product manufactured by them. However, section 140(3) of the CGST Act imposed a condition in respect of goods purchased by the first stage dealer from the manufacturer prior to one year.
- The distinction drawn in case of first stage dealer is arbitrary and discriminatory. The first stage dealers are not accorded in the same treatment as is given to the manufactures.
- CVD is meant to offset the element of excise duty to put imports on same pedestal as a local manufacturer. For any of the imports made prior to one year, CVD component by virtue of section 140(3) of CGST Act would have to be borne by the petitioners.
- Further submitted that the impugned statutory provisions take away the vested right. Under the earlier regime, the duty borne by the petitioners on the goods purchased from the manufacturer or paid in the form of CVD on imports were granted CENVAT credit which could be utilised for discharge of duty liabilities.

II. Ruling by the Hon'ble Supreme Court

The Apex court in the light of the above stated matters issued the following directions:

- Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months w.e.f. 1st September 2022 to 31st October 2022.
- Any aggrieved registered assessee is therefore directed to file relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been directed by Information Technology Grievance Redressal Committee (ITGRC).

¹ SLP(C) No. 32709-32710/2018

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- GSTN has to ensure that there are no technical glitches during the same time.
 - The concerned officers have to verify the veracity of claim/ transitional credit and pass appropriate orders on the merits of such claims in 90 days; after giving a reasonable opportunity to the parties concerned.

III. VA Comments:

The ruling of the Hon'ble Supreme Court comes as a relief and enables all the registered taxpayers to claim the ITC for taxes paid in the erstwhile tax laws in its electronic credit ledger by filing Form TRAN-1 and TRAN-2 irrespective of the fact that whether they could not meet with the time limit specified in Rule 117 of the CGST Rules, 2017 or their claim was partially or completely denied. Businesses may explore methods to take advantage of the same.

For any further information/ clarification, please feel free to write to:

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