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The TRAN-1 showstopper

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WITH the advent of the much touted GST regime, came a catalogue of issues handpicked for each assesse. One such issue which has given restless nights to a lot of taxpayers is the filing of Tran-1 or the carrying forward of the transitional credits from the erstwhile regimes to the Goods and Services Tax (GST) regime. In the hindsight, this issue has not only been a nightmare for assesses but also for the judiciary as they have had a taxing time ruling in favour and against; multiple times in multiple states. However, in this article we are going to discuss the two recent contrary rulings ruled by the Delhi High Court and the Rajasthan High Court in the case of *Brand Equity Treaties Limited Vs Union Of India* - **2020-TIOL-900-HC-DEL-GST** and *Shree Motor Vs Union of India* - **2020-TIOL-924-HC-Raj-GST** respectively and the Notification that followed the tussle.

Torment - Rajasthan HC

The Rajasthan HC in March 2020 rejected the petition filed by Shree Motors and denied transitional credit due to non-attempt to file Tran-1. The petitioner had alleged that due to various technical glitches/system errors, they failed to file Tran-1 on the common portal within the time envisaged under Rule 117 of the Central Goods and Services Tax Rules, 2017 (CGST Rules, 2017). Further, it was alleged that the petitioner made various attempts to file a complaint in this regard with the respective GST department but failed to obtain a response. However, the respondent denied all allegations and concluded by saying that there was no log of the complaints filed and while thousands of assesses were given transitional credit why would the department specifically deny such credit to the petitioner. The HC discussed the theory of vested rights also and ruled against the petitioner stating that providing a limitation to the statue does not take away any vested rights.

Respite - Delhi HC

Approximately 2 months later the Delhi HC ordered the Union of India to accept Tran-1. The court observed that the period of 90 days for claiming input tax credit is directory and therefore, period of limitation of three years under the Limitation Act would apply. The Court has directed the revenue department to allow **all** assesses to claim input tax credit by June 30, 2020. Generally, a court order applies only to the petitioner, but this judgment is revolutionary as the court has made the verdict applicable to all taxpayers. Further, the court also discussed that the transitional credit became a vested right in the erstwhile regime itself when the credit was availed.

Contrasting views

While it is not uncommon for different high courts to give differing rulings on the same matter, the issue of Tran-1 is being debated over for almost 2 years now. Various high courts have conferred this issue since the time GST was brought in; there have been to and fro

rulings which have made this issue contentious. However, the agenda here is focussed on the aforementioned two rulings; the contrast of which has been discussed below:

1. While both the rulings discussed the theory of vested interest, the conclusion in each case was different. The Raj. HC referred the ruling of Supreme Court (SC) in the case of Osram Surya wherein the SC had held that by merely applying a limitation, any statue doesn't take away the vested rights. Therefore the Raj. HC upheld the time limit given under Rule 117 of the CGST **Rules, 2017**. Contrary to this, the Delhi HC observed that input tax credit accumulated prior to 1 July 2017 is a vested right of the taxpayer and GST rules cannot take this away. Moreover, the Delhi HC went a step ahead and ruled that the limitations act shall apply in this case and granted three years as the time to file Tran-1 which ends on 30 June 2020. What was astonishing was that the Delhi HC did not only rule in favour of the petitioners but also directed the revenue to grant such time limit to all taxpayers and publish the same on their website so as to make the taxpayers aware of the extended timeline.

2. In the former ruling, the revenue contended that the excuse of technical glitches cannot be given by the petitioner as there was no log of complaints filed and besides, numerous taxpayers filed their Tran-1 within the same time frame but did not face any challenges. The Raj. HC accepted the contention and ruled that subject to the petitioner furnishing the proof that they tried to upload Tran-1 but failed due to technical glitches, the petitioners Tran-1 be accepted.

However, in the latter case, the Delhi HC held that technical difficulty is a broad term and is not only limited to a difficulty faced by or on the part of the respondent. It would include within its purview any such technical difficulties faced by the taxpayers as well, which could also be a result of the respondent's follies.

3. The time limit given under Rule 117 of the CGST Rules, 2017 was also one key point discussed in the rulings. The Raj. HC observed that the time limit given under the said rule is intra-vires the law and should be followed in its entirety. However, the Delhi HC questioned sacrosanct nature of the said rule, especially given the fact that the revenue itself has multiple times extended the time limit given under the rule. This proves that the revenue recognises that the taxpayers were facing technical difficulties on account of the inefficiencies of the portal.

The above discussion brings us to the epicentre of the wrangle i.e. Section 140 of the CGST **Act 2017** and Rule 117 of the CGST Rules, 2017. The Section deals with transitory provisions and carry forward of the **eligible credit** from the erstwhile regimes. The section presumes that the credit that is carried forward shall be eligible, accrued and availed by the assessee in their Cenvat register. Therefore the foundation of the said section itself admits that the credit under question is the vested right of an assesee and the assesee has passed the acid test to be entitled for such credit. While transitioning to GST, the government gave the option to use this credit under GST and no option of refund was cited. Therefore, the only respite to the taxpayer was to move this credit to the new regime.

It is no secret that the transition to GST regime was far from smooth; it was shambolic and cumbersome. The Government was striving as hard as the taxpayer to get things under control. The timelines for various compliances including Tran-1 was extended several times, because not only the taxpayer wasn't ready, the portal was also misbehaving. It seems only discriminatory that the timelines were extended when the government was facing technical difficulties but the taxpayer's plea on the same account was ignored.

CBIC's masterstroke

Post the magnanimous judgment given by the Delhi HC, the Central Board of Indirect taxes and Customs (CBIC) moved quite expeditiously in issuing **Notification no. 43/2020-Central Taxes dated 16 May 2020.** The Notification lays down imposition of Section 128 of the Finance Act, 2020 from 18 May 2020.

The said Section 128 (effective from 1 July 2017) amends Section 140 of the CGST Act, 2017 to include the words 'within such time' and manner as prescribed. Vide such amendment, the CBIC has put to bed the issue raised in various HC that the time limit given under Rule 117 of the CGST Rules, 2017 is *ultra vires* the Act as Section 140 of the CGST Act, 2017 did not direct the rules to prescribe the time limit.

The retrospective amendment by the CBIC is their master stroke reply to the plethora of HC judgments which favoured the assesse and allowed them to file Tran-1 even beyond the time-limit on the premise that the time limit given under Rule 117 is *ultra vires* the law. With this new development, the celebrated judgment of Delhi HC which allows all assessee to file Tran-1 till 30 June 2020 stands nullified. One would have been happy had the CBIC been so proactive even while addressing the grievances of taxpayers?

Litigation to end?

While the department may have hit it out of the park with the retrospective applicability of the said Notification, it is for us to see whether all the litigations on this issue will be resolved? While the old litigations may have become null and void, a new fresh wave of litigations is waiting to hit us, where credit being substantive right and the constitutional validity of the time limit will be questioned. This has been discussed numerous times in the old regime when cenvat/modvat scheme was prevalent. Long story short, this is a time bomb which is just waiting to explode.

Next Steps

There is still a chunk of taxpayers who haven't yet filed their Tran-1 for reasons, so many. The taxpayers who tried to file Tran-1 earlier but failed to do so owing to technical glitches and have with them a proof of the same (sent emails, recorded telephone calls, screenshots etc.) stand a better chance to get their Tran-1 in the system. They may apply to their jurisdictional Commissioner for an extension (only upto 29 June 2020 as amended by Notification no. **35/2020-CT** dated 3 April 2020*) and try filing the same manually. One factor which may be important to consider here is whether such technical glitch is on the portal i.e. at the department's end or at the taxpayer's end. From the above discussion, one can understand that the revenue may extend the timeline in the former case but turn a blind eye towards the latter cases.

[**Notification no. 35/2020-CT dated 3 April 2020 extends the time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020. The Notification gives exclusion to certain Sections; the transition provisions are not a part of such exclusions. Therefore, it has been interpreted that the timeline to apply for an extension to file Tran-1 to the jurisdictional commissioner has also been extended to 29 June 2020.*]

The Finance Minister has recently unveiled the 20 lakh crore fiscal stimulus to revive the economy. In grim situations like the current, the least that was expected was to provide small reliefs like allowing filing Tran-1 to the badly affected businesses in order to improve their working capital situation. However, the CBIC has done exactly the opposite.

[The views expressed are strictly personal.]