

## Transitional Credit litigations under GST - Over or Still Hover?

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The GST Law had introduced provisions to enable the taxpayers to transition unutilized credits from the pre-GST regime into the GST regime. The claim of transition credits was required to be made by the taxpayers by 27th December 2017 by submitting Form TRAN-1 on GSTN portal as provided in rule 117 of the CGST Rules.

However, due to several reasons, such as the lack of knowledge about the GST law, technical glitches on the GSTN portal, manual errors etc., many taxpayers could not properly transition the credits within the specified time limit. Consequently, the taxpayers had no option but to approach the High Courts to seek redressal of their grievances and not to lose their validly earned credits.

In 2020, the Delhi High Court in case of **Brand Equity Treaties Ltd and Ors vs Union of India and Ors** [\[TS-256-HC-2020\(DEL\)-NT\]](#) held that the taxpayers can claim transition credit by submitting form TRAN-1 within time-limit of 3 years from the date of introduction of GST, i.e., till 30th June 2020, under the general law of limitation. However, the judgment was stayed by the Supreme Court. Further, the Government had amended the GST law retrospectively in Finance Act, 2020, giving it the power to specify the time limit for claiming transition credits.

Despite completing 5 years of implementation of GST, issues regarding transitional credits were still far from being over. Differing judgements were pronounced by various High Courts on issues relating to transition credits. And the taxpayers as well as the Governments appealed to Supreme Court for obtaining relief on this continuing issue. Following a plethora of disputes, eventually, the issue with respect to the carry forward of legacy credit to the GST regime was decided by the recent decision of Supreme Court in the case of **Union of India vs. Filco Trade Centre Pvt. Ltd.** [\[TS-369-SC-2022-GST\]](#), wherein the Apex Court gave a one-time opportunity to all the aggrieved taxpayers to either file the Form TRAN 1 or revise the Form TRAN 1 filed earlier to claim the credits which were not claimed earlier in a limited period window of 1st October 2022 to 30th November 2022. The CBIC also issued circular no. 180 and 182 in this regard, for manner of claiming credit and verification by the GST authorities. Some of the salient features of the above are as under:

- Although, the term 'aggrieved taxpayer' is not specified anywhere in the Order or instructions issued in this regard, it was understood that the aggrieved taxpayers can be anyone who has filed the TRAN-1/ Tran-2 earlier and intends to revise the same or one who has missed filing the same earlier.
- Circular No. 180 dated 9th Sept 2022 issued pursuant to the Supreme Court Order provides that where any adjudication/ appeal proceeding is pending, the appropriate course would be to pursue the said adjudication/ appeal rather than filing of revised TRAN-1/ TRAN-2. However, contrary to this, another Circular No. 182 dated 10th Nov 2022 on this matter clarifies that if the applicant of TRAN-1 is already undergoing adjudication or appeal proceedings in respect of transitional credit related matter, the officer should take a note of the relevant facts in the notice/ order and the reasons for inadmissibility of transitional credit in the said notice/ order. This seems to have created an uncertainty amongst taxpayers with respect to their eligibility to avail the excellent opportunity granted by the Apex Court.

- The credit verification guidelines issued by the Government seems to be quite stringent. The lack of documents at taxpayer's end such as 'transport verification' or 'any other collateral document', which are to be applied in case of high inventory, could reignite the unnecessary litigations similar to the ones under VAT & CST Laws, considering that there is no parameter to define what is a high inventory.

It is important to note here that although the order of the Hon'ble Supreme Court was a huge sigh of relief for the taxpayers who missed transitioning their eligible credits, the devil lies in the details.

As per the order and the circular, the GST authorities are required to issue the notice, verify the veracity of credit, ask for further documents, accord the personal hearing in case any credit is sought to be treated as ineligible and pass the Order by or before 28 February 2023. Only post such Order, the credit will be reflected in Electronic Credit Ledger of the taxpayer. More than a month and half has already passed, and a number of companies have still not been issued with any intimation for verification yet. It will be a sight to watch how the Revenue will deal with tonnes of applications by 28 February 2023. Due to such short timelines, there is an apprehension in the industry that either the notice for verification could be issued at the last minute or the order may be passed without complete verification. It is also unclear as to whether such order would be appealable or not, considering that the source to issue order allowing or rejecting the claim of credit is coming from a circular. In case, the order cannot be treated as appealable order, the aggrieved taxpayers will again have to approach the High Courts for another round of litigations for transitional credit, after five and a half years of introduction of GST and also add to the burden on the High Courts.

Considering above, the Union Budget 2023-24 should amend the GST Law to specifically clarify about an appellate mechanism against such rejection of the claims so as to avoid any confusion, in addition to suitably increasing the timelines to complete verification, giving intended relief to the taxpayers at large.