



1. Recent Rulings

Transition Of Pre-Gst Cesses Like Education Cess, Krishi Kalyan Cess Etc. Allowed In Gst

The Hon'ble Madras High Court in the recent case of **Sutherland Global Services Private Limited v. Union of India & Ors. W.P. 4773 of 2018** has held that the assessee can carry forward credit of pre-GST cesses like Education Cess ("EC"), Secondary and Higher Education Cess ("SHEC"), Krishi Kalyan Cess ("KKC") etc. to the Goods and Services Tax ("GST") regime through filing Form GST TRAN-1. A brief summary of the findings of the Hon'ble Madras HC are as follows:

- The language of section 140(1) and (8) of the Central Goods and Services Tax Act, 2017 ("CGST Act"), both make it clear that an assessee to GST is entitled to transition of 'the amount of Cenvat credit carried forward in the return relating to the period ending with the date preceding the appointed date' and this in the present case includes accumulated credit of EC, SHEC and KKC.
- The intent of Section 140(8) of the CGST Act is clear to the effect that the credit reflected in the earlier returns is sought to be permitted to be transitioned, except if specifically barred.
- Accumulated credit cannot be said to have been wiped out unless there is a specific order under which it lapses.

It is noteworthy that the Madras HC, while pronouncing the above judgement has relied upon an important concept of lapsing of credits. The judgment notes that unutilized portion of EC, SHEC and KKC continued in

the electronic credit ledgers of assessee, but could not be practically utilised in the absence of an enabling provision. Therefore, such credit continues to be available till such time it is expressly stated to have lapsed. The Court noted that *"having permitted the assessee to carry forward the credit, the authorities cannot now take a stand that such credit is unavailable for use"*

Our thoughts –

While the judgment is a much awaited relief to the assessee who had taken a conscious call to transition the credits of all cesses into GST regime, there were many assessee who did not do so by relying upon the informal clarifications given by Central Board of Indirect Taxes and Customs during the onset of GST regime.

The assessee who transitioned these credits can now use the ruling in their favour in case of denial by the tax authorities, while the others will have to seek other remedies like filing revised Form GST TRAN-1.

Transitional Credit A Vested Right, Cannot Be Denied On Ground Of Non-Filing Of Tran-1

Recently, a Division Bench of the Hon'ble Punjab & Haryana High Court in a bunch of Writ Petitions, has reaffirmed the views taken by Hon'ble Gujarat High Court and Hon'ble High Court of Delhi and has held that denial of credit of tax/duty paid under existing Acts would amount to violation of Article 14 and 300A of Constitution of India as unutilized credit has been recognized as vested right and property in terms of Article 300A of the Constitution of India in various judgments.

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2. Important Notifications

Restriction On Full Availment Of Input Tax Credit

A restriction has been cast on full availment of input tax credit by the recipient in cases where the supplier does not furnish/upload the details of its outward supplies in its monthly GST returns. As per this restriction, if the details of supplies received by a recipient have not been furnished/uploaded by the supplier (“**Non Reported Supplies**”), the recipient shall be allowed to take the input tax credit of such Non Reported Supplies only to the extent of 20% of the total eligible credit available in respect of the invoices the details of which have been duly uploaded/furnished by the suppliers (“**Reported Supplies**”) in the monthly returns.

Our thoughts –

The declining GST revenues every month are a major factor pushing CBIC to make such stringent provisions which is leading to an increased compliance burden over the assessee. However, not only has such move increased the compliance burden but also thrust the responsibility of better vendor management on the purchaser.

It may be worthwhile to explore whether such onerous conditions can be imposed on a *bona fide* purchaser by exercise of a rule making power by the Government. Moreover, appropriate clarifications must be issued by the Government to provide clarity on the various scenarios which may emerge upon a practical application of this provision.

Service By Way Of Grant Of Alcoholic Liquor Licence Neither A Supply Of Goods Nor Supply Of Service

CBIC has notified that service by way of grant of

alcoholic liquor licence, against consideration in the form of licence fee or application fee, etc. shall be treated neither as a supply of goods nor a supply of service.

This notification is also a much awaited relief for the alcohol industry as the GST Council had given this recommendation way back in its 26th meeting dated 10 March 2018. Thereafter, even the Delhi High Court in **Jagatjit Industries v. Union of India** had directed the CBIC to issue necessary instructions.

The notification also puts to rest various investigations being carried by the Directorate General of GST Intelligence (“**DGGI**”) across the country on players in alcohol industry.

3. Other Updates

Generation And Quoting Of Document Identification Number (Din) On Any Communication By Officers Of Cbic

CBIC, in a recent communication, has directed its officers that no search authorisation, summons, arrest memo, inspection notices and letters issued in course of any enquiry shall be issued without a computer generated DIN after 8 November 2019. CBIC also notes that any communication which does not bear a DIN shall be treated as invalid and be deemed to have been never issued.

Our thoughts –

The generation of DIN by any communication from officers of CBIC is a welcome move, especially in a scenario where at times it may become difficult to verify the authenticity of a communication. This will also act as deterrence to casual enquiry notices issued by some officers only to harass the tax payers as DIN will be monitored and is an effective step towards accountability in governance.

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