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Analysing developments impacting business

SUPREME COURT RESTS THE TRANSITIONAL CREDIT DISPUTE

28 July 2022

Introduction

The Supreme Court, in an order dated 22 July 2022¹, has decided a batch of nearly four hundred petitions and has directed opening of the Goods and Services Tax (GST) portal from 1 September 2022 till 30 October 2022 to facilitate claiming of transitional credit by all taxpayers who have missed to take such credit in past.

GST law contained a specific provision for transitioning tax credits of the earlier regime (CENVAT Credit, State VAT credit etc.) to the new regime, subject to myriad substantive and procedural conditions. There were constitutional and legal challenges to the scheme of transitional credit including on the issues of limitation, revisions, inadvertent errors and technical glitches. All these disputes were being heard and disposed by the jurisdictional high courts, with mostly in favor of the taxpayers.

Order dated 22 July 2022 of the Supreme Court

The order of the Supreme Court has given a one-time option for assesseees and business to set right their claims of transitional credit, as follows:

- (a) The portal facilitating claim of transitional credits will be re-opened for the period between 1 September 2022 – 30 October 2022.
- (b) All assesseees can file their returns for claiming transitional credits which have not been claimed earlier or have been incorrectly claimed and therefore, rectify inadvertent errors. This benefit is available to one and all and irrespective of any requirement of pre-existing dispute.
- (c) Once filed, the GST officers will be required to verify the claims so made within a period of 90 (ninety) days and pass orders determining the correctness of the claims so made.
- (d) Thereafter, the transitional credit should reflect in the electronic credit ledger on the GST portal.

¹ Union of India & Anr. v Filco Trade Centre Pvt. Ltd. & Anr. in SLP(C) No. 32709-32710/2018 and other connected matters.

- (e) GST Council may issue appropriate guideline for scrutiny of claims.

Comments

While this ruling will certainly help businesses to re-assess their transitional credit filings and make claims for any credits inadvertently missed out, there are a few questions that are amiss and will lead to another round of litigation.

As an illustration, transitional credit claims on account of pending or failed constitutional challenges will in all probability be rejected even if claimed once again. In other words, transitional credits on account of pending legal or constitutional disputes cannot take the outright benefit of this order, which practically, is limited to those cases where credit was inadvertently unclaimed.

Further, various services at the time of introduction of GST were eligible to complete credit and subsequently, subjected to lower rates of tax with a condition that no input tax credit will be available. The tax officers may use this restriction as a handle to reject transitional credits claims since today, there is a complete legal prohibition on using credits.

It is unclear whether the prescribed period of 90 (ninety) days is mandatory or directory and therefore, can operate as estoppel in law. Further, whether any claims made in this period would have the effect of exposing such claims to a further period of 5 (five) years of statutory limitation, has been left unanswered.

If the Government of India does indeed seek to put to rest some of the issues through a circular and/or instruction, it would in all probability lead to another round of litigation or revive existing litigations.

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