

## **HC asks Tax Dept to permit GST assessees to file for transitional credit**

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The Punjab and Haryana High Court has permitted filing or revising Form TRAN I for transitional credit by November 30, 2019, irrespective of whether the form was filed, incorrectly filed or not filed at all.

“Article 300A provides that no person shall be deprived of property saved by authority of law. While right to the property is no longer a fundamental right but it is still a Constitutional right,” the court said while disposing the petitions.

Further it said CENVAT (Central Value Added Tax) credit earned under the erstwhile Central Excise Law is the property of the writ applicants and it cannot be appropriated for merely failing to file a declaration in the absence of Law in this respect.

“It could have been appropriated by the government by providing for the same in the CGST Act but it cannot be taken away by virtue of merely framing Rules in this regard,” the Court said.

Accordingly the Court asked the tax authority to take applications. Commenting on the ruling, Rajat Mohan, Senior Partner with AMRG & Associates, said that this could be touted as the biggest victory for all taxpayers litigating the genuine claim of transitional credit, and would have a strong persuasive value of taxpayers across the nation giving them enough material to approach the jurisdictional high courts for sanction of transitional credit, which would deleteriously upset the GST collections in coming months.

“The High court took cognizance of the Constitutional right of “Right to property”, inferring CENVAT credit earned is the property of taxpayers and it cannot be denied for merely failing to a declaration in the absence of legislative provision in the GST law itself,” he said.

Post introduction of Goods & Services Tax (GST), special provision was made for credit accumulated under VAT, Excise Duty or Service Tax to be transited to GST. Barring registered dealer opting for composition scheme, all other assesses were given opportunity to avail the transitional credit.

However, there were some conditions. The credit will be available only if the returns for the last 6-months i.e. from January 2017 to June 2017 were filed in the previous regime (i.e. VAT, Excise and Service Tax returns had been filed). And Form TRAN I (to be filed by registered persons under GST, may be registered or unregistered under old regime) has to be filed by December 27, 2017, to carry forward the Input Tax Credit. Also, Form TRAN I can be rectified only once.

## Making Corporate India Comply

A total of 102 petitions were filed as petitioners either could not load the prescribed form electronically or incorrect form was loaded which could not be corrected within the prescribed time. A number of reasons was given by the petitioners for non-filing by December 20, 2017. These included press release showing last date as December 31, 2017, availability of utilities to upload TRAN-I in September, 2017 instead of July 2017, heavy load upon accountants who were having number of assesses, lack of proper knowledge of computer system, complexity in filling different columns of TRAN-I etc.

The lawyer for the Tax Department contended that the government from time-to-time extended the period to load TRAN-I and it was mistake on the part of Petitioners who did not attempt to load by December 27, 2017.

The government has permitted all those registered persons to file TRAN-I by March 31, 2019, who furnished evidence of attempt to load TRAN-I up to December 27, 2017. There would be no end if Petitioners are permitted to load TRAN-I at this stage. The Petitioners cannot take excuse of technical glitches because they did not attempt to load TRAN-I by extended due date, the Tax Department said.