



GST RRC ORGANISED BY WIRC OF ICAI

14TH & 15TH DECEMBER, 2019 AT LONAVALA

Contents

- Recent Decisions
- Availability of ITC in view of restrictions imposed under Rule 36(4) of the Central Goods and Services Tax Rule, 2019
- Post Supply Discounts
- Trade Promotion Schemes
- Agreeing to Tolerate an Act
- Implication of Clerical Mistakes made in filing FORM GST TRAN-1
- Implication of decision of the SC in case of State of U.P. v. M/S Kay Pan Fragrance Pvt Ltd, 2019-VIL-39-SC, dated 22.11.2019
- Anti-profiteering

**M/s Sutherland Global Services
Private Limited v. Assistant
Commissioner CGST and Central
Excise**

**[2019-TIOL-2516-HC-MAD-
GST, dated 15.9.2019]**



Facts of the case:

The Petitioner was availing credit of Education Cess (“EC”), Secondary & Higher Education Cess (“SHEC”) and Krishi Kalyan Cess (“KKC”) on IT enabled services provided by the petitioner under the erstwhile service tax regime.

CENVAT Credit Rules, 2004, provide that CENVAT credit of EC, SHEC and KKC could only be utilised against payment of such EC, SHEC and KKC, respectively.

Since EC and SHEC were abolished w.e.f. 1.6.2015 and KKC was abolished w.e.f. 1.7.2017, the accumulated credit of said cesses could not be utilised.

The Petitioner carried forward such accumulated credit in GST under GST TRAN -1. The said credit was denied by the department on the ground that it did not qualify as “eligible duties” under Section 140(1) of the CGST Act.

Issue Involved:

Whether the credit of EC, SHEC and KKC that had accumulated under the existing law could be carried forward into the GST regime and utilized against output GST liability?

Decision of the Court:

The Court held that the Petitioner is eligible to carry forward the accumulated cess credit under existing laws, in the GST regime in terms of Section 140(1) & 140(8) of the CGST Act in view of following-

The Court held that the cess of credit has not lapsed since CBEC has not expressly declared that accumulated cess credit has lapsed by issuing any instructions/notification/circular till date.

Further, the cess credit represents a vested right accrued or acquired by the petitioner. (Reliance placed on Eicher Motors Ltd. v. Union of India [(1999) 106 ELT 3]).

Furthermore, the decision of rejecting the claim has the consequence of insertion of a Rule/Regulation, which is impermissible.

Decision of the Supreme Court (contd.)

The Goods and Services Tax (Amendment) Act, 2018 inserted the term “of eligible duties” after the phrase ‘Cenvat credit’ in Section 140(1) but not in Section 140(8) of the CGST Act.

The Court, therefore, held that the cess credit carried forward in the returns filed under existing laws, can be transitioned to GST under Section 140(8) i.e. in case the registered person was having a centralised registration under the service tax regime.

Impact of the Decision

Whether applicable for assessee not having Centralized service tax registration and claiming ITC under Section 140(1).

Section 140(1) and Explanation 1 to Section 140 use the term “eligible duties”, however, Section 140(5) uses the term “eligible duties and taxies.” Whether Explanation 3 to section 140 which defines “eligible duties and taxies” would be restricted to Section 140(5) only?

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M/s Safari Retreats Pvt Ltd and
Another vs Chief Commissioner of
Central Goods and Service Tax and
others,

(2019-TIOL-1088-HC-ORISSA-GST)



Facts

- The petitioner was a company engaged in the business of construction of shopping malls for the purpose of letting out of the same to various tenants and lessees.
- The Petitioner acquired huge quantities of materials and other inputs in the form of cement, wires, plywood etc., along with services such as professional services, engineering services etc., for the construction of the said malls.
- All of the said inputs and input services were received after payment of local tax i.e CGST + SGST by the Petitioner.
- This amounted to huge accumulation of credit.
- The petitioner was further charging output tax of CGST+SGST on renting/leasing of individual units of the mall to other vendors. The petitioner intended to use the said accumulated credit for the payment of the said output tax.
- However, the petitioner was advised to deposit the CGST & SGST collected without taking input credit in view of restrictions placed as per Section 17(5)(d) of the CGST Act, 2017 and was warned of penal consequences if it did not do so.

Issue

- Whether ITC will be available for the builder of the mall who is further subletting the said immovable property to customers by paying GST on the same?

Judgment of the Orissa High Court

- The Hon'ble High Court held that the provision of Section 17(5)(d) is to be read down and the narrow restriction as imposed in reading of the provision by the Department is not required to be accepted keeping in mind the language used in Eicher Motors Ltd. 2002-TIOL-149-SC-CX-LB
- It was further held that if the petitioner is required to pay GST on the rental income arising out of the investment on which he has paid GST, it is required to have the input credit on the GST, which is required to pay u/s 17(5)(d) of the CGST Act.
- The Hon'ble High Court was not inclined on holding the said provision to be *ultra vires*.

STATE OF WEST BENGAL & ORS.
Vs
CALCUTTA CLUB LIMITED & Ors.,
2019-VIL-34-SC-ST dated
03.10.2019



Facts

- The respondent Club assessee's were in the practice of making sales of and drinks to its permanent members without charging sales tax on the same.
- The Assistant Commissioner of Commercial Taxes issued a notice to the respondent clubs to make payment of sales tax on the said supplies.
- The Club assessee's contended before the Tribunal that there could be no sale by them to its own permanent members, for doctrine of mutuality would come into play. To elaborate, the respondent Clubs treated themselves as agents of the permanent members in entirety and advanced the stand that no consideration passed for supplies of goods, drinks or beverages, etc. and there was only reimbursement of the amount by the members and therefore, no sales tax could be levied.
- The Tribunal analysed the applicability of Article 266(29-A) of the Constitution of India.

Issue

- Levy of Sales Tax / Service Tax on sale of food and drinks to the permanent members by Resident-Club and whether the doctrine of mutuality has been done away with by Article 366(29-A)(e)

Judgement

The Hon'ble Supreme Court ruled as under:

- The doctrine of mutuality continues to be applicable to incorporated as well as unincorporated members' clubs after the 46th Amendment adding Article 366(29-A) to the Constitution of India.
- The Sub-clause (f) of Article 366(29-A) has no application to members' clubs, and thus, the expression "body of persons" will not include an incorporated company, nor will it include any other form of incorporation including an incorporated co-operative society.
- The incorporated clubs or associations or prior to 1st July, 2012 were not included in the service tax net. In the negative list scheme, the expression "body of persons" occurring in the explanation to Section 65 and occurring in Section 65(25a) and (25aa) does not refer to an incorporated company or an incorporated cooperative society. As the same expression has been used in Explanation 3 post-2012 (as opposed to the wide definition of "person" contained in Section 65B(37)), it may be assumed that the legislature has continued with the pre-2012 scheme of not taxing members' clubs when they are in the incorporated form.
- The expression "body of persons" may subsume within it persons who come together for a common purpose, but cannot possibly include a company or a registered cooperative society. Thus, Explanation 3(a) to Section 65B(44) does not apply to members' clubs which are incorporated

Availability of ITC in view of restrictions imposed under Rule 36(4) of the Central Goods and Services Tax Rule, 2019



Conditions prescribed under Section 16(2) of the CGST Act for availing ITC

A registered person can claim ITC with respect to supply of either goods or services if:

- ▶ possesses a tax invoice / debit note / any other document issued by a registered supplier
- ▶ goods / services have been received by the recipient
- ▶ GST has been paid to the Government
- ▶ Returns have been furnished under Section 39

Restrictions imposed under Rule 36(4) of the CGST Rules, 2017

Rule 36(4) limits the availment of ITC by the recipient in respect of invoices/debit notes, details of which have not been uploaded by the supplier in its FORM GSTR-1 up to 20% of the eligible credit available in respect of invoice which have been reported by the supplier.

Meaning of the term “eligible credit”?

Not defined in the CGST Act or Rules

To include ITC restricted under 17(2) & 17(5) of the CGST Act.

Issues with respect to enforcement of Rule 36(4)

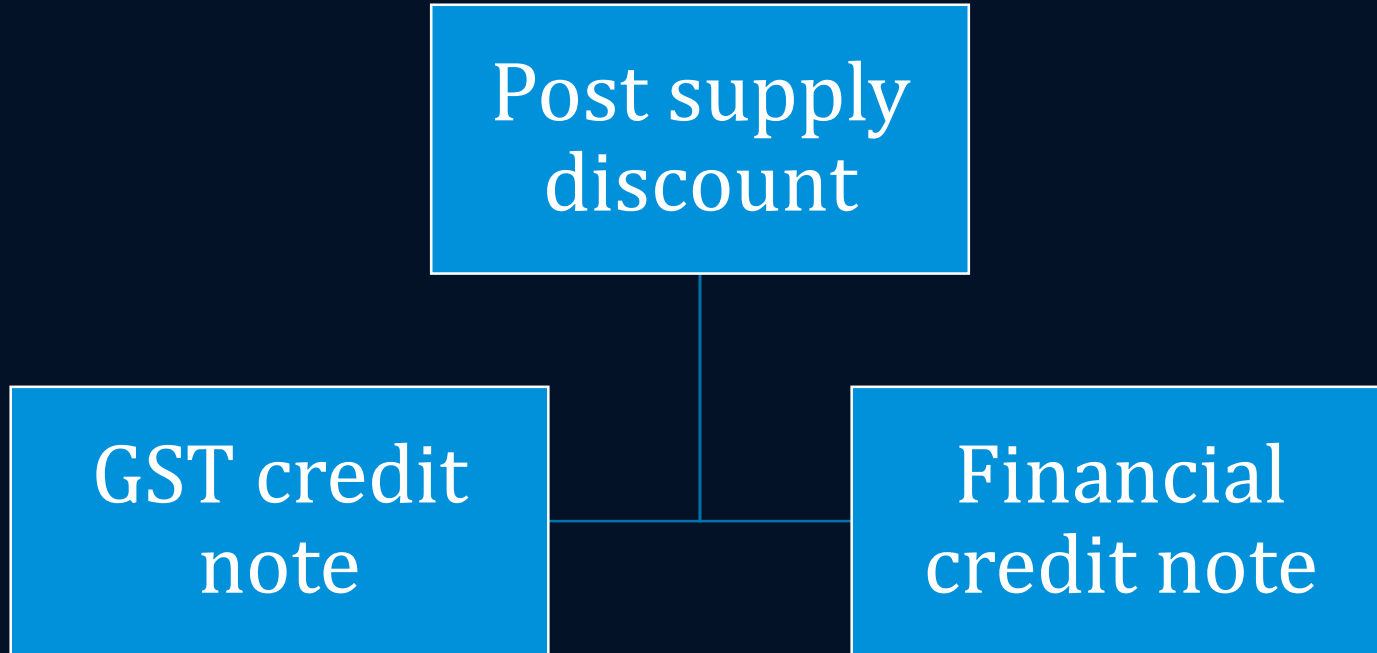
Section 43A(4) of the CGST Act, inserted vide CGST (Amendment) Act, 2018, is the enabling provision in the statute which allows availment of ITC on unreported invoices, not exceeding 20% of the eligible ITC on reported invoices.

Since, section 43A is not yet notified, whether restriction imposed by Rule 36(4) can be validly enforced?

Post Supply Discounts



Post Supply Discount



GST credit note - Implications

- Post-supply Discounts allowed to be adjusted with GST liability through issuance of credit note subject to the conditions of Section 15(3)(b) of the CGST Act
- Conditions laid down in Section 15(3)(b) of the CGST Act:
 - a) Discount shall be established in terms of an agreement entered before or at the time of supply
 - b) Credit note(s) shall be linked to relevant invoices
 - c) ITC attributable to discounts has been reversed by the recipient of the supply
 - d) Discount shall be quantified in the agreement – *Ultratech Cements Limited [2018(15) G.S.T.L. 455 (A.A.R. - GST)]*

Implication in hands of recipient - Financial cr. Note

- MRF Limited AAR
- MRF Limited AAAR
- Circular No. 105/24/2019-GST – (Withdrawn)

MRF Limited - 2019-VIL-71-AAR

Facts:

The suppliers of MRF Ltd. agreed to provide cash / additional discounts to MRF for prompt payment which was not agreed before or at the time of supply. The said discount was routed through the C2F0 system which was installed at both the buyer and seller's end. As agreed between both the parties to contract, the supplier under the said system would voluntarily accelerate the payment and receive early payment with appropriate discount. Such discount will be offered on the said platform through issuance of financial/commercial credit notes. The said payment of the invoices would be processed by the recipient of the goods or services after considering the discount offered by the supplier at that time.

Issue:

Whether recipient (i.e. MRF) is eligible to take full ITC of the GST charged on the supply by the supplier or proportionate reversal of the same is required in case of post-supply discount which is given by the supplier through issuance of financial/commercial credit notes.

AAR held:

The AAR observed that as per proviso to Section 16 of the CGST Act, 2017, if the recipient fails to pay the supplier, the value and tax amount, within 180 days from the date of issue of the invoice, in such case, the recipient shall have to pay output tax proportionate to the ITC availed on the unpaid amount. Hence, the AAR ruled that in the present case the ITC to the extent of value of supply not paid by the recipient could not be availed as input tax credit.

Second Proviso to Section 16

“Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier; an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed...”

MRF Limited (AAAR-Tamil Nadu) – 1/2

Findings in the MRF Judgement – Persuasive Value

The plain language of the proviso to Section 16 of the CGST Act /TNGST Act only requires that 'the amount towards the value of supply along with tax payable thereon be paid within 180 days'. This only means that the

- (i) full commercial price should be paid to the supplier, and
- (ii) the GST should be paid on the value of supply as determined under the CGST ACT / SGST ACT.

The proviso only requires the amount contractually/commercially agreed upon by the recipient to be paid to the supplier. The tax alone has to be paid on the valuation as per Section 15 of the CGST Act. There is no requirement to pay the value of supplies as per value determined under Section 15 of the CGST Act.

MRF Limited (AAAR-Tamil Nadu) – 2/2

Intention of the law- As per minutes of the GST Council Meeting, Section 16(2) was introduced as an anti-evasion measure. Further discussions in the 29th GST Council meeting also establishes the intention of the provision as an anti-evasion measure and a provision to facilitate the prompt payment to suppliers.

Circular No. 122/3/2010 dated 30.4.2010 in the context of Rule 4(7) of the CENVAT Credit Rules has clarified that ‘In the cases where the receiver of service reduces the amount mentioned in the invoice/ bill/ challan and makes discounted payment, then it should be taken as final payment towards the provision of service.’

Circular No. 877/15/2008 dated 17.11.2008- CX regarding reversal of CENVAT Credit in case of trade discount or reduction in the price

It was observed that the discounts were given in respect of value of inputs and not in respect of duty. The effect of reduction in value of inputs may be that the duty required to be paid on inputs was lesser. However, higher duty was paid. It was clarified that in such cases, the entire amount of duty paid would be available as ITC.

Circular No. 105/24/2019-GST – (Withdrawn)

Para 5 ITC eligibility of the dealer where discount is given by issuing a commercial credit note

- Post sale discount is not allowed to be reduced from the value of supply and the supplier issues a commercial credit note - Supplier is not eligible to reduce its tax liability.
- The dealer will not be required to reverse ITC attributable to the tax already paid on such post-sale discount received by him through issuance of financial / commercial credit notes by supplier in view of second proviso to Rule 37(1).
- The dealer shall be eligible for ITC as long as:
 - it pays the value of the supply (as reduced after adjusting the amount of post-sale discount in terms of financial / commercial credit notes received by him from the supplier of goods)
 - the amount of original tax charged by the supplier

Circular No. 112/31/2019-GST dated 3rd October 2019 withdrew Circular No. 105/24/2019-GST dated 28.06.2019.

Circular No. 105/24/2019-GST – (Withdrawn)

Para 3. There is an obligation on dealer to perform some activities

The dealer is required to do some acts (like undertaking special sales drive, advertisement campaign, exhibition etc.,) to get the additional discount.

- The transaction would be a separate transaction.
- The additional discount will be the consideration for undertaking such activity and therefore would be in relation to supply of service by dealer to the supplier of good.
- The dealer would be required to charge applicable GST on the value of such additional discount.
- The supplier of goods, being recipient of services, will be eligible to claim ITC of the GST so charged by the dealer subject to other conditions.

Circular No. 105/24/2019-GST – (Withdrawn)

Para 4. The discount is given to offer reduced price to customer by the dealer

The dealer is required to offer a special reduced price to the customer to get the discount.

- The additional discount would represent the consideration flowing from the supplier of goods to the dealer for the supply made by dealer to the customer
- The value of discount would be liable to be added to the consideration payable by the customer, for the purpose of arriving value of supply of the dealer.
- The customer, if registered, would be eligible to claim ITC of the tax charged by the dealer only to the extent of the tax paid by the said customer to the dealer in view of second proviso to sub-section (2) of Section 16 of the CGST Act.

Santhosh Distributors (2019-VIL-416-AAR)

Issue under consideration

- Whether the discount provided by the Principal Company to their dealers through the applicant as shown in Annexure D attracts any tax under the GST laws?
- Whether the amount shown in the Commercial Credit note issued to the applicant by the Principal Company attracts proportionate reversal of input tax credit?
- Is there any tax liability under GST laws on the applicant for the amount received as reimbursement of discount or rebate provided by the Principal Company as per written agreement between the Principal Company and their dealers and also an agreement between the principal and distributors?

Santhosh Distributors (2019-VIL-416-AAR)

HELD:

- The additional discount reimbursed by the Principal Company to the Applicant is in the nature of additional consideration and liable to be added to the consideration payable by the customer to the Applicant.
- With respect to commercial credit notes, since the Principal Company is not eligible to reduce its original tax liability to the extent of value of credit note, the Applicant shall not be liable to reverse the ITC attributable to the value of commercial credit notes.
- GST shall be levied and payable at applicable rate by the Applicant on the amount of reimbursement of discount/ rebate from the Principal Company.



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Trade Promotion Schemes



Trade Promotion Schemes

- Directed towards Supply chain - Distributor/ Stockiest /Wholesaler / Dealer/Retailer
 - Business Gifts
 - Samples
 - Point of Sale Materials
 - Target Linked Incentives – Goods & Services

Business Gifts and Free Samples

- Section 17(5)(h) – ITC shall not be available in respect of goods disposed by way of gift or free sample
- Schedule I - Activities treated as supply even if made without consideration
 - Permanent transfer or disposal of business assets where input tax credit has been availed
 - Calendar
 - Stationery
 - Physician samples

Whether gift and free samples will qualify as supply without consideration?

- Supply of goods or services or both between related persons, when made in the course or furtherance of business

Whether ITC of foreign trips provided to dealers for achieving targets will be available?

Point of Sale Marketing Material

- POSM Materials - Banners, Danglers, display boards, Gondolas etc.
- Detailers – Detailed product portfolios given to dealers/distributors
- Non-availability of ITC? – Whether goods disposed of by way of gifts?
[Section 17(5)(h)]
- Supply without consideration? –whether permanent disposal of business assets where ITC is availed?

SANOFI INDIA LIMITED (2019-VIL-176-AAR) GST – Maharashtra AAR

Issues

1. Whether input tax credit is available of the GST paid on expenses incurred towards promotional schemes of Shubh Labh Loyalty Program?
2. Whether input tax credit is available of the GST paid on expenses incurred towards promotional schemes goods given as brand reminders?

HELD - The distribution of promotional articles by the applicant is nothing but gifts and hence the transaction is covered by the provisions of Section 17(5) of the Act

Input Tax Credit on "gifts" will not be available when no GST is being paid. Just because the applicant submits that they have satisfied Section 16 (1) of the CGST Act 2017 does not mean that they are entitled to credit

Input Tax Credit is not available for the expenses incurred towards promotional schemes such as Shubh Lakh Loyalty Program and Brand Reminder Products

Surfa Coats (India) Private Limited -

Facts:

The applicant company is in the business of manufacturing decorative paints and frames incentive schemes for their dealers. This include providing goods such a appliances and services such as free foreign trips.

Question before the Authority:

Whether ITC shall be available to the applicant on goods and services procured to provide incentives to its dealers which is in the course and furtherance of business.

Ruling:

The authority ruled that input tax credit on the goods/ services procured (input services) to be provided as incentives without consideration is in the form of gift and hence, ITC shall not be available to the applicant.

Agreeing to Tolerate an Act



Tolerating an Act or a Situation:

➤ Definition

- Clause 5(e) of Schedule II to the CGST Act, 2017 categorizes “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act” as supply of Services.
- Clause 5(e) of Schedule II to the CGST Act, 2017 categorizes “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act” as supply of Services.

Thus, an activity will be a supply if it is agreeing to the obligation to:

- i. refrain from an act, or
- ii. to tolerate an act or a situation, or
- iii. to do an act.

Maharashtra State Power Generation Company Limited (GST-ARA-15/2017-18/B-30) & (MAH/GST-AAAR-09/2018-19)

Facts:

- The applicant was engaged in operation and Maintenance activities and construction of new power plants or renovation of old plants.
- The appellant enters into contract with various contractors for the purpose of construction of new power plants or renovation of old plants or for operation of maintenance. The contract generally states a commencement date.
- The contracts stipulate the payment of Liquidated Damage in case of delay in doing the same.

Issue:

Whether the payment of the said liquidated damages amounts to supply of “Agreeing to tolerate an act” under GST?

Held:

Liquidated damages falls under Clause 5(e) of Schedule-II of Central Goods and Services Tax Act, 2017 vide HSN Code 9997 attracting GST @ 18% (9% CGST + 9% SGST) under Notification No. 11/2017-C.T. (Rate)/State Tax (Rate) as amended..

In Re: North American Coal Corporation India Private Limited 2018 (18) G.S.T.L 525 (A.A.R. – GST),

Issue:

Whether liquidated damages that may be awarded to the Applicant by the International Chamber of Commerce (“ICC”) qualifies as a ‘supply’ under the Goods and Services Tax (“GST”) law, thereby attracting the levy of GST?

Held:

The Maharashtra Advance Ruling Authority was of the view that the compensation awarded by arbitrators qualifies as a supply of “Agreeing to tolerate an act” and GST shall be payable on the same.

Bai Mamubai Trust & Ors. Vs Suchitra wd/o. Sadhu Koraga Shetty (2019-VIL-454-BOM)

Facts:

The Plaintiff filed a Suit seeking to recover possession of three shops, which together constituted a restaurant, where the Plaintiff trust was carrying on business in the name and style of "Manranjana Hotel". The Suit proceeded on the cause of action of trespass / unauthorized occupation.

Held

The Amicus Curie in the said case held as under:

“An award of damages for trespass / illegal occupation is not an agreement to the obligation to refrain from an act, to tolerate an act or situation, or to do an act as contemplated by Paragraph 5(e) of Schedule II to the CGST Act.”

Implication of Clerical Mistakes made in filing FORM GST TRAN-1



South India Bank Ltd. v. Union of India, 2019-TIOL-2635-HC-KERALA-GST, dated 18.11.2019

Facts of the Case:

- The Petitioner had obtained a centralised registration for its various branches located across the country, under the erstwhile service tax regime.
- The Petitioner had filed returns for the period April 2017 to June 2017 and the same were accepted by the department, thereby accepting Petitioner's entitlement to ITC availed.
- Thereafter, GST was introduced and the petitioner obtained Input Service Distributor ("ISD") registration under the CGST Act for carrying forward and distribution of the accumulated ITC in its account to its various branches.
- Accordingly, the Petitioner filed FORM GST TRAN-1 with registration number of ISD.

Facts of the Case (Contd.)

- The application was rejected by the Nodal Officer on the following grounds:
 - the petitioner had erroneously shown the GSTIN pertaining to ISD instead of the GSTIN of the assessee to whom the credit had to be transferred.
 - inability of the petitioner to provide the details of the purchase invoices (on the strength of which credit was taken under the erstwhile regime) at the time of carrying forward of the accumulated credit.

Issues Involved:

- The first issue pertained to whether the ITC accumulated in the account of the petitioner was validly taken during the pre-GST period, if the Petitioner cannot produce purchase invoice.
- The second issue pertained to whether the Petitioner could be permitted to file Form TRAN-1 in respect of each of the recipient branches and then distribute the accumulated ITC to its various branches.

Decision of the Court

- The court held that the ITC accumulated in the account of the Petitioner was validly taken during the Pre-GST regime since the returns filed during the relevant period have been accepted by the department.
- Further, in the absence of a requirement to migrate to the GST regime, the petitioner would have been able to distribute the credit to its various branches through the ISD mechanism that was in place prior to the introduction of the GST Act . Therefore, the Petitioner should be allowed to distribute the accumulated ITC to its branches.
- The Court concluded that the department should either permit the petitioner to file a rectified TRAN-1 Form electronically in favour of each of its branches in the country, if the non-availability of the details of the purchase invoices prevents the petitioner from pursuing the Form GST TRAN -1 already filed , or accept manually filed TRAN -1 Form with the appropriate corrections, on or before 30.12.2019.

Adfert Technologies Private Ltd. v. Union of India, 2019-VIL-537-P&H, dated 4.11.2019

Facts of the Case:

- In the instant case, the High Court has clubbed writ petitions filed by various petitioners pertaining to carry forward of accumulated credit under the erstwhile tax regime to the GST regime
- The Petitioners were registered under the erstwhile Punjab VAT Act, 2005 or Haryana VAT Act, 2003 and Central Excise Act, 1944. They have unutilized CENVAT Credit accrued under the Excise Act and ITC accrued under respective VAT Act (“**accumulated credit**”).
- Thereafter, GST was introduced.
- Therefore, the Petitioners wanted to carry forward the accumulated credit in the GST regime. However, the Petitioners could not load Form TRAN-1 electronically or an incorrect form was uploaded which could not be uploaded within the prescribed time.
- Thus, the writ petition has been filed to seek an order to direct the department to allow the petitioner to file or revise Form TRAN-1.

Issue Involved

Whether the Petitioners can be allowed to file or revise GST Form TRAN-1 even after the deadline prescribed under Rule 117(1) of CGST Act i.e. 27.12.2017, has passed?

Decision of the Court

The Court directed the department to permit the petitioners to file or revise where already filed incorrect Form TRAN-1 either electronically or manually Form TRAN-1 on or before 30.11.2019, on the following ground:

Grounds of the Decision:

- The Court held that Section 140 of the CGST Act allowed carrying forward of unutilized credit of duty/tax paid in the erstwhile regime to the GST regime but it did not prescribe any time frame for the same. The deadline is prescribed under Rule 117 of the CGST Rules. Further, Rule 117(1A) provides extensions for filing the form and Rule 120 A provides for one time amendment of the form, however, these rules were enacted subsequently. Therefore, there is no intention of the Government to deny carry forward of unutilized credit of duty/tax paid on ground of time limit.
- Further, the Form TRAN-1 is a technical form so there is possibility that the petitioners made mistake while filling the form. Therefore, the Court held that the vested right to carry forward unutilized credit cannot be denied on procedural or technical grounds.

Decision of the Court (Contd.)

- Further, as required under Section 140, the Petitioners must have filed tax returns under the erstwhile tax regime. Therefore, the department can verify the veracity of their claims but not deny them their valuable right to credit.
- The Court while placing reliance on **Siddharth Enterprises v. The Nodal Officer** [2019-TIOL-2068-HC-AHM-GST] held that denial of credit of duty/tax paid under the existing acts would amount to violation of Articles 14 and 300A of the Constitution of India since the unutilized credit has been recognized as vested right and property under Article 300A.
- Therefore, the Court held that the Petitioners shall not be denied the right to carry forward legitimate claim of CENVAT/ITC on ground of non-filing of TRAN-1 by 27.12.2017 and directed the department to allow the Petitioners to file or revise Form TRAN-1 on or before 30.11.2019.



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**Implication of decision of
the SC in case of State of
U.P. v. M/S Kay Pan
Fragrance Pvt Ltd, 2019-
VIL-39-SC, dated
22.11.2019**



Decision of the Court

- In cases of seizure of goods, the assessee approached the HC for quashing of the seizure order. The HC in many cases directed the department to release the goods belonging to the assessee via an interim order and disposed the writ petition on basis of interim order only, thereby surpassing provisions of CGST Act.
- In this case the SC held that the HC cannot go beyond the boundaries of law as set in Section 67 of the CGST Act. If the statute states a proper procedure that has to be followed in case of seizure of goods then the HC cannot pass a decision to surpass such provisions. It has to abide by the statutory law.
- The SC further held that any decisions of the HC that surpasses the procedure prescribed under the CGST law will not be binding on the authority and the authority shall follow the statutory law.



Anti-profiteering

Anti-profiteering for real estate

Methodology adopted by DG:

Particulars	GST	Service tax
Credit availed (adjusted for sold area)	18	15
Taxable Turnover	100	100
ITC to Taxable Turnover %	18%	15%
Benefit of ITC % (18%-15%)	3%	
Benefit of ITC (3% of 150) to Turnover (not taxable turnover)	4.5	

Anti-profiteering for real estate

Flaws in methodology

- Comparison between CENVAT credit availed vis-à-vis ITC availed instead of CENVAT credit not available vis-à-vis ITC available
- Benefit of ITC % applied on total turnover (before abatement)
- Total turnover includes post GST freshly negotiated contracts

Alternative methodology

- ITC benefit to be computed on balance construction cost based on pre-GST procurement pattern (Eg. CST, SBC cost)
- Amount to be passed on to all customers who booked the flat pre-GST

NAA order – Amount passed on by way of discount

- Order of NAA in the case of Macrotech (Lodha):
 - Discount given is not towards ITC benefit
 - No mention of GST ITC benefit on the document
 - Discount given in GST regime is for business reasons due to slowdown in market, etc. – cannot be considered as passing of ITC benefit (Even for already booked customers pre-GST)