

GST CAFÉ
Recent Judicial Pronouncements in GST Law

1. BOMBAY HC RESTRICTS AVAILMENT OF TRANSITIONAL INPUT TAX CREDIT (“ITC”), UPHOLDS IMPOSITION OF TIME LIMIT

Background:

There is an ongoing legal controversy whether the Government has the power to impose a time limit on the availment of accumulated ITC from the erstwhile indirect tax regime. With the introduction of Goods and Services Tax (“GST”) in July, 2017, the taxpayers *vide* rule 117 of the Central Goods and Services Tax Rules, 2017 (“CGST Rules”) read with section 140 of the Central Goods and Services Tax Act, 2017 (“CGST Act”) were allowed to carry forward accumulated ITC subject to certain conditions. Taxpayers were given time up to 27.12.2017 for the relevant filing, which was further extended to 31.03.2020 in cases of technical difficulties being faced by taxpayers.

Such imposition of a time-limit on availing accumulated ITC from the earlier regime has been challenged before various High Courts.

1. [CONTD.] BOMBAY HC RESTRICTS AVAILMENT OF TRANSITIONAL INPUT TAX CREDIT ('ITC'), UPHOLDS IMPOSITION OF TIME LIMIT

The Bombay High Court, in the case of *Nelco Ltd. v. Union of India [W.P. No. 6998 of 2018]*, assumes significance as it upholds the Centre's stance, thereby, upholding the constitutional validity of the power given to the government to impose a time limit on availment of transitional ITC. The Court, while dismissing the said petition, reasoned that the benefit of availing **accumulated ITC from the previous indirect tax regime is in the nature of a 'concession' and not by way of right**. Therefore, such concession can be appropriately regulated by placing a time limit.

Further, the Court observed that for planning allocation of resources and for efficient administration, it is necessary to know, with enough certainty, the amount of taxes available at a particular time. Thus, the time limit for availing of input tax credit in the transitional provisions is in **larger public interest i.e. to have certainty in budgeting and allocation of funds**.

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Furthermore, the Court also **limited the scope of 'technical difficulties'** in eligibility of extended due dates to mean to only those technical difficulties which arise at the common GST portal.

VA COMMENTS:

In our view, the Bombay High court has taken a conservative approach in upholding the constitutional validity of imposing a time limit for filing TRAN-1. In addition, the Court has also restricted the assessee from taking the credit beyond the time limit by limiting scope of the term 'technical difficulties'. However, various other High Courts have allowed assesses to file TRAN-1 and claim credit even beyond the time period prescribed irrespective of the absence of a technical difficulty on the ground of it being a vested right.

2. GUJARAT HC STRIKES DOWN LEVY OF IGST ON OCEAN FREIGHT IN CIF CONTRACTS; SEPARATELY ALLOWS ASSESSEE TO FILE REFUND CLAIM FOR IGST DEPOSITED

Background:

The levy of Integrated Goods and Services Tax (“IGST”) under the Integrated Goods and Services Tax Act, 2017 (“IGST Act”) on the ocean freight services provided by a person located in a non-taxable territory to a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India i.e. in CIF contracts has been a contentious issue.

The Gujarat High Court in the case of *Mohit Minerals Pvt. Ltd. v. Union of India and Anr. [SCA No. 726 of 2018]* struck down levy of IGST on service of ocean freight imposed upon the importer of the goods *vide* Notification No. 8/2017–Integrated Tax (Rate) and Entry 10 of the Notification No.10/2017 – Integrated Tax (Rate).

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The Court observed that the IGST Act itself does not provide for levy of tax under reverse charge on any person other than a 'recipient'. Further, such levy does not conform to other provisions of the IGST Act including relating to time of supply, value of supply, intra and inter-state supplies, etc. Thus, the imposition thereof by way of subordinate legislation is *ultra vires* the parent statute and thus, violative of Article 265.

The Court further noted that input tax credit against such levy would not be available to the importer, since the same is restricted to recipient of the supply. It was held that such **non-availability of credit would prove against the object of GST laws** imposing burden of tax only on the end consumer.

Further, considering that the freight component has already suffered IGST under the Customs Tariff Act, 1975 as part of the value of imported goods, a dual levy of the tax by delegated legislation without statutory authority cannot be justified.

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In this background, the Gujarat HC in a separate ruling in the case of *Gokul Agro Resources Ltd. v. Union of India [R/SCA No. 1758 of 2020]*, allowed the assessee to file an application before the competent authority for claiming refund of the IGST paid against the freight component in import of goods. Further, the Court directed the competent authority before which the refund application may be filed, to not raise any technical issues with respect to the refund claim of IGST.

VA COMMENTS:

The Gujarat High Court has allowed for filing of refund claims where IGST has been paid previously against the freight component in import of goods even beyond the time limit of two years as prescribed under the Act. Although the instructions in the judgment are specific to the assessee, we believe that the same will be helpful to other assesses who have earlier paid IGST freight component on import of goods.

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