

CBIC amends GST law nullifying Delhi High Court decision on Cenvat Credit transition beyond prescribed date

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1 Background

The Central Goods and Services Act, 2017¹ (**CGST Act**) allows a taxpayer to transition Cenvat Credit from the erstwhile indirect tax regime to the Goods and Services Tax (**GST**) regime in the manner prescribed under the CGST Rules, 2017². The CGST Act, however, did not empower the legislature to impose a time limit on such transition.

Despite the absence of such power, an initial time limit of 27 December 2017 was prescribed in Rule 117. This was extended before finally being fixed to 31 March 2020 for special cases where the taxpayers could not upload the mandated Form GST TRAN-1 (**Form**) on account of technical issues on the GSTN portal.

This time limit was challenged by taxpayers across the country before various High Courts. Subsequently, the Delhi High Court in *Reliance Elektrik Works v. Union of India* had decided that the time limit prescribed under Rule 117 was without authority of law and went beyond the scope of the CGST Act. The Delhi High Court also observed that while the time limit mentioned in Rule 117 is not mandatory, the right to transition Cenvat Credit could not exist in perpetuity, and thus, will be subject to the residuary limitation period of 3 years from the date of enforcement of GST.

The Central Board of Indirect Taxes and Customs has notified amendments to GST laws nullifying Delhi High Court's recent decision allowing taxpayers to transition Cenvat Credit to GST regime till 30 June 2020. Therefore, the time limit prescribed for transitioning such credit continues to be 31 March 2020.

¹ Section 140

² Rule 117

Accordingly, the Delhi High Court had allowed the transition of Cenvat Credit from erstwhile indirect tax regime to GST regime till 30 June 2020 which came as a great relief to the taxpayers. This judgment was also discussed in our update dated 11 May 2020 ([accessible here](#)).

2 CBIC Notification giving effect to amendment in the transitional credit provisions

Through its Notification No. 43/2020 – Central Tax dated 16 May 2020 (**Notification**), the Central Board of Indirect Taxes and Customs (**CBIC**) has brought into force Section 128 of the Finance Act, 2020, which amends Section 140 of the CGST Act with retrospective effect from 1 July 2017 i.e. the date of advent of GST regime in India.

With this amendment, the phrase 'within such time' has been introduced at multiple places in Section 140, with retrospective effect from 1 July 2017, thereby granting power to the legislature to prescribe a time limit for transitioning Cenvat Credit from such date. The amendment, in effect, also ratifies the time limits previously imposed under Rule 117, which had been held to be without authority of law by the Delhi High Court.

3 Observations

This amendment changes the premise on which the Delhi High Court had held that the time limit prescribed in Rule 117 was not mandatory, therefore, rendering it ineffective. For taxpayers, it means that the relief granted by the Delhi High Court to transition the Cenvat Credit, even if the Form had not been filed previously, stands nullified.

Consequently, the statutory time limit of 31 March 2020 prescribed in Rule 117 is reinstated as the deadline for revising or filing the Form, in cases where the taxpayer could not do so due to technical difficulties on the GSTN portal. Taxpayers who had not filed or revised the Form due to any other reason, are left without any remedy.

The interplay of this Notification with the relief granted by CBIC³ in deadlines for GST related compliances falling between 20 March 2020 to 29 June 2020 is unclear and will require further analysis.

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³ Notification No. 35/2020 – Central Tax dated 03 April 2020