

Delhi High Court Transitioning Cenvat credit from the erstwhile indirect tax regime to the GST regime allowed till 30 June 2020

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1 Background

Under the erstwhile indirect tax regime, a manufacturer or service provider could avail credit of the tax paid on goods and services (known as inputs and input services) used by it in the manufacture of the final product or for providing output services. This credit was called Cenvat Credit.

With the advent of the Goods and Services Tax (GST) regime, one of the major concerns of taxpayers was the preservation of this Cenvat Credit that had accrued to them under the previous indirect tax regime.

To address these concerns, specific transitional provisions were incorporated in the Central Goods and Service Tax Act, 2017 (**CGST Act**) and CGST Rules, 2017 (**CGST Rules**) to enable taxpayers to transition Cenvat Credit to the GST regime. The manner of transitioning was specifically provided under Rule 117 of the CGST Rules which prescribed Form GST TRAN-1 (**Form**) for this purpose. An initial time limit of 27 December 2017 was stipulated in the CGST Rules for uploading Form on the GSTN portal.

This time limit for filing the Form was later extended on several occasions before finally being fixed to 31 March 2020 for special cases where the taxpayers could not upload the form on account of technical issues on the GSTN portal.

Rule 117 of the CGST Rules was however challenged by taxpayers before various High Courts across the country on the grounds that the rule exceeded the authority of CGST Act and restricted their right to transition Cenvat Credit to the GST regime by imposing a time limit which otherwise did not exist in the CGST Act. The courts consistently held that the taxpayers had indefeasible right over the Cenvat Credit which had accrued to them and granted them relief by directing the GST authorities to allow filing of the Form even beyond the prescribed time limit. However, the High Courts did not address the issue regarding the legality of Rule 117.

The Delhi High Court, in *Reliance Elektrik Works v. Union of India* has held that Cenvat Credit availed under the erstwhile indirect tax regime can be transitioned to the GST regime by 30 June 2020.

2 Delhi High Court Decision

In the present decision, the Delhi High Court examined the legality of Rule 117 of the CGST Rules. It held that Rule 117 is merely directory in nature and that the procedure laid down in the rules cannot affect the substantive right of the taxpayer to transition the accrued Cenvat Credit.

Further, addressing the time limit for transitioning such credit, the Delhi High Court held that the residuary limitation period of 3 years would apply and taxpayers who have filed or attempted to file the Form within three years of enactment of GST i.e. by 30 June 2020, will be entitled to transition the Cenvat Credit.

This judgment of the Delhi High Court comes as a great relief to taxpayers who had filed the Form with incorrect details or could not file the Form at all and were unable to transition such Cenvat Credit. They will now be permitted to do so by 30 June 2020.

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