

## HC: Credit transitioned cannot be denied; Mistake/discrepancy in filing TRAN-01 may be 'overlooked'

Sep 13, 2023

Sri Renga Timbers vs. The Assistant Commissioner (ST) [TS-452-HC(MAD)-2023-GST]

### Conclusion

Madras HC allows writ, quashes order disallowing transitional input tax credit (ITC) on account of mistake in filing TRAN-01 and remits the matter back to the Revenue to re-examine records afresh from the last VAT return for the month of June 2017; HC observes that *"even if there was any discrepancy while filing Form TRAN-1, the mistakes committed by the petitioner may be overlooked and the credit that availed and utilized can be condoned and regularized"*; Transitional credit amounting to Rs. 90 lakhs (approx.) was disallowed owing to 'inadmissible' credit due to mistake in revision of FORM TRAN-01; In order to rectify its mistake, assessee attempted to revise the revised TRAN-01 and received a letter from SGST Department stating that *"though they have claimed CGST Credit in the revised FORM GST TRAN-1 application, they have not produced any documents relating to Central Excise or Service Tax. The claim has been filed wrongly by the taxpayer"*; HC relies upon SC rulings in Dai Ich Karkaria Limited and Unichem Laboratories and citing Top Court's principle that validly availed credit cannot be denied, HC clarifies that despite the blunder by assessee in filing Form TRAN-01 and revised return, it is matter of fact that *amount was the credit that was lying unutilized in the last return filed by the petitioner for the month of June 2017* and such credit *"cannot be denied"* even if there is a mistake in the returns filed in TRAN-1 twice:HC MAD

### Decision Summary

The order was passed by Justice C. Saravanan.

Advocate S. Rajasekar appeared on behalf of the Assessee, whereas Revenue was represented by Additional Government Pleader C.Harsharaj and Senior Standing Counsel Rajnish Pathiyil.

Transitional credit of Rs.89,88,498 as claimed under Table7(a)7(A)/7.a.A in the revised FORM GST TRAN-1 filed by assessee under section 140 of the CGST Act, 2017 was disallowed as inadmissible.

In the returns filed for the month of June 2017 assessee declared the Input Tax Credit (ITC) carried forward as Rs. 90 lakhs approximately. In FORM TRAN-01 assessee had transitioned ITC in table 5(c) in the third column State/Union Territory tax as credit claimed on account of State/Union Territory tax credit carried forward.

Pursuant to SC decision in Filco Trade Centre [\[TS-369-SC-2022-GST\]](#) assessee filed a revised return in TRAN-1.

Assessee put forth that instead of filing a revised TRAN-1 by showing the amount of credit of Rs.89,88,498 in column 2 for State/Union Territory Tax against Table 7.c i.e., amount of VAT and Entry Tax paid on inputs supported by invoices under the caption "Inputs Held in Stock", the petitioner made an entry in Table 7.a.A i.e., for Input Held in Stock, where duty paid invoices were available.

Assessee in an attempt to rectify its mistake received a letter from SGST Department stating that though they have claimed CGST Credit in the revised FORM GST TRAN-1 application, they have not produced any documents relating to Central Excise or Service Tax. The claim has been filed wrongly by the taxpayer.

In this backdrop, Revenue concluded that assessee had wrongly claimed and utilized the excess SGST credit of Rs.89,88,499 as per the revised Form GST TRAN-1 as per with the earlier FORM GST TRAN-1 claiming the credit.

Revenue also sought to issue a show cause notice in FORM GST DRC-01 in case assessee failed to pay the amount.

#### Observations :

- HC noted that the amount in question remained unutilized as per the monthly returns filed by the assessee for the month of June-17, which was the last return filed under the TNVAT Act, 2006 before the enactment of the respective GST Acts with effect from July 01, 2017
- HC cited the principle credit that was validly availed cannot be denied as laid down by SC in CCE Vs. Dai Ich Karkaria Limited, 1999 (112) ELT 353
- HC held that validly availed credit is indefeasible in law credit
- HC observed that such credit cannot be denied even if there is a mistake in the returns filed in TRAN-1 twice
- HC relied on Unichem Laboratories Vs. Commissioner of Central Excise, (2002) 7 SCC 145

HC quashed the order and remitted the matter back to the Revenue to re-examine the records of assessee afresh from the last VAT return for the month of June 2017.

HC clarified that in case such credit was available, even if there was any discrepancy while filing Form TRAN-1, the mistakes committed by assessee may be overlooked and the credit that availed and utilized can be condoned and regularized. Further, HC clarified that in case no credit was available in the last VAT return and was wrongly transited, such credit shall be recovered from the assessee.

Thereby, HC allowed the writ petition.

#### **Cases Referred**

- SC: Copy of Supreme Court order on TRAN1/TRAN2 issue, disposing off a batch of 400 appeals
- [TS-369-SC-2022-GST](#)

#### **Case Law Information**

##### **Appellant/Applicant/Complainant Name**

- Sri Renga Timbers

##### **Respondent Name**

- The Assistant Commissioner (ST)

##### **Counsel of Appellant/Applicant/Petitioner**

- S.Rajasekar

##### **Respondent Counsel**

- C.Harsharaj
- Rajnish Pathiyil

##### **Authority Level & Location**

- High Court Madras

**Appeal Number**

- W.P.No.22854 of 2023 and W.M.P.Nos.22327 and 22328 of 2023

**Date of Pronouncement**

- 2023-08-17

**Ruling in favour of**

- Not Applicable

**Judges**

- Justice C. Saravanan