



GST Update

September 17, 2018

1. FILCO TRADE CENTRE PVT. LTD. VS UNION OF INDIA

- The Hon'ble Gujarat High Court in its judgment and order in **Filco Trade Centre Pvt. Ltd. vs. Union of India** has struck down Section 140(3)(iv) of the Central Goods & Services Tax Act, 2017 ("CGST Act") as unconstitutional.
- Section 140(3)(iv) of the CGST Act imposed a condition for availment of transitional input tax credit (ITC) *inter alia* in respect of inputs held in stock as on the appointed date, that the invoices or other prescribed documents were issued not earlier than 12 months immediately preceding the appointed day (01.07.2017).
- The Petitioner's case was that, prior to enactment of GST, a first stage dealer was not burdened with excise duty/CVD paid on purchases, and, this was without any restriction on time during which the goods must be sold. It was contended that the said provision takes away the vested right retrospectively and was therefore unconstitutional
- This was countered by the Revenue by contending that the option of availing CENVAT Credit provided under the *erstwhile* indirect tax regime was in the nature of a concession granted, and same is subject to conditions imposed by the Legislature. Hence, putting a reasonable restriction (condition imposed by Section 140(3)(iv) of the CGST Act) on enjoying such a right (transitioning the credit to GST regime) would not amount to taking away any vested right with retrospective effect.
- The Hon'ble Gujarat High Court held as follows:
 - a. The benefit of credit of eligible duties on the purchases made by the first stage dealer was a vested right. In this regard, the Hon'ble High court has referred to the decisions of the Hon'ble Supreme Court in *Eicher Motors Ltd vs. Union of India* and *Central Excise, Pune vs. Dai Ichi Karkaria Ltd* on the proposition that credit once availed is indefeasible
 - b. The transitional provision has taken away with retrospective effect, the vested right in relation to goods which were purchased prior to one year from the appointed day
 - c. The provision has no rational or reasonable basis for imposition of the said condition
- It is noteworthy that that this judgment of the Hon'ble Gujarat High Court in the present case is at odds with the judgment of the Hon'ble Bombay High Court in case of **JCB India Limited and others vs. Union of India and others** (Writ Petition No. 3142/2017) wherein the Hon'ble Bombay High Court has upheld the *vires* of Section 14(3) of the CGST Act.
- At the request of the Revenue the Hon'ble High Court has stayed the operation of the said judgement up to 31.10.2018.

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