



## **THE DECISION OF THE SUPREME COURT IN FILCO TRADE CENTER PVT LTD – A HAPPY ENDING TO THE UNDESIRABLE TALE OF TRANSITIONAL CREDIT?**

**Authors:** *Jitendra Motwani, Partner, Email: [JitendraMotwani@elp-in.com](mailto:JitendraMotwani@elp-in.com)*

*Rinkey Jassuja, Associate Partner, Email: [RinkeyJassuja@elp-in.com](mailto:RinkeyJassuja@elp-in.com)*

*Alifya Vora, Associate, Email: [AlifyaVora@elp-in.com](mailto:AlifyaVora@elp-in.com)*

Despite GST completing half a decade of its existence, its implementation is still plagued by many issues including disputes regarding transitional credit. Recently one such issue with respect to the carry forward of credit from the erstwhile regime was finally put to an end by the decision of the Supreme Court in the case of *Union of India & Ors V. Filco Trade Center Pvt. Ltd & Anr. (Filco Trade Center Pvt Ltd.)*<sup>1</sup>

In this case, the Supreme Court has directed the Goods and Service Tax Network (**GSTN**) to re-open the common portal for accepting form GST TRAN-1 and GST TRAN-2 from 01.09.2022 to 31.10.2022 and to further ensure that there are no technical glitches during those two months. Furthermore, jurisdictional tax authorities are directed to adjudicate claims of such transitional credit after giving the assessee an opportunity to defend its interest. Most importantly (and a very welcome step), the Supreme Court has extended the benefit of this judgement to all the assesseees and not just the assesseees who have chosen to litigate this issue.

### **Background to decision in the case of Filco Trade Center Pvt Ltd**

Despite several extensions being granted for filing of Form GST TRAN-1 many assessee's were unable to file and carry forward their cenvat credit to the GST regime on account of technical glitches. Such assesseees approached their jurisdictional High Courts seeking reliefs *inter alia* on the ground that the right to credit is a vested indefensible right and the same cannot be restricted basis purely technical considerations. A challenge was also mounted in several of these petitions that right to utilize the cenvat credit duly availed is an indefeasible right and no time limit can be inserted to restrict the transition and availment of the said credit under GST. Divergent views were expressed by the High Courts on the said issue. Finally, the Supreme Court has via the case of Filco Trade Center Pvt. Ltd. conclusively put an end to this divergence.

### **A throwback to previous judgements**

To understand the significance of this judgement, it is important to understand the historical context of this issue. One of the earliest cases challenging the time-limit placed on transition of cenvat credit came up before the Gujarat High Court in the case of Willowood Chemicals Pvt Ltd. V. Union of India & Ors<sup>2</sup>. In this case, Gujarat High Court upheld the vires of Rule 117 of the CGST Rules and accordingly, disallowed the plea of the petitioner therein to file his form GST TRAN-1 post the due date.

---

<sup>1</sup> SLP (C) No. 32709-32710/2018

<sup>2</sup> Order dated 19.09.2018 in R/SCA No. 4252 of 2018



A similar challenge was mounted before the Bombay High Court in *Nelco Limited V. Union of India & Ors*<sup>3</sup> which too was set dismissed by the Bombay High Court.

However, the Bombay High Court itself has in *Heritage Lifestyle and Developers Pvt Ltd V. Union of India & Ors*<sup>4</sup> allowed the petitioner therein to file the Form GST TRAN- 1 after the due date *inter alia* on the ground that mere technicality cannot come in way of substantial justice.

These two divergent views were considered by the Aurangabad bench of the Bombay High Court in *Ambica Fertilizers & Anr V. Union of India & Ors*<sup>5</sup>. In this case, the Bombay High Court allowed the petitioner therein to amend its Form GST TRAN-1 and file Form GST TRAN-2 without prejudice to any of the rights and contentions of both the parties. In the said case, the Aurangabad Bench of the Bombay High Court had also remanded the matter back to the jurisdictional assessing authority with the direction that the issue must be decided in accordance with the provision of GST laws and the rules made thereunder. This decision was followed by the Bombay High Court again in a batch of petitions recently.<sup>6</sup>

Furthermore, the Delhi High Court had, in the case of *Brand Equity Treaties Limited V. Union of India & Ors*, after taking note of the technical difficulties faced by the assesses at large while filing form GST TRAN- 1 allowed the petitioners therein to file their form GST TRAN- 1 beyond the due date. In this case, the Delhi High Court also read down the time-limit prescribed under Rule 117 of CGST Rule, 2017 as being directory in nature<sup>7</sup>.

Other High Courts have also taken a lenient view of the situation and allowed the petitioner's therein to file their form GST-TRAN-1 beyond the prescribed time limit<sup>8</sup>.

### **Supreme Court's decision in the case of Filco Trade Center Pvt Ltd.**

This divergence of views was finally put to rest by the Supreme Court in *Filco Trade Center Pvt Ltd* wherein it has been directed as under-

- 1. Goods and Service Tax Network (GSTN) is directed to open a common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.*
- 2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).*
- 3. GSTN has to ensure that there are no technical glitch during the said time.*

---

<sup>3</sup> Order dated 20.03.2020 in WP No. 6998 of 2018

<sup>4</sup> Order dated 05.11.2020 in WP (ST) No. 3705 of 2020

<sup>5</sup> Order dated 13.04.2022 in WP No. 1690 of 2020

<sup>6</sup> Order dated 02.05.2022 in WP No. 44 of 2019 and Order dated 27.06.2022 in WP No. 1075 of 2021

<sup>7</sup> Order dated 05.05.2020 in WP (C) 11040/2018

<sup>8</sup> Order dated 10.09.2018 in WP (MD) No. 18532 of 2018 passed by Madras High Court, Order dated 04.11.2019 in CWP No. 30949 of 2018 passed by Punjab and Haryana High Court and Order dated 1.07.2022 in WPA 12239 of 2019 passed by Calcutta High Court.



*4. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.*

*5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.*

*6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims.*

This judgement of the Apex Court is a welcome move for the industry as it not only put an end to the litigation around timelines for filing form GST TRAN-1, but it also extends this benefit to assesseees who had chosen not to litigate this issue. Furthermore, this judgement fortifies the view that credit once availed is an indefeasible vested right which cannot be varied especially on account of procedural lapses. This judgement is a right step towards achieving the core objective of GST regime i.e. seamless flow of credit.

It would be interesting to see how the department will implement the said decision of the Apex Court to ensure that the claims of transitional credit are objectively assessed. Also, considering verification will have to be conducted by the jurisdictional officers in each State, a Circular laying down the guidelines for verification of the claims - for instance - eligibility of undisputed credit transitioned under GST should not be questioned while allowing claim under Form GST TRAN-1. A few of these simple (and hygiene) steps would go a long way towards putting an end to any future litigation.

- ***This article has been published in Taxsutra***