

TAX INFO

Dated 16/05/2022

Latest update on GST Law: **Transitional credit being vested right cannot be taken away on procedural or technical grounds** as given by **CESTAT, Chennai**.

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Name of Petitioner	M/s. Bharat Heavy Electricals Ltd.
Name of Respondent	Commissioner of GST & Central Excise
Court	CESTAT, Chennai
Date of Judgement	15.12.2021
Appeal No.	Excise Appeal No.40546 of 2021

Brief Facts of the Case Law:

The appellants were engaged in manufacture of boiler auxiliaries namely electrostatic precipitator, air pre-heaters, fans etc. and were registered with the Central Excise Department. They also had Service Tax registration as they are service providers as well as recipient of service. After introduction of GST, they migrated to GST and obtained necessary registration. During the period from March 2017 to June 2017, the appellant received various inputs and input services into their factory for the use in their manufacturing activity. As per the provisions under CENVAT Credit Rules, 2004, as amended in 2015, the appellants were eligible to avail credit of the duty / tax paid on inputs and input services within a period of one year. However, they had not availed the credit on such inputs and input services till 30.6.2017. They had filed the ER-1 returns for this period without reflecting the credit on the inputs and input services. After introduction of GST with effect from 1.7.2017, the appellant could not process for carry over through TRAN-1 the credit eligible on the inputs and input services as they had not availed the credit prior to 30.6.2017 and did not reflect in their ER-1 returns. They later filed an application for refund of the credit vide their letter dated 27.3.2018. After due process of law, the original authority rejected the claim stating that they ought to have taken the credit within 90 days of the appointed day and submit a declaration electronically in TRANS-1. This view was upheld by the Commissioner (Appeals) vide order impugned in this appeal.

Contention of Appellant:

The appellant has been receiving on an average of about 8000 nos. of cenvatable and other invoices per year. The credit of the duty / tax is availed only after a systematic verification of admissibility of credit after acceptance of the quality of the goods and scrutiny of the vendors' invoices by finance department. This process takes time resulting in a time-lag between receipt of input / capital goods and availment of credit. During the period 28.3.2017 to 8.6.2017, the appellant received 20 numbers consignment of inputs. During 23rd to 28th June, input services (involving reverse charge mechanism) were received for which payments to vendors were effected during the period 5th July to 4th October 2017. Since credit on the inputs / input services could not be availed before 30.6.2017, the same was not reflected in the ER-1 returns filed by them. It could not be carried forward through TRAN-1 to new GST regime. The Department has no case that the credit availed by them for which refund claim has been filed is ineligible. The refund claim has been rejected merely stating that the appellant has not availed the credit and carried forward to GST regime by filing TRAN-1. That the time for filing such TRAN-1 has expired on 27.12.2017 and therefore the appellant cannot claim refund. The 3rd proviso to Rule 4 of CENVAT Credit Rules, 2004 provide for availment of credit within one year of receipt of inputs / input services. The appellant would be able to take the credit on all these invoices but for the introduction of GST regime and consequent closure of CENVAT Credit Rules

with effect from 30.6.2017. The refund of credit has to be adjudicated under the erstwhile law. If that be so, the appellant would be eligible for credit and also refund of the unutilized credit. Various High Courts and the Tribunal have consistently held that if an assessee for any reason is not in a position to utilize the credit duly accrued to him, the same has to be refunded in cash. The tax has not been passed on to another person. Thus, there is no unjust enrichment and the appellant is entitled for the refund of the duty / tax element borne by them on the input / input services procured by them.

Decision of the Court:

There is no allegation raised by the department that the appellant is not eligible to avail credit of the duties / taxes paid on the inputs / input services. The appellant avails credit only after they make the full payment to the vendors. The appellants have cleared payments to vendors of the impugned invoices during the period from 5.7.2017 to 4.10.2017. The provisions of CENVAT Credit Rules, as it stood during the disputed period (March to June 2017), allowed the appellant to avail credit within a period of one year. They could not avail the credit only because of the introduction of GST law by which the CENVAT account has ceased to exist. There was also a cut-off date for filing TRAN-1 return for carry forward of eligible credit. As per the accounting system followed by the appellant, they were to take credit only after making payment to vendors which was completed in October 2017 (after introduction of GST). Thus, they could not avail the credit or reflect the same in their ER-1 returns for the month of June 2017.

In the case of Adfert Technologies Pvt. Ltd. Vs. Union of India – 2020, it is held that transitional credit being vested right cannot be taken away on procedural or technical ground. This decision was upheld by the Hon'ble Supreme Court. It is settled legal position that substantive credit cannot be denied on procedural grounds. The said right cannot be frustrated by pressing on the procedural requirement of filing TRAN-1 before 27.12.2017. The accounting practice adopted by the appellant allows them to avail credit only after making payments to the vendors which has made it impossible to carry forward the credit as set out in the GST law. When the credit is eligible, the same cannot be denied by stating procedural requirements.

Therefore, the rejection of refund claim cannot be justified. The impugned order was set aside.

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