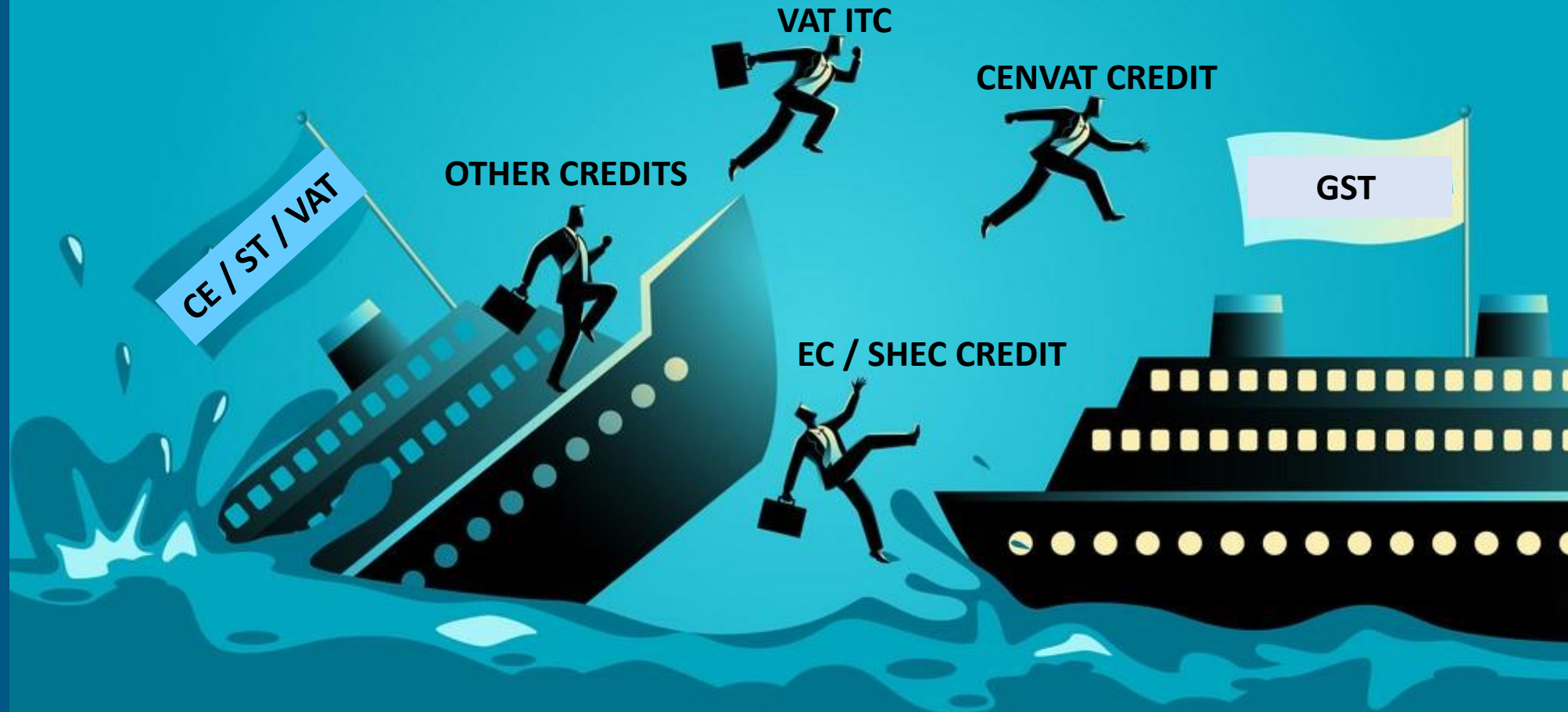


# TRANSITIONAL CREDITS UNDER GST

(By G. Natarajan, Advocate)

# TRANSTIONAL CREDIT



# Credit eligibility under legacy laws.

## Manufacturer

- ED paid on inputs and capital goods.
- ST paid on input Services.
- VAT paid on inputs and capital goods.

## Service Provider

- ED paid on inputs and capital goods.
- ST paid on input Services.
- ~~• VAT paid on inputs and capital goods.~~

## VAT Dealer

- VAT paid on inputs and capital goods.
- ~~• ED paid on inputs and capital goods.~~
- ~~• ST paid on input services.~~

# Statutory provisions (CGST Act & SGST Act).

## CHAPTER XX

### TRANSITIONAL PROVISIONS.

Sec. 139 – Migration of taxpayers.

Sec. 140 & Rule 117 – Transitional Credit [Filing of TRAN 1].

Sub Rule (1A) of Rule 117 providing for extension of time limit.

Rule 120 A – Revision of TRAN 1.

Sec. 141 & Rule 119 – Transitional provisions relating to job work.

Sec. 142 & Rule 118 – Miscellaneous transitional provisions.

# Section 140 (1) of the CGST Act.

- Deals with carrying forward the balance of Cenvat Credit as per the last ER 1 / ST 3 return filed by the Manufacturer or Service provider, as the case may be.
- All returns upto June 2017 should have been filed.
- The credit must be eligible under GST law also.
- Similar provisions under SGST Act also to carry forward VAT ITC.
- For pending Form C / F / H / I – credit should not be carried forwarded. Refund to be claimed upon receipt of forms.
- TRAN 1 to be filed.

# Section 140 (2) of the CGST Act.

- Sub-Section (2) deals with availing the unavailed portion of credit on capital goods.
- Similar provisions under SGST Act also.
- Such credit should be eligible under old law as well as GST law.
- If 50 % credit was taken in Apr-June 2017, balance 50 % can be taken under this provision. If no credit was taken earlier, full credit can be taken under this provision.
- TRAN 1 to be filed.

# Section 140 (3) of the CGST Act.

- Deals with availing ITC for the stock in hand, where credit has not been availed earlier.
- Applicable for
  - who was not registered under existing law.
  - who was manufacturing exempted goods or providing exempted service.
  - Works Contract service provider availing Notification 26/2012.
  - FSD / SSD / Depot / Importer.
- Credit of “eligible duties” paid on inputs in stock, contained in work in progress or in finished goods.

# Section 140 (3) of the CGST Act.

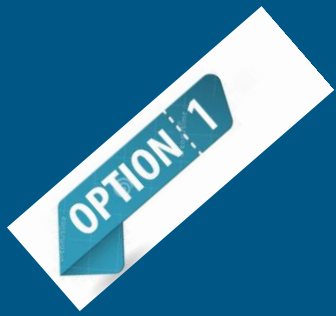
- Works Contract service provider availing Notification 26/2012.
- Notification 26/2012 is abatement notification (where sale value includes land value also and higher abatement is admissible).
- Several Works Contract service providers were under Rule 2 A of the Service Tax Valuation Rules.
- They should also be entitled to transitional credit (not registered earlier under excise law).



# Section 140 (3) of the CGST Act.

## Conditions.

- Such inputs / goods are used or intended to be used for making taxable supplies.
- Such credit is entitled under GST law.
- Invoice available and is issued not earlier than one year from 01.07.2017 [Filco Trade Centre Pvt. Ltd. 2018 (17) GSTL 3 Guj HC].
- No abatement is available under GST (where ITC is restricted).
- TRAN 1 to be filed.



# Section 140 (3) of the CGST Act.

Proviso to Sec. 140 (3) read with Rule 117 of CGST Rules.

- Applicable if duty paid invoices are not available.
- Such goods are not absolutely exempted under excise.
- Not applicable for manufacturers and service providers.
- But some document evidencing purchase must be available.
- For sales made from July 2017 to Dec 2017, 60 % of CGST paid (if the CGST rate is 9 % or more) or 40 % of CGST paid (if the CGST rate is less than 9 %) would be allowed as credit.
- If IGST is paid, 30 % / 20 % of IGST paid, respectively.
- TRAN 2 to be filed for the said six months.
- Similar provision under SGST for goods suffered tax at first point of sale and exempted for subsequent sale.



## Section 140 (3) of the CGST Act.

Credit Transfer Document – Notification 20 & 21/2017 CE NT. Dt. 30.06.2017.

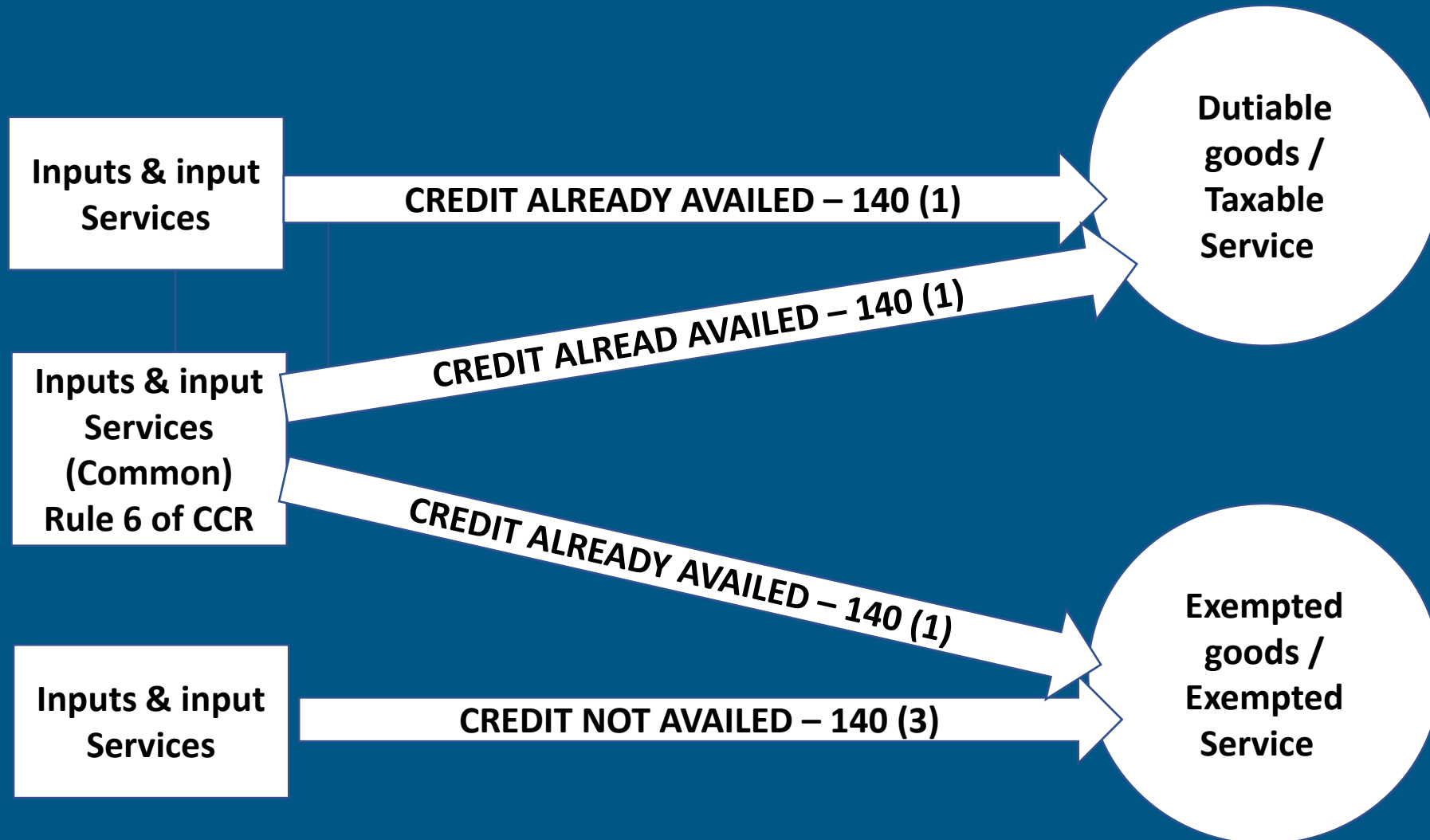
Conditions.

- Value of such goods, to be more than Rs.25,000 a piece.
- Goods bear brand name and identifiable with manufacturer, with S.No. etc.
- Duty payment by manufacturer capable of demonstration.
- Both parties to file TRAN 3 (Table 1 & 2)

# Section 140 (4) of the CGST Act.

- Applicable to manufacturer of both dutiable and exempted goods; provider of taxable and exempted services.
- Eligible credit already availed must be carried forwarded as per Sec. 140 (1).
- Ineligible credit which was not availed, can be availed under Sec. 140 (3).
- Common input / input services credit would have been already availed, subject to Rule 6 of CCR, 2004.

Section 140 (4) of the CGST Act.



# Section 140 (5) of the CGST Act.

Duty / Tax paid on inputs and input services, received on or after 01.07.2017, but, on which the Duty / Tax has been paid under the existing law.

- Goods in transit and received on or after 01.07.2017.
- ST paid on advances and Services received on or after 01.07.2017.
- The purchase document should be accounted by the recipient on or before 30.07.2017 (with another 30 days extension by Commissioner).



# Section 140 (6) of the CGST Act.

- Those who were paying tax at fixed rate or fixed amount. Example, Compounded levy for stainless steel pattis and pattas; aluminium circles.
- They were not entitled to avail credit under existing law.
- They can claim credit of duties paid on inputs lying in stock, contained in work in progress and finished goods.
- Such inputs / goods are used or intended to be used for making taxable supplies.
- Such credit is entitled under GST law.
- Invoice available and is issued not earlier than one year from 01.07.2017.

# Section 140 (7) of the CGST Act.

- Input Service Distributor, can distribute the credit of Service Tax on input services received prior to 01.07.2017, as CGST Credit.
- Closing balance of credit with ISD on 30.06.2017, could be distributed as CGST credit.
- Invoices received on or after 01.07.2017 for payment of Service Tax can be distributed as CGST credit.



## Section 140 (8) of the CGST Act.

- Person having centralised registration under Service Tax, can carry forward his balance of Cenvat Credit under the existing law, to the new GST registrations obtained by him.
- Such credit may also be distributed to all / any units of such person or retained in the main registration (No centralised registration under GST).

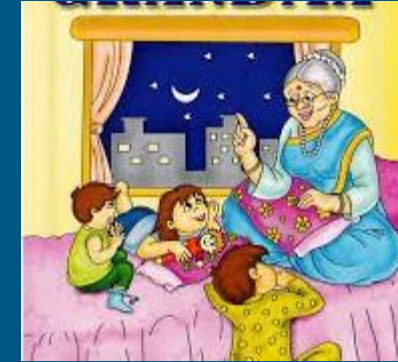
# Section 140 (9) of the CGST Act.

- If credit was reversed under CCR, 2004 for non payment of value of service within six months, such credit can be claimed, if the payment is made within 3 months from 01.07.2017.
- Similar situations but not provided for
  - Credit reversed for not receiving the inputs from job worker within the specified period.
  - Credit reversed for writing off the value of inputs, capital goods, etc. when they are used again.

# Eligible duties.

- Explanation I – for sub sections (3), (4) & (6).
- All the above sub sections refer to ITC on stock on hand as on 30.06.2017.
- The definition covers ED / CVD /AED / NCCD.
- Explanation II – for sub section (5) – Goods and services in transit.
- Apart from the above, it covers Service Tax also.

# Story of EC / SHEC



- EC / SHEC leviable on excisable goods exempted from 01.03.2015.

*"118. As part of the movement towards GST, I propose to subsume the Education Cess and the Secondary and Higher Education Cess in Central Excise Duty. In effect, the general rate of Central Excise Duty of 12.36% including the cesses is being rounded off to 12.5%" - Budget speech of Hon'ble Shri. Arun Jaitley, FM.*

- EC / SHEC leviable on taxable services removed w.e.f. 01.06.2015.

Section 153 and 159 of the Finance Act, 2015, read with Notification 14/2015 ST Dt. 19.05.2015.

- ST Rate revised from 12.36 % to 14% from 01.06.2015.

# Story of EC / SHEC

Notification 14/2015 C.E. NT Dt. 30.04.2015.

- EC / SHEC paid on inputs and capital goods received on or after 01.03.2015;
- Second instalment of EC / SHEC paid on capital goods received during 2014-15;
- EC / SHEC paid on input services received on or after 01.03.2015

Can be used to pay Excise duty on the final products.

# Can the credit balance of EC / SHEC as on 30.06.2017 can be carried forwarded to GST regime or not?

- Credit is a vested right [Eicher Motors Ltd. 1999 (106) ELT 3 SC]
- Balance not specifically lapsed.
- EC / SHEC were subsumed into the rate of ED / ST.
- Utilisation of EC / SHEC for payment of ED was allowed by Government to a limited extent.

# Sutherland Global Services Pvt. Ltd.

## 2019 (30) GSTL 628 Mad

Observations of the Hon'ble HC.

- No provision has been made for lapsing of such credit.
- Sec. 140 (1) does not refer to “eligible duties” but Cenvat Credit.
- Reliance placed on Eicher Motors.
- Sec. 140 (8) dealing with transition of credit in case of centralised registration is also referred to.
- Certain amendments to Sec. 140 to bar transitioning of EC / SHEC have not been notified yet.

## Government's take.

- CE Tariff Conference minutes – F.No.96/85/2015 Dt. 07.12.2015 – Dit not allow utilisation of EC / SHEC, beyond what is permitted under Notification 14/2015 CE NT.
- Cellular Operators Association of India VS UOI – 2018 (14) GSTL 522 Del.
- Retrospective amendments in Section 140.



the words "fourteen days" shall be substituted.

28. In section 140 of the principal Act, with effect from the 1st day of July, 2017,—

(a) in sub-section (1), after the letters and word "CENVAT credit", the words "of eligible duties" shall be inserted and shall always be deemed to have been inserted;

(b) in the *Explanation 1*—

(i) for the word, brackets and figures "sub-sections (3), (4)", the word, brackets and figures "sub-sections (1), (3), (4)" shall be substituted and shall always be deemed to have been substituted;

(ii) clause (iv) shall be omitted and shall always be deemed to have been omitted;

(c) in the *Explanation 2*—

(i) for the word, brackets and figure "sub-section (5)", the words, brackets and figures "sub-sections (1) and (5)" shall be substituted and shall always be deemed to have been substituted;

(ii) clause (iv) shall be omitted and shall always be deemed to have been omitted;

(d) after *Explanation 2* as so amended, the following *Explanation* shall be inserted and shall always be deemed to have been inserted, namely:—

*'Explanation 3.*—For removal of doubts, it is hereby clarified that the expression "eligible duties and taxes" excludes any cess which has not been specified in *Explanation 1* or *Explanation 2* and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975.'



# The faux pas.

- “Eligible duties” inserted in Sec. 140 (1) also.
- In both Explanation I and II, reference to sub-section (1) of Sec. 140 included.
- It may be noted that both the Explanations refer to the “eligible duties” paid on inputs lying in stock as on 30.06.2017.
- If the above amendments are notified, the entire credit balance of “eligible duties” as on 30.06.2017 cannot be carried forwarded and only those attributable to stock as on 30.06.2017 could be carried forwarded.
- Explanation III Added.

*Explanation 3.*—For removal of doubts, it is hereby clarified that the expression “eligible duties and taxes” excludes any cess which has not been specified in *Explanation 1* or *Explanation 2* and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975.’

# The face saving.

In exercise of the powers conferred by sub-section (2) of section 1 of the Central Goods and Services Tax (Amendment) Act, 2018 (31 of 2018), the Central Government hereby appoints the 1st day of February, 2019, as the date on which the provisions of the Central Goods and Services Tax (Amendment) Act, 2018 (31 of 2018), except clause (b) of section 8, section 17, section 18, clause (a) of section 20, sub-clause (i) of clause (b) and sub-clause (i) of clause (c) of section 28, shall come into force.

[Notification No. 2/2019-C.T., dated 29-1-2019]

# Certain issues.

- Service Tax paid later under RCM.
- Service Tax on ocean freight for CIF imports.
- No technical glitches, but TRAN 1 not filed.
- TRAN 1 filed, but with mistakes.
- TRAN 2 / TRAN 3 not filed.

GST COUNCIL ↑

HIGH COURT →

← GST



# Important Judgements.

Adfert Technologies Pvt. Ltd. – 2019-TIOL-2519-P & H HC. SLP dismissed by the Hon'ble SC.

Siddharth Enterprises – 2019-TIOL-2068-Guj HC. Review petition dismissed.

Hans Raj Sons – 2019-TIOL-2891-P&H HC. If TRAN 1 could not be re-opened, credit can be taken in GSTR 3 B.

**Brand Equity Treaties Limited – 2020-TIOL-900-Delhi HC.**

- Credit already availed is a property protected under Art. 300 A.
- Such right cannot be curtailed by prescribing a time limit.
- To be allowed to file TRAN 1, upto 30.06.2020.
- Relief to be made available to all similarly placed taxpayers.



# Effect of Budget 2020 amendment

126. In section 140 of the Central Goods and Services Tax Act, with effect from the 1st day of July, 2017,—

Amendment  
of section  
140.

25 (a) in sub-section (1), after the words “existing law”, the words “within such time and” shall be inserted and shall be deemed to have been inserted;

(b) in sub-section (2), after the words “appointed day”, the words “within such time and” shall be inserted and shall be deemed to have been inserted;

30 (c) in sub-section (3), for the words “goods held in stock on the appointed day subject to”, the words “goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to” shall be substituted and shall be deemed to have been substituted;

(d) in sub-section (5), for the words “existing law”, the words “existing law, within such time and in such manner as may be prescribed” shall be substituted and shall be deemed to have been substituted;

35 (e) in sub-section (6), for the words “goods held in stock on the appointed day subject to”, the words “goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to” shall be substituted and shall be deemed to have been substituted;

40 (f) in sub-section (7), for the words “credit under this Act even if”, the words “credit under this Act, within such time and in such manner as may be prescribed, even if” shall be substituted and shall be deemed to have been substituted;

(g) in sub-section (8), for the words “in such manner”, the words “within such time and in such manner” shall be substituted and shall be deemed to have been substituted;

45 (h) in sub-section (9), for the words “credit can be reclaimed subject to”, the words “credit can be reclaimed within such time and in such manner as may be prescribed, subject to” shall be substituted and shall be deemed to have been substituted.

127. In section 168 of the Central Goods and Services Tax Act, in sub-section (2), for

Amendment

Will this  
be of use?



Mr. Skeptic.

# To quote from Delhi HC Judgement

21. Lastly, we also find merit in the submissions of the petitioners that Rule 117, whereby the mechanism for availing the credits has been prescribed, is procedural and directory, and cannot affect the substantive right of the registered taxpayer to avail of the existing / accrued and vested CENVAT credit.

Section 140 (1) is categorical. It states that the registered person “shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day....”. Only the manner i.e. the procedure of carrying forward was left to be provided by use of the words “in such manner as may be prescribed”

Further, even in ***ALD Automotive Pvt. Ltd. v Commercial Tax Officer*** 2019) 13 SCC 225, while dealing with the question of whether the provision prescribing time limit for claim of Input Tax Credit is directory or mandatory in nature, it was observed that “*whether particular provision is mandatory or directory has to be determined on the basis of object of particular provision and design of the statute*” and “*such interpretation should not be put which may promote the public mischief and cause public inconvenience and defeat the main object of the statute*”. Therefore, in the present cases, the purport of the transitory provisions is to allow a smooth migration from the erstwhile service tax regime to the new GST regime and the interpretation must be in consonance with the said purpose.



# To quote from Delhi HC Judgement

We, therefore, have no hesitation in reading down the said provision [ Rule 117] as being directory in nature, insofar as it prescribes the time-limit for transitioning of credit and therefore, the same would not result in the forfeiture of the rights, in case the credit is not availed within the period prescribed. This however, does not mean that the availing of CENVAT credit can be in perpetuity. Transitory provisions, as the word indicates, have to be given its due meaning. Transition from pre-GST Regime to GST Regime has not been smooth and therefore, what was reasonable in ideal circumstances is not in the current situation. In absence of any specific provisions under the Act, we would have to hold that in terms of the residuary provisions of the Limitation Act, the period of *three years* should be the guiding principle and thus a period of three years from the appointed date would be the maximum period for availing of such credit.



***"Retrospective tax is a matter of past. That chapter will not be opened again. We are ensuring that neither this government nor the future governments can open this chapter"*** – Prime Minister Shri. Narendra Modi while addressing India France Business Summit in January 2016.

# Other transitional provisions.

- Inputs, semi-finished goods and manufactured goods, lying with job workers, to be returned within six months (another 2 months extension) to the principal. If not credit availed thereon to be reversed by principal and tax shall be paid by the job worker – Sec. 141.
- Details of such stock to be declared.

# Other transitional provisions.

## Sec. 142 (1)

- Goods cleared to unregistered person between 01.01.2017 to 30.06.2017, if returned to the supplier before 31.12.2017, the tax originally paid can be claimed as refund.
- If the goods are returned by registered person, it shall be deemed as a supply and GST is payable.

# Other transitional provisions.

## Sec. 142 (2)

- Upward price revision for the goods cleared under a contract entered into prior to 01.07.2017, to be treated as supply and GST payable (even for the goods supplied prior to 01.07.2017), by raising a debit note.
- Downward price revision for the goods cleared under contract entered into prior to 01.07.2017, Credit note to be issued with GST. Supplier can reduce his GST liability if the recipient reverses proportionate credit.

# Other transitional provisions.

- Any claim for refund of Cenvat Credit, to be sanctioned in cash – Sec. 142 (3).
- Any refund claim towards tax paid on exports, shall be treated under existing law – Sec. 142 (4).
- Refund of Service Tax for services not paid, to be dealt with under Service Tax law and refund to be paid in cash – Sec. 1402(5).
- Proceedings under existing law to be conducted as per existing law and any recovery can be made under GST law – Sec. 140 (6) to 142 (9).

# Other transitional provisions.

- Any supply made after 01.07.2017 is leviable to GST - Sec. 142 (10), save as otherwise provided.
- If VAT was already paid on any supply under this Act, no CGST / SGST is payable.
- If Service Tax was already paid on any supply under this Act, no CGST/ SGST is payable.

*(As sale and service are “supply” under GST, if such sale and service is already taxed under existing law, no further levy under GST)*

- For any supply made after 01.07.2017, if both VAT and Service Tax paid earlier, such VAT and Service Tax to be claimed as refund and GST to be paid.

*Sec. 142 (11)*

# Sec. 142 (11)

TRANSACTION	VAT	SERVICE TAX	CONSEQUENCE
Supply of goods on or after 01.07.2017	PAID	NOT APPLICABLE	NO GST – Sec. 142 (11) (a)
Services rendered on or after 01.07.2017	NOT APPLICABLE	PAID	No GST – Sec. 142 (11) (b)
Composite supply on or after 01.07.2017	PAID	PAID	Pay GST. Claim refund of VAT and Service Tax already paid – Sec. 142 (11) (c)



# THANK YOU

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