

Top 100 Indirect Tax Rulings of 2017

Fourth Edition

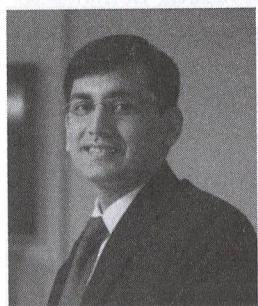
Key Features

- Top rulings based on expert analysis, industry impact and basic principles of Indirect tax law
- Writ petitions filed before the Courts challenging various aspects of GST
- User-friendly layout with reference to 'in favour of' and specific indexes to locate cases by topic and Court



Wolters Kluwer

Expert's Take on Ruling



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The CENVAT Credit Rules, 2004 ('Credit Rules') forming a self-contained code, comprehensively provide for availment, utilisation, transfer and restrictions on availment and utilisation of CENVAT credit.

In the case of Advance Surfactants India Limited vs. Union of India ('Advance Surfactants'), the Gujarat High Court ('Court') was concerned with the restriction envisaged under first proviso to Rule 3(4) of the Credit Rules. The proviso allowed an assessee to discharge excise duty liability of a month by utilising credit available in books of accounts as

on the last day of such month. Thus, a taxpayer was prohibited to utilize the credit availed in subsequent month for discharging a month's duty liability.

It is noteworthy that Rule 8 of the Central Excise Rules, 2002 ('Excise Rules') was the mirror image of proviso to Rule 3(4) of the Credit Rules. Rule 8 dealt with payment of excise duty and allowed a taxpayer to discharge its excise duty liability for a month by 6th of the following month. In these circumstances, the restriction placed upon utilisation of credit availed in a month for discharge of excise duty liability for previous month, seems deviant. This can be understood through an example. Excise duty liability for the month of January 2017 needs to be deposited by February 6, 2017. This liability can be discharged by using credit balance as on January 31, 2017 and not through credit earned during the period February 1 to 6, 2017.

In this case, the assessee utilised credit earned during the subsequent month for discharging excise duty liability for a month. It is trite that CENVAT credit forms a substantial right vested in a manufacturer or service provider and is as good as tax paid. Once the credit is rightly availed, its utilisation would inevitably result in discharging of excise duty liability.

In this case, the assessee only preponed the utilisation of credit and thus, the matter involved only difference of time of payment of tax. Over a time, neither the taxpayer got any extra credit nor did the government lose any revenue. Utmost, there was working capital advantage for the taxpayer by utilising the credit earlier.

It is settled principle that punishment must be commensurate with the offence. Accordingly, the Revenue clearly erred in raising demand for entire excise duty paid by utilising credit in contravention of the above proviso. Given that the amount of credit would in any case be available for utilisation in subsequent month, imposition of interest for the period of delay would have sufficed for this contravention. Thus, the Gujarat High Court rightly came to the taxpayer's rescue.

Section 37(2) of the Central Excise Act, 1944 empowers the Central Government to frame rules providing for credit on inputs, capital goods and input services. Evidently, the term 'providing' needs to be read liberally covering all aspects of CENVAT credit within its sweep. Further, this specific power is in addition to the general rule making powers conferred under sec 37(1). Thus, the Court rightly concluded that the impugned proviso is within the *vires* of sec 37.

At this juncture, it is also pertinent to critically examine the reasoning adopted by the Court. The Court held that the impugned proviso is *ultra vires* the scheme of CENVAT credit. The test of *vires* requires satisfaction of the following two conditions:

- There must be atleast two bodies of law under consideration such as Constitution of India ('Constitution'), statutes, rules, circulars, orders; and
- One body of law must be the parent of other, i.e., the two laws must share the relationship of parent and subsidiary

The above principle can be understood by following examples: (i) Constitution and Excise Act; (ii) The Excise Act and Excise Rules / Credit Rules; (iii) The Credit Rules and Circulars. Evidently, Rule 3(1) and impugned proviso belong to the same body of statute, *viz.* the Credit Rules. Since both Rule 3(1) and impugned proviso stand at same pedestal, the concept of *vires* is inapplicable. It is pertinent to note that the Court's conclusion that impugned proviso is within the *vires* of Excise Act but *ultra vires* the scheme of CENVAT credit seems contradictory.

In addition to the above, the legislative authorities exercise a greater prerogative in matters pertaining to tax. Whilst drafting beneficial legislations, like the Credit Rules, the legislative authority is well within its right to impose restrictions. In the present context, the revenue authorities are responsible to ensure that only admissible CENVAT credit is utilised for discharge of a month's excise liability. The impugned proviso forming a reasonable constraint on utilisation

Top 10 Rulings of 2017 with Expert's Take

of credit was an example of one such reasonable restriction. In such cases, the Courts are expected to exercise greater restraint before reading down a provision.

For the above reasons, the High Court seems to have erred in striking down the applicability of proviso to Rule 3(4) of Credit Rules by holding it *ultra vires* the scheme of CENVAT credit. At the same juncture, the Court rightly rescued the taxpayer on the principles of equity. Thus, the result was right but may not be the path adopted to reach the same.

It is pertinent to highlight that under Goods and Services Tax ('GST') regime, a taxpayer avails credit in its electronic credit ledger only upon filing of GSTR 2. Whereas, the GST is payable on 20th day of the following month. Thus, the credit attributable to subsequent month would not be availed before the date of payment of GST liability. Accordingly, the ruling may not be applicable under GST regime.

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They say that a movie should never be judged by its trailer...The magnum opus 'Goods & Services Tax' (GST) saw a countrywide release on a billion screens on July 1, but the jury is still out on whether this is indeed a transformative 'Good & Simple Tax' as the PM had coined it; a tax whose main objective is to achieve the dream of our founding fathers – One Nation, One Market.

While the tax reform presents itself with own legal interpretation issues, besides the systematic and technological issues in compliance, one just cannot lose sight of the legacy matters pending before various judicial & quasi-judicial forums.

Top 100 Indirect Tax Rulings of 2017 is your guide to the key indirect tax judgments under Service Tax, Central Excise, Customs, Foreign Trade Policy (FTP) and Value Added Tax (VAT) delivered during the course of the year.

Taxsutra's editorial team has carefully picked the Top 100 as also the Top 10 cases of 2017, based on the principles involved, industry impact and nature of controversy. The Top 100 cases traverse a wide range of important issues, such as Constitutional validity of legislations, CENVAT Credit eligibility, classification, taxability, valuation, exemption eligibility, refund, works-contract and more...

The book outlines Top 100 rulings along with concise summary of each case, covering facts and significant observations of Tribunal / Court as the case may be. 'Renowned Tax Experts' have given their take on Top 10 judgments of 2017, putting forth their views on the likely industry impact and way forward

These experts include the Who's Who of the Indirect Tax world:

- **Mr. P.V. Srinivasan**, Corporate Advisor
- **Mr. Prashant Deshpande**, Partner, Deloitte Haskins & Sells LLP
- **Mr. L. Badri Narayanan**, Partner, Lakshmikumaran & Sridharan Attorneys
- **Mr. Rohit Jain**, Partner, Economic Laws Practice
- **Mr. Sujit Ghosh**, Partner and National Head, Advaita Legal
- **Mr. Puneet Bansal**, Managing Partner, Nitya Tax Associates
- **Mr. Abhishek Jain**, Partner, EY India
- **Mr. Jigar Doshi**, Partner, SKP Business Consulting LLP
- **Mr. Abhishek A Rastogi**, Partner, Khaitan & Co.
- **Mr. V Raghuraman**, Advocate

That's not all! The book gives an overview of the ongoing litigation under the GST regime, covering various issues like taxability of supplies, availability of Input Tax Credit, applicability of reverse charge mechanism, detention & seizure of goods for non-compliance, entitlement to exemption & concessions and more...

Further, the book contains special segment catering to 'What's likely to buzz in 2018...' in the domain of Indirect Tax / GST. Herein, the following articles are presented –

"Six Months into GST – Taking Stock" authored by **Ms. Bhavna Doshi**, BDA LLP

"GST – The Year Ahead" authored by **Mr. Pratik Jain**, Partner & Leader, PwC India

"Litigation in 2018 - What to Expect" authored by **Sr. Advocate N. Venkataraman**.

Top 100 Indirect Tax Rulings of 2017 is a must have for indirect tax professionals, both in practice as well as in industry, as an able ally, in their day to day work in this critical area.

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