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# **APEX COURT'S DISMISSAL OF SLP IN TRAN-I MATTER – IS IT IMPLIED ACCEPTANCE?**

# Background

Taxpayers and the Government alike, lost considerable sleep over transition of unutilized credit into the Goods and Services Tax regime. So, when the Gujarat High Court<sup>1</sup> declared filing of GST TRAN-I within prescribed time-limit as a substantive condition and upheld its validity, it seemed seal the fate of transitional credits. But soon the High Courts in the cases of **Siddhartha Enterprises v. The Nodal Officer, 2019-VIL-442-GUJ** and **Adfert Technologies Private Limited v. UOI, 2019-VIL-537-P&H** ('Adfert Technologies') propounded a contrasting view and declared time-limit for filing GST TRAN-I as a procedural condition whose non-compliance could not deprive taxpayers of a substantive right. In the recent past, some High Courts<sup>2</sup> have yet again rejected the taxpayers' claim for condoning time-limit for filing GST TRAN-I except in cases of technical glitches.

It is trite that a High Court's decision is binding within the confines of the concerned State. Therefore, the existence of diametrically opposite verdicts of various High Courts, presents a dilemma

regarding the correct interpretation and application of the law. In such circumstances, the sole available recourse is a judgment of the Supreme Court. Exercising this recourse, the Revenue approached the Supreme Court by filing a Special Leave Petition ('SLP') in **UOI v. Adfert Technologies Private Limited, 2020-VIL-10-SC** ('Revenue's SLP'). The Apex Court dismissed the Revenue's SLP.

The dismissal of Revenue's SLP is being reckoned as Apex Court's validation of High Court's decision in Adfert Technologies and consequently, a declaration of law on procedural nature of the time limit for filing GST TRAN-I. In the authors' view, this prevailing perception is mis-guided and Supreme Court's silence is being misinterpreted. In this article, the authors will discuss the significance of dismissal of SLPs and the effect of

## Special Leave Petitions - Brief Overview

'Special' Leave Petition, as the name suggests, is an extraordinary jurisdiction of the Supreme Court. Enshrined within Article 136 of the Constitution of India, 1950 ('Constitution'), SLP allows Apex Court to correct any manifest injustice or grave errors of law. An attentive reading of this Article reveals that it does not vest a right to appeal in the petitioner instead it vests discretionary appellate powers in Apex Court, exercisable under extra-ordinary circumstances. The contours of this 'discretion' is limited to matters involving substantial questions of law regarding interpretation of the Constitution, validity of legislations, matters perpetrating grave miscarriage of justice and violation of fundamental rights<sup>3</sup>.

This discretion has also been built into the procedure of SLPs. Article 136 empowers the Court to grant 'leave to appeal'. This means that only once special leave is granted, a matter is registered as an appeal. Two stages of Article 136 are as follows:

- Seeking leave of Apex Court to appeal; and
- Hearing of the appeal after grant of leave

<sup>1</sup> *Willowood Chemicals Private Limited v. UOI*, 2018 [19] GSTL 228

<sup>2</sup> *Shree Motors & Gaurav Industries v. UOI*, 2020-VIL-140-RAJ; *NELCO Limited v. UOI*, 2020-VIL-143-BOM; *Ingersoll-Rand Technologies & Services Private Limited v. UOI*, 2019-VIL-575-ALH; *Jagadamba Hardware Stores v. UOI*, TS-109-HC-2020(CHAT)-NTJ

<sup>3</sup> *Mathai v. George*, (2010) 4 SCC 358





At the stage of seeking leave, the petitioner needs to demonstrate the existence of circumstances for exercise of extra-ordinary jurisdiction. At this stage, the Apex Court does not exercise its appellate jurisdiction but only considers whether to grant leave to appeal or not. The next stage commences only after the Apex Court grants the leave and converts the petition into an appeal.

## Effect of dismissal of SLP

If the Apex Court is not satisfied regarding existence of requisite circumstances, SLP is outrightly dismissed through a summary / *in limine* dismissal or a reasoned order of dismissal.

An *in limine* dismissal simply means that the Apex Court has dismissed SLP without giving any reasons for dismissal. The Apex Court does not usually provide reasons for outright dismissal. An *in limine* dismissal does not operate as an acceptance of correctness of impugned decision by the Apex Court. It simply means that the Apex Court did not find it to be a fit case for invocation of its appellate jurisdiction<sup>4</sup>. By dismissing the SLP, the Court turns away the petitioner at the threshold without allowing him to enter its appellate jurisdiction. It is important to understand that the dismissal in such cases is of petition and not of appeal. Therefore, the Apex Court's order of dismissal neither merges with the order under challenge nor becomes law under Article 141 of the Constitution. Consequently, the dismissal order does not operate as *res judicata* in any subsequent proceedings before any Court.<sup>5</sup>



## Conclusion

The dismissal of the Revenue's SLP in Adfert Technologies is a textbook case of *in limine* dismissal. The Apex Court, in its order, categorically refrained from exercising its jurisdiction under Article 136. In the authors' view, the Apex Court's dismissal neither lays down any law on the requirement of filing GST TRAN-I within time-limit nor does it operate as *res judicata*. It is open to the Revenue to approach the Apex Court through SLPs in other decisions passed by the High Courts. It is pertinent to note the case of **CCGST v. Lantech Pharmaceuticals Limited, 2020 (2) TMI 1206 (SC)** where the Apex Court has granted leave to appeal to Revenue in SLP concerning identical issue of delayed filing of GST TRAN-I.

In nutshell, it would be fallacious for taxpayers to rely on the Apex Court's outright dismissal of Revenue's SLP in Adfert Technologies to contend that the Apex Court upheld the decision of the High Court. The law in respect of validity and nature of time-limit for filing GST TRAN-I continues to remain unsettled and as usual, the Supreme Court will have the last word on the same in times to come.



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<sup>4</sup> *Supreme Court Employees Welfare Association v. UOI*, (1980) 4 SCC 187

<sup>5</sup> *Kunhyammed v. State of Kerala*, (2000) 6 SCC 359