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Tale of Transitional Credits: **A disjunct** between Legislature and Courts

By Kulraj Ashpnani, Director and Sourabh, Senior Associate

NITYA Tax Associates

Transitional provisions in a statute essentially regulate a process that starts before an amendment or enactment of a statute, till it comes into force. The objective being to ensure that the paradigm shift is smooth, hassle free and also minimizes loss to the stakeholders.

Similar was the beneficial intent of introducing transitional provision under GST. On the contrary, these provisions are flooded with jurisprudence staggered in all directions and they continue to wobble over for more than 3 years now. So much so that the narrative of transitional credit mystifies each time a judgment is pronounced.



The latest turn around in this narrative is the judgments pronounced on eligibility of dealers not having excise invoices to transition credit of excise duty. On one side, the Gujarat High Court in ***Downtown Auto Private Limited v. UOI, 2020-VIL-342-GUJ*** held that dealers are entitled to transition of Cenvat credit of excise duty based on any document which evidences payment of duty. To the contrary, the Appellate Authority ***Bhagwandas Purshotamdas v. Superintendent, 2020-VIL-29-GSTAA (Raj.)*** held that Section 140(3)(iii) of the CGST Act mandates supplier to possess prescribed documents evidencing payment of excise duty on such goods under the Excise Law. VAT invoice is not a document prescribed under Excise Law and the taxpayer is not in

possession of any other prescribed documents under Excise Law. Thus, it shall not be allowed to transition such credit.

So much for transitioning under GST. Isn't it?

This article is an attempt to analyze the novel dispute of eligibility of credit of excise duty to dealers and how it resurfaces the divide between the Courts and Legislature over transitional credits under GST.

The Dispute

Section 140(3)(iii) *inter alia* provides 'possession of an invoice or other prescribed documents evidencing payment of duty under the existing law' in respect of goods in stock, as one of the conditions for dealers to transition such excise duty credit. The Court in ***Downtown Auto (Supra)*** applied a pragmatic approach and held that dealer had documents in the form of excise invoices issued by the manufacturer to the selling dealer to back its claim of excise duty. The Court, therefore, extended the benefit to the dealers based on a document not issued in its name but sufficiently evidencing excise duty payment on the goods held in stock.

This judgment raises two cardinal questions on interpretation of condition prescribed under Section 140(3)(iii) viz. whether the condition shall be read to mean as prescribed document evidencing payment of excise duty (and as no document is prescribed under GST Law, any document substantiating the claim) or only such documents which were prescribed under the Excise Law.

The purpose and the intent of GST was largely to remove cascading effect of taxes and if the credit is not allowed to be transitioned, the excise duty will form a cost for the dealer and accordingly to the customer. Reasonably so, as the goods will suffer GST on sale under the new regime without a possibility of claiming such credit. In ***Downtown Auto (Supra)***, the Court adopted a similar beneficial view and allowed credit to the taxpayer on the basis of a document issued in the name of selling dealer.

The Court, therefore, construed the condition in the light of the larger object of the provision and accorded a beneficial interpretation.

It is a trite that an object-based interpretation shall be adopted to read a beneficial law. Needless to say that the transitional provisions, in so far as it deals with transitional credits, are beneficial in nature. The legislature well intended that if the credit of excise duty is not allowed to a dealer, it will defeat the larger intent and the object of the GST legislations to remove cascading effect of taxes. Thus, any document which sufficiently evidences excise duty payment is acceptable to allow such credit. In such cases, extending benefit to the dealers looking at the object of law appears to be a correct interpretation.

On the other side of the spectrum, a literal reading of the condition under Section 140(3)(iii) provides that the term 'document' is preceded by 'prescribed' and succeeded by 'evidencing payment of duty under existing law'. It can hence be said that the prescription of document is required under the Excise Law itself. This is further supplemented by the fact that Section 2 starts with the phrase 'Unless the context otherwise requires'. Use of this phrase indicate that the definitions which are indicated to be conclusive may not be treated as such, if it was otherwise required by the context. Hence, a question as to prescription under GST Law does not arise in any situation. Similar view was duly echoed by the Appellate Authority **Bhagwandas Purshotamdas** (*Supra*). This also flows from the established principle of *ex visceribus actus*, that is to say, a statute must be read as a whole in its context and each word shall be construed contextually.

Taking both the interpretations into account, it is clear that the condition under Section 140(3)(iii) is not aloof of an interpretation which may oscillate in favor of both the sides. Emergence of this issue also highlights the contradistinction between intention versus the enactment of the legislature, depicting the weaker framework of transitional provisions.

Conclusion

Under GST, the Constitutional Courts have been the flag bearers of transitional rights. Courts have exercised its power of judicial review, more often than not, for examining the legislative intent and testing the vires of the provision wherever there was infringement of Fundamental or Constitutional Rights.

In as far as the initial disputes on transitional credits are concerned, the Courts were justified in its approach of extending benefits wherever there was curtailment of rights due to administrative inefficiencies. This judgment while extending the benefit to dealer has created an interesting dispute for times to come. In all possible situations, one aspect is ensured, the time is yet to come when the stakeholders transition into GST fully and look beyond the *erstwhile laws*.



Kulraj Ashpnani
Director
(Author)
NITYA Tax Associates



Sourabh
Senior Associate
(Co-Author)
NITYA Tax Associates