



NITYA
tax associates

NITYA | Indirect Tax Bulletin

JUNE 2021 | Week 1

June 9, 2021

Index

LEGAL PRECEDENTS.....	3
PART A: WRIT PETITIONS.....	3
1. Carry forward of transitional credit through TRAN-1.....	3
PART B: GST APPELLATE AUTHORITY	3
1. Relevant date for filing refund application for Inverted Duty Structure	3
PART C: CESTAT RULINGS	4
1. Customs Duty on sales promotion & advertising and subvention payments	4
2. Refund of balance of credit of Cesses as on June 30, 2017.....	4

LEGAL PRECEDENTS

PART A: WRIT PETITIONS

1. Carry forward of transitional credit through TRAN-1

The Petitioner could not avail CENVAT credit for Financial Years (FYs) 2012-13 to 2017-18 neither in Excise regime nor transitioned such credit in GST regime. The Petitioner requested the revenue to allow it to file TRAN-1 to carry forward such credit. However, the revenue rejected such request. The Petitioner filed writ petition against such rejection order.

The High Court stated that the Petitioner could not file TRAN-1 on or before cut-off date as it inadvertently missed such credit. The Court held that as held in the case of **Brand Equity Treaties Limited v. UOI, 2020-VIL-196-DEL**, time limit prescribed for filing TRAN-1 is procedural requirement and a vested right cannot lapse for procedural lapses. Basis this, the Court directed the revenue to allow the Petitioner to file TRAN-1 either electronically or manually on or before June 30, 2021.

Jahanpanah Club v. UOI, 2021-VIL-433-DEL

NITYA Comments: It is pertinent to note that Supreme Court vide **2020-VIL-21-SC**, stayed Delhi High Court decision in Brand Equity's case. Despite Supreme Court's stay, Delhi High Court in several cases has allowed taxpayers to file or revise TRAN-1 electronically or manually [Refer **Super India Paper Products v. UOI, 2021-VIL-436-DEL**]. The revenue is unlikely to accept such TRAN-1 and challenge such rulings before the Supreme Court.

PART B: GST APPELLATE AUTHORITY

1. Relevant date for filing refund application for Inverted Duty Structure

The Appellant filed refund application for period December 2017 for Inverted Duty Structure on January 20, 2020. The revenue issued deficiency memo on January 23, 2020 in response to which, the Appellant again filed refund application on January 25, 2020. The revenue rejected second refund application considering it as time barred on the ground that second refund application shall be treated as fresh application as per **Circular No. 125/44/2019-GST** dated **November 18, 2019**. The Appellant filed an appeal against such rejection order before the Appellate Authority on the ground that amendment in Section 54(14) of the Central Goods and Services Tax Act, 2017 ('CGST Act') would apply for prospective tax periods.

The Appellate Authority stated that the Government amended Section 54 of the CGST Act effective February 1, 2019, that refund application in case of Inverted Duty Structure needs to be filed within 2 years from due date of GSTR-3B of tax period for which refund is claimed. The Appellate Authority stated that this amendment is prospective and will apply to all refund applications filed on or after February 1, 2019. In this case, the Appellant filed fresh refund application on January 25, 2020 which is beyond two years from date of filing GSTR-3B i.e., January 20, 2020. Accordingly, the Appellate Authority rejected appeal of the Appellant.

Nirmal Industries Private Limited v. CC, 2021 (6) TMI (20) – Commissioner (Appeals), CGST

NITYA Comments: This ruling is correct to the extent that amendment in time-period for filing refund claim is procedural and such amendment will apply for future refund claims. However, taxpayer could have independently argued that second refund claim should not be considered as fresh refund claim and limitation period should not lapse as held by several High Courts while interpreting similar provisions in respect of Customs law.

PART C: CESTAT RULINGS

1. Customs Duty on sales promotion & advertising and subvention payments

The Appellant was a subsidiary of Volvo, Sweden. The Appellant imported motor vehicles and paid Customs Duty on transaction value of the goods as relationship between the Appellant and Volvo, Sweden did not affect price. Special Valuation Branch ('SVB') passed an order that transaction value may be accepted for levying Customs Duty as relationship did not affect price. The revenue filed an appeal against SVB order. The Commissioner (Appeals) allowed revenue's appeal and found that order of SVB did not consider effect of a) Expenses incurred on sales promotion & advertising; and b) Subvention payments. The Appellant filed an appeal against order of the Commissioner (Appeals) before the CESTAT.

The CESTAT held that expenses incurred on sales promotion or advertising by the Appellant would not be included in transaction value as it does not constitute as an additional consideration being paid to foreign supplier or any other party on behalf of foreign supplier.

The CESTAT further held that subvention payments would be included only if it was payable by importer to foreign supplier. In the present case, payment is not flowing from the Appellant to foreign supplier and rather flowing other way round. Therefore, it would not be included in transaction value.

Volvo Auto India Private Limited v. CC, 2021-VIL-209-CESTAT-DEL-CU

2. Refund of balance of credit of Cesses as on June 30, 2017

The Appellant was service provider and carried forward unutilized balance of Cesses lying on June 30, 2017 into GST regime. The Appellant subsequently reversed credit of Cesses transferred pursuant to amendment made in Section 140 of the CGST Act. Thereafter, the Appellant filed refund application for claiming refund of such Cesses. The revenue rejected the same considering it is time-barred. The Appellant filed an appeal against such rejection order before the Appellate Authority who also rejected the Appellant's appeal.

The CESTAT stated the Appellant reversed credit of Cesses carried forward in GST regime and said credit could not accordingly be considered as GST credit. Further, the period of 1 year for filing refund application for claiming refund of Cesses would be counted from date of amendment in Section 140 of the CGST Act i.e., August 30, 2018, as the Appellant could not have filed refund application before such amendment. Basis above, the CESTAT held that the refund application filed by the Appellant is not time-barred as the same has been filed within 1 year from August 30, 2018.

Schlumberger Asia Services Limited v. CCE, 2021-VIL-218-CESTAT-CHD-ST

NITYA Comments: *This ruling is correct and will give relief to taxpayers who filed refund claim of Cesses within 1 year from date of amendment in Section 140 of the CGST Act. The ruling will also support cases of filing refund claims of CVD, SAD or Service Tax which becomes payable post introduction of GST regime.*

.....

Disclaimer:

This Insight has been prepared for clients and firm's personnel only. It is solely for the purpose of general information and does not represent any opinion of NITYA Tax Associates. We are not responsible for the loss arising to any person for acting or refraining from acting on the basis of material contained in this Insight. It is recommended that professional advice be sought based on specific facts and circumstances.



CALL US

+91 11 4109 1200
+91 11 4109 1201



MAIL US

updates@nityatax.com
info@nityatax.com
www.nityatax.com



REACH US

NITYA Tax Associates
B-3/58, Third Floor,
Safdarjung Enclave,
New Delhi-110 029.

