

CGST/Maharashtra GST : Where petitioner, on 10-8-2017, had transferred a part of its business to someone and in revised GST-TRAN-1 it sought to distribute input tax credit available as on 1-7-2017 amongst its branch offices/locations but due to technical difficulties distribution of credit was not reflected on website, petitioner was directed to file manually with Competent Authority a copy of revised GST TRAN-1, ITC-01 and GSTR-3B and on doing so it would be entitled to take credit

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[2018] 100 taxmann.com 74 (Bombay)

HIGH COURT OF BOMBAY

Indusind Media Communications Ltd.

v.

Union of India*

M. S. SANKLECHA AND RIYAZ I. CHAGLA, JJ.

WP NO. 2229 OF 2018

OCTOBER 19, 2018

Section [140](#), read with sections [16](#) and [18](#), of the Central Goods and Services Tax Act, 2017 and rule [117](#) of the Central Goods and Services Tax Rules, 2017/Section [140](#), read with sections [16](#) and [18](#), of the Maharashtra Goods and Services Tax Act, 2017 and rule [117](#) of the Maharashtra Goods and Services Tax Rules, 2017 - Transitional provisions - Input tax credit - Transitional arrangement for - On 11-8-2017, petitioner had transferred a part of its business to someone - As on 1-7-2017 there was input tax credit available to it from earlier cenvat regime - In revised GST TRAN-1 it sought to distribute same among its branch offices/locations which had separate registration under GST Law - However, due to technical difficulties distribution of credit was not reflected on website - Petitioner filed writ petition seeking relief in this regard - Whether petitioner was to be directed to file manually with Competent Authority a copy of revised GST TRAN-1, ITC-01 and also GSTR-3B and on doing so it would be entitled to take credit - Held, yes [Paras 7 and 8] [Matter pending]

(NR)

FACTS

- On 11-8-2017, the petitioner had transferred a part of its business to someone. As on 1-7-2017 there was input credit available to it from the earlier cenvat regime. In revised GST TRAN-1 it sought to distribute the same amongst its branch offices/locations which had separate registration under the GST law. However, due to technical difficulties, though the revised GST TRAN-1 was accepted, the distribution of the credit was not reflected on the website. Thus the GST credit ledger available at the various branches/locations did not reflect the credit which would be available to it on account of the distribution done by the Mumbai location.
- On writ:

HELD

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- In the instant case, the petitioner is entitled to distribute the input credit available with it as on 1-7-2017 amongst its branches/locations. This distribution has not been possible on account of technical problems of the department. Further the availment of input tax credit available on 1-7-2017 has to be done on or before 20-10-2018 in view of section 16(4). Thus it is likely that the petitioner may be deprived of the facility of the input tax credit available with it on 1-7-2017, if the same is not taken before 20-10-2018. It is to be noted that the department has extended the time to file GST TRAN-1 and GST TRAN-2 but no such extension has been granted to extend the time to file GSTR-3B. Thus the petitioner would manually file with the department a copy of its revised TRAN-1, ITC-01 and also GSTR-3B at Mumbai (in physical form). [Para 7]
 - On the basis of the revised TRAN-1, ITC-02 and the GSTR-3B at Mumbai, the petitioner will be entitled to take the credit reduced at Mumbai (Maharashtra) to its locations in Delhi, Gujarat and Karnataka subject to the satisfaction of the Commissioner having jurisdiction over those locations. [Para 8]

CASES REFERRED TO

Indusind Media Communications Ltd. v. Union of India [WP No. (C) 8691 of 2018] (para 6).

Vikram Nankani, Sr. Counsel and **Prithviraj Chaudhary** for the Petitioner. **Amol Joshi** and **Pradeep S. Jetly** for the Respondent.

ORDER

1. Heard. Rule.

2. On 10th August 2017, Petitioner No. 2 transferred a part of its business i.e. Headend In The Sky (HITS) to Petitioner No. 1. However, as on 1st July 2017 there was Input Credit available to the Petitioner No. 2 from the earlier CENVAT Regime. Thus, the Petitioner No. 2 sought to carry forward its available Input Credit to the GST regime by filing TRANS 1. In its revised TRANS 1 the Petitioner No. 2 in terms of Section 140(8) of the Central Goods and Services Tax Act, 2017 (for short "the Act") sought to distribute the Input Credit available to it amongst its branch offices/locations which have separate registration under the Act. However, due to technical difficulties, though the revised TRANS 1 was accepted, the distribution of the credit available to it among its various branches/locations is not reflected on the website. Thus, the GST credit ledger available at the various branches/locations do not reflect the credit which would be available to it on account of the distribution done by the Mumbai location of Petitioner No. 2.

3. In cases of transfer of business as in this case from Petitioner No. 2 to Petitioner No. 1 in terms of Section 18(3) of the Act, the transferee of a business would be entitled to take input tax credit which remains unutilised in the transferor's books. This unutilised credit would be reflected in ITC 02 to be filed by the Petitioner No. 2. However, this flow of Input Credit to Petitioner No. 1 from Petitioner No. 2 is not taking place as the Revised TRANS 1 to the extent it shows distribution is not being reflected. This admittedly in view of the technical difficulties as recorded in the Minutes of the second Meeting of Grievance Redressal Committee held on 21st August 2018, where the system is not accepting a downward revision of Input Credit available. As a consequence of the distribution as sought by the Petitioner No. 2 to the various locations/branches in its revised TRANS 1 not being reflected on the website, the Input Credit cannot be reflected in the GST ledger at the branches/locations. Therefore, the branches/locations are not able to utilise the Input Credit by filing the GSTR 3B. Further it is pointed out

that in terms of Section 16(4) of the Act, the last date for taking the input tax credit for the financial year period ending March 2018 would be the 20th October 2018. In case the same is not reflected in the Form GSTR 3B return the Petitioners' location/branches would lose the benefit of the input tax credit. This position in law is not disputed by the Revenue.

4. Further our attention is drawn to the Ministry of Finance press release dated 18th October 2018 wherein it has the last date to avail all input tax credit in respect of invoices issued for the period July 2017 to March 2018 is clarified.

Although the above press note does not in terms deal with and/or make reference to the Input Credit available from the CENVAT regime being transitioned into the present GST regime.

The Revenue does not dispute the Petitioners' contention that in such cases also because of the mandate of Section 16(4) of the Act, if the credit is not availed of prior to 20th October 2018, it would lapse.

5. This Petition was adjourned from 4th October 2018 to 12th October 2018 at the instance of the Respondents. On 12th October 2018 this Petition was again adjourned to 17th October 2018 (at the instance of the Petitioner). On 17th October 2017, it was adjourned at the request of the Respondents in particular to respond to the case made out by the Petitioners. Today, when the Petition reached, the Respondents place reliance upon the earlier Additional Affidavit dated 21st September 2018. It does not deal with the above contention urged by the Petitioners. In fact, on facts and/or in law at this stage, the Respondents do not dispute that the Petitioners are entitled to distribute the credit in terms of Section 140(8) of the Act nor dispute that it is entitled to and/or covered by the Assessee's who can file form GSTR 3B, nor that the provisions of Section 16(4) of the Act apply, nor dispute that the last date for filing the GSTR 3B is 20th October 2018 and not doing so would result in the lapse of the credit.

6. In fact the Petitioners location at Delhi had filed a Writ Petition in the Delhi High Court bearing Writ Petition No. (C) 8691 of 2018 (*Indusind Media Communications Ltd. v. Union of India*), wherein the Petitioners at Delhi branch/location had made a grievance of not being entitled to take the transition credit i.e. the Input Credit available prior to 30th June 2017 for payment of tax post 1st July 2017. The Hon'ble Delhi High Court in its order dated 16th October 2018 in the above Petition while admitting the Petition noted the fact that the Grievance Redressal Forum of the GST Council in the Meeting held on 21st August 2018 had recorded in its minutes that the Delhi branch/location could not file its GSTR 3B and take credit in view of technical problems in uploading TRANS 1 and that the grievance needs to be addressed. Thus, pending the redressal of the Petitioners' grievance, the Delhi High Court by its order dated 16th October 2018 has allowed the Delhi branch/location to file GSTR 3B Form manually and take the credit distributed to it in terms of the third proviso to Section 140(8) of the Act subject to the final outcome of the Petition.

7. In view of the above, the undisputed position before us is that the Petitioners are entitled to distribute the Input Credit available with it as on 1st July 2017 amongst its branches/locations. This distribution has not been possible on account of technical problems of the Respondents. Further the availment of input tax credit available on 1st July 2017 has to be done on or before 20th October 2018 in view of Section 16(4) of the Act. Thus, it is likely that the Petitioners may be deprived of the facility of the input tax credit available with it on 1st July 2017, if the same is not taken before 20th October 2018. It is to be noted that the Respondents have extended the time to file TRANS 1 and TRANS 2, but no such extension has been granted to extend the time to file GSTR 3B. Thus, in the above facts, pending the final disposal of the Petition (when these issues will be considered in greater depth), as the system is not accepting it, the Petitioners would manually file with the Respondents a copy of its revised TRANS 1, ITC 01 and also GSTR 3B at Mumbai (in physical form).

8. On the basis of the revised TRANS 1, ITC 02 and the GSTR 3B at Mumbai (to be certified by the

Commissioner at Mumbai), the Petitioners will be entitled to take the credit reduced at Mumbai (Maharashtra) to its locations in Delhi, Gujarat and Karnataka subject to the satisfaction of the Commissioner having jurisdiction over those locations. We are not giving any directions to the Commissioners of Delhi, Gujarat and Karnataka as in terms of Section 25(4) of the Act each registered location/branch is a distinct person. Therefore, on the above basis of being distinct persons under the Act, they have in cases of Delhi locations and Karnataka locations (as informed by Shri. Nankani, the learned Senior Counsel), the Petitioner has filed separate Petitions. Moreover, the Commissioners at separate locations/branches (except Mumbai) are not parties before us. Therefore, appropriate orders from the jurisdictional Commissioners on the basis of the certificates issued by the Mumbai Commissionerate be obtained by the Petitioners locations/branches subject to the satisfaction of the concerned Commissioners in accordance with law.

9. Liberty to apply. The Petition expedited.

s.k. jain

*Matter pending.