

APEX COURT'S RELIEF ON "TRANSITIONAL CREDIT" - A MUCH NEEDED BREATHER!**1. INTRODUCTION**

The Supreme Court's landmark judgement¹ has directed the Government to allow Transition Form-1 ("TRAN-1") and Transition Form-2 ("TRAN-2") filing for a period upto two months between September, 2022 and October, 2022, bringing in huge relief to the taxpayers who have not been able to transition the balance of credit from the erstwhile indirect tax regime to the Goods and Services Tax ("GST") regime owing to a host of issues, with technical glitch on the Goods and Services Tax Network ("GSTN") portal being the most common of all.

2. KEY ASPECTS OF THIS JUDGEMENT

- 2.1 GSTN portal to open for all taxpayers (registered under GST) for a two-month window, i.e., from September 1, 2022, to October 31, 2022.
- 2.2 Aggrieved taxpayers are directed to file the relevant form(s) and/or revise the already filed form(s) **irrespective** of whether the taxpayer had filed a WRIT before the High Court(s) or whether the matter is decided by Information Technology Grievance Redressal Committee.
- 2.3 It is directed that the GSTN should ensure that there is no technical glitch during the said time.
- 2.4 Concerned officers to verify the veracity of each claim and pass appropriate orders (after affording reasonable opportunity to the taxpayers) on merits within 90 days.
- 2.5 Goods and Services Tax Council ("GST Council") is at the liberty to issue guidelines to field formations in scrutinizing these claims.

3. INDUSLAW VIEW

One of the fundamental features of the GST regime has been the seamless flow of input tax credit, which is why transitional provisions under Section 140 of the Central Goods and Services Tax Act, 2017 ("CGST Act") were introduced. However, taxpayers had to deal with various challenges which among others included complex rules and procedures, limited time frame, technological issues etc.

¹ *Union of India vs. Filco Trade Center Private Limited & Ors* [TS-369-SC-2022-GST]

Over the last few years, courts were flooded with Writ Petitions on these issues (some of which were argued by the authors) and relief in various forms were provided to those specific Petitioners alone. Further, even the Central Board of Indirect Taxes and Customs (“CBIC”) had setup a grievance redressal mechanism for this purpose *vide* Circular dated April 3, 2018, which led to further issues and litigation.

This judgement, however, comes in the form of a blanket relief to all taxpayers who missed the opportunity to transition this credit either in full or in part, by providing far reaching directions as detailed above. This also clears the roadblock with respect to all the transition credit matters pending at various courts at various levels.

Chances like these are very rare and now it is up to the taxpayers to ensure that the relevant details are appropriately filed (upon proper evaluation of the credit) well within the stipulated timeline. Taxpayers whose credits are duly transitioned earlier, may utilize this opportunity to re-verify and claim any missed credit, if at all.

Having said this, some questions remain open like what will happen to those taxpayers who could not file the TRAN-1 and TRAN-2 earlier and would have accordingly accounted/reversed the credit in the books of accounts, how is one supposed to now deal with such reporting issues/challenges in the financial/returns etc. Our Team at IndusLaw, is well equipped to deal with these issues and advice on these aspects.

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Date: July 28, 2022

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