

Relying upon the SC decision, Bombay HC directed taxpayers to use the transitional window for transfer of ISD credit as well

6 September 2022



## Summary

The Bombay High Court (HC) disposed of a batch of the petitions filed w.r.t. the procedural difficulties and objections raised concerning Input Service Distributor (ISD) credit of service tax/excise duty. The HC adopted the approach of the Supreme Court (SC) in the case of Filco Trade Centre Private Limited (FTCPL) and accordingly issued directions to the petitioners, the Central Board of Indirect Taxes and Customs (CBIC) and the concerned officers. Accordingly, the petitioners can file/revise their form GST Tran-1 between 1 September 2022 to 31 October 2022. Further, the HC directed the CBIC to issue a clarification in relation to the distribution/reporting of ISD credit, preferably within 21 days from the upload date of the order.

## Facts of the case

- A batch of petitions<sup>1</sup> have been filed w.r.t. the procedural difficulties/objections raised regarding distribution and/or utilisation and/or eligibility of ISD credit of service tax/excise duty<sup>2</sup>.
- The respondent contended that the ISD credit could not be transitioned directly into the electronic credit ledger (ECL) under the GST<sup>3</sup> regime. Instead, the transferee units should have filed form GST Tran-1 for the transition of ISD credit.
- The petitioners submitted that they could not distribute and report the credit from ISD to their units due to procedural and functional difficulties in relation to GST forms and the portal.

## HC observations and ruling<sup>4</sup>:

- **Directions issued by HC in view of the SC order:** The HC intended to adopt the approach of the SC in the case of FTCPL<sup>5</sup>, wherein the SC directed the GST network to open the common portal for two months<sup>6</sup> for filing/rectifying the

transitional forms. Accordingly, the HC issued the following directions and disposed of the petitions.

- a) All petitioners, through their respective units/offices<sup>7</sup>, can avail of the window and file/revise form GST Tran-1 between 1 September 2022 to 31 October 2022, in terms of SC's order.
- b) The basis of form GST Tran-1 will be the manual ISD invoices issued/to be issued. Further, the aggregate credit should not exceed the ISD credit available with the ISD petitioner.
- c) The CBIC will consider the problem faced by the parties and issue a clarification w.r.t. the distribution/reporting of ISD credit within 21 days from the date of uploading the order. The petitioners may approach the CBIC in this regard.
- d) The concerned officers, within 90 days, can verify the accuracy of the transitional credit and accordingly,

<sup>1</sup> Unichem Laboratories Limited vs Union of India & Ors.

<sup>2</sup> u/s 140 of the CGST Act 2017

<sup>3</sup> Goods and services tax

<sup>4</sup> Writ Petition No. 109 of 2020 and Ors., Order dated 23 August 2022

<sup>5</sup> SCA No. 18433/2017 05-09-2018 dated 29 August 2022

<sup>6</sup> 1 September 2022 to 31 October 2022

<sup>7</sup> Registered under CGST Act and/or State Acts

pass appropriate orders on merits, after giving reasonable opportunity.

### **Our comments**

Earlier, the SC directed the government to open the GST common portal from 1 September 2022 to 31 October 2022 to claim the transitional credits. However, while hearing an application from GST Network (GSTN), the SC<sup>8</sup>, in its decision dated 2 September 2022, has allowed a time extension of four weeks to open the GST common portal. Accordingly, GSTN would open the common portal for filing transitional credit through form GST Tran-1 and GST Tran-2 effective from 1 October 2022.

In view of the Apex Court ruling, the Bombay HC has issued directions to use such a window for the transition of ISD credits as well. Accordingly, the time period for the transition of ISD credit should also be considered effective from 1 October 2022 in terms of SC's order.

This is a welcome move and will likely benefit numerous taxpayers who earlier could not transition their ISD credit through their respective units/offices into the GST regime.

However, since the transitional credits/claims are subject to the concerned officers' verification, the taxpayers should be attentive and have sufficient documentary evidence to avoid unnecessary litigations/disputes.

Nevertheless, the re-opening of the two months window is a golden chance for all taxpayers to avail their lawful pre-GST credit. Therefore, the businesses which were unable to transition credit from the erstwhile indirect tax regime, should re-assess their credits and avail benefit of this facility.

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<sup>8</sup> Miscellaneous Application Nos.1545-1546/2022 in SLP(C) No. 32709-32710/2018

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