

SC dismisses SLP against HC order in Adfert case allowing to file/ revise TRAN-1

The Hon'ble Supreme Court in the matter of ***Union of India v. Adfert Technologies Pvt. Ltd. [SLP No. 4408 dated February 28, 2020]*** has rejected a Special leave Petition filed by the department against the order of the Hon'ble HC, Punjab and Haryana allowing the Respondent to carry forward unutilized pre-GST credit, noting that being a vested right it cannot be denied on the ground of time limit. Further the HC also directed the Petitioners to permit the Respondents to file or revise where already filed incorrect TRAN-1 either electronically or manually.

Facts and held portion of the Hon'ble HC, Punjab and Haryana in ***Adfert Technologies Pvt. Ltd. v. Union of India [CWP No. 30949 of 2018(O&M)]*** is discussed below:

Facts:

Civil writ petitions in 102 different cases were filed by various taxpayers ("**Petitioners**") on account of them not being able to carry forward their unutilized CENVAT credit. The reason for the same being that these taxpayers could not file TRAN-01 ("**the form**") and/ or the incorrectly filed the form by the "**stipulated last date**" i.e. December 27, 2017.

The Petitioners had accrued unutilized credits under the erstwhile laws which were eligible to be carried forward under the new GST regime through filing of form TRAN-01 as per Section 140 of the Central Goods and Services Tax Act, 2017 ("**CGST Act**"). However, no time limit for the same was prescribed under the relevant section of the said act but Rule 117 of the Central Goods and Services Tax Rules, 2017 ("**CGST Rules**") provided for a period of 90 days from the appointed day i.e. July 1st, 2017 which was extended from time to time & the last date was December 27th, 2017.

There were cases where the Petitioners didn't file the form or filed the form wrongly because of varied reasons such as press release showing last date December 31st, 2017, lack of proper knowledge of computer system, complexity in filling different columns of TRAN-I, system glitches, etc.

Held:

The Hon'ble Punjab & Haryana HC passed a very reasoned ruling in the matter of **Civil Writ Petition No. 30949 of 2018 dated November 4th, 2019** observing as under:

- GST is an electronic system-based tax regime and most of the people in India are not very conversant with such electronic mechanisms.
- Accrued unutilized credits are a vested right of the Petitioners and cannot be taken away as such by the Respondents just on account of procedural or technical grounds.

- The court also relied on the judgements cited by the Petitioners in the case of **Siddharth Enterprises Vs the Nodal Officer [2019 (9) TMI 319]** as well as **Krish Authomotors Pvt. Ltd. Vs UOI and others [2019 (9) TMI 817]**.
- The Court was not in agreement with the judgment cited by the Revenue i.e., **Willowood Chemicals Pvt. Ltd. Vs. Union of India [2018(19) G.S.T.L. 228 (Guj.)]**, observing that the sub rule (1A) added/inserted to Rule 117 of the CGST Rules w.e.f. September 10th, 2018 has not been noticed by the Hon'ble Gujarat HC which goes to the roots of findings recorded by the Hon'ble Gujrat HC. Thus, allowed all petitions.
- Further, directed the Respondents to permit the Petitioners to file or revise TRAN-1 either electronically or manually on or before November 30th, 2019.

Our Comments:

The above judgment in the case of the **Adfert Technologies Pvt. Ltd. v. Union of India [CWP No. 30949 of 2018(O&M)]** has been relied upon in following judgments as well:

- ***Hans Raj Sons vs. Union of India & Ors. [CWP 36393/2019 decided on December 16th, 2019];***
- ***Silicon Constructions Pvt. Ltd. vs. Union of India [CWP 14192-2019 decided on November 25th, 2019]***

to carry forward unutilized cenvat credit by allowing the petitioners to modify or file Form TRAN-1.

By rejecting the department SLP by Supreme Court, it's now clear that transactional credit is a vested right and could not be denied just for non-filing of TRAN -1/ incorrect filing of Tran-1.

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