

## **Dealer cannot be compelled to carry forward the ITC to GST regime instead of refund**

The Hon'ble Madras High Court in *Easwaran Brothers India Private Limited v. The Assistant Commissioner (ST) (FAC) [W.P. No. 33593, 33048 and 33593 of 2022 dated December 15, 2022]* has held that dealers cannot be compelled to carry forward Input Tax Credit ("ITC") from extant regime to the Goods and Services Tax ("GST") regime if the dealer chooses to avail refund instead.

### **Facts:**

Easwaran Brothers India Private Limited ("**the Petitioner**") is a registered dealer. When the GST regime came into force on and from July 1, 2017 and the Tamil Nadu Value Added Tax Act, 2006 ("**the TNVAT Act**") stood subsumed, dealers who had ITC had the option of either seeking refund or carrying forward the ITC to GST regime. The Petitioner opted for refund instead of carrying forward the ITC, but due some technical glitch in the common portal.

Subsequently, a provisional refund order in FORM-P dated October 06, 2022 ("**the Impugned Order**") was passed by the Revenue Department ("**the Respondent**") making it clear that the Petitioner is entitled to refund of INR 13,36,741/- qua ITC for assessment year 2017-18; but the Petitioner is yet to receive refund. Further, the Impugned Order passed *inter alia* requesting the Petitioner to opt for carrying forward the ITC to GST regime instead of availing the refund of the ITC.

However, the Petitioner mistakenly reversed ITC in June 2017 which led to the issuance of notice dated November 25, 2022 ("**the Impugned Notice**") against the Petitioner.

Hence, this petition has been filed.

### **Issue:**

Whether the Petitioner can be compelled to choose carrying forward of the ITC to GST regime instead of refund?

**Held:**

The Hon'ble Madras High Court in ***W.P. No. 33593, 33048 and 33593 of 2022*** held as under:

- Noted that, a similar matter was transferred to the Hon'ble Supreme Court in ***Union of India and another v. Filco Trade Centre Pvt. Ltd. [MANU/SCOR/64133/2022]***, wherein the Revenue Department was directed to open a common portal for availing transitional credit through TRAN-1 and TRAN-2 for two months and issued FORM-P qua provisional refund order. Further, the common portal giving dealer the option for carrying forward or refund of the ITC is now active till 2024.
- Observed that, the dealer has two options i.e., refund or carrying forward the ITC to GST regime, and the Petitioner had opted for the former not the latter.
- Stated that, the Impugned Notice ought not to have been issued particularly when a provisional refund order has been issued after processing the refund application, which clearly quantified the entitlement of the Petitioner of INR 13,36,741/-.
- Opined that, the Impugned Notice has been erroneously issued and the same deserves to be interfered with / set aside, as refund has already been opted for by the Petitioner, the same has been processed by the Respondent and a provisional refund order also has been passed besides issue of FORM-P which is a procedural facet of refund.
- Held that, the Petitioner cannot be compelled to opt for one of the two i.e., refund or carrying forward the ITC to GST regime. It is after all an option given to the dealer.
- Directed that, Respondent to ensure refund and a provisional refund order as quantified in FORM-P is made available to the Petitioner within 3 weeks.

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