

## **Claim of ITC through GSTR-3B justified since Form GST ITC-02 was not live on common portal**

The Hon'ble Allahabad High Court in *M/s Tikona Infinet Private Limited v. State of U.P. [Writ Tax No. 859 of 2023 dated July 25, 2023]* set aside the demand raised on the ground that assessee instead of passing the Input Tax Credit ("ITC") through Form GST ITC-02 transferred ITC through Form GSTR-3B and held that the stand of the Revenue Department was not correct since the Form ITC-02 was not live on the common portal.

### **Facts:**

M/s. Tikona Infinet Private Ltd. ("**the Petitioner**") is engaged in providing internet service across India from various State including the State of Uttar Pradesh.

The Petitioner entered into a business transfer agreement with M/s. Tikona Digital Network Pvt. Ltd. on August 17, 2017.

M/s. Tikona Digital Network Pvt. Ltd. (TDN) has accumulated ITC balance of more than INR 3,13,13,68,997 which was unutilized. The Petitioner being entitled to transfer the ITC remaining unutilised under section 18(3) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") attempted to transfer the same as per the procedure prescribed under Rule 41 of the Central Goods and Services Tax Rules, 2017 ("**the CGST Rules**"). However, due to non-availability of functionality to transfer ITC on common portal the Petitioner manually accepted and availed the ITC of INR 3,13,68,997/-.

Revenue Department ("**the Respondent**") issued a Show Cause Notice on February 28, 2023 ("**the SCN**") to the Petitioner demanding the differential ITC of INR 2,88,35,905.60 along with interest and penalty.

The Petitioner submitted reply of the SCN on March 13, 2023 with a prayer to withdraw the SCN. However, the Adjudicating Authority vide an order dated April 17, 2023 ("**the Impugned**

**Order”)** without considering the reply filed by the Petitioner confirmed the demand on the ground that the transfer of the said ITC has been accepted and availed by the Petitioner through Form GSTR-3B instead of Form GST ITC-02.

The Petitioner filed writ before the Hon’ble Allahabad High Court questioning the legality propriety and correctness of the Impugned order.

**Issue:**

Whether the Petitioner could manually transfer ITC in case Form GST ITC-02 was not available on common portal?

**Held:**

The Hon’ble Allahabad High Court in ***Writ Tax No. 859 of 2023*** held as under:

- Observed that, the Form GST ITC-02 was not available on the GST Portal since the whole system was at nascent stage during the initial months after its implementation on July 01, 2017.
- Opined that, the Petitioner had to raise a proper grievance on the GST portal help-desk and ought to have waited for the relevant Form to go live on the GST portal instead of making illegal adjustment by use of the Form GSTR-3B of the Petitioner (transferor) and the TDN (transferee company).
- Further opined that, mere shortage of working capital cannot be an excuse to bypass the legal procedure laid down under the law.
- Held that, the stand of the Respondent for rejecting the claim of the Petitioner in the wake of the admitted fact that the GST common portal was not online cannot be justified.

- Set aside the Impugned order and stated that the Respondent had liberty to pass a fresh order after considering the objections of the Petitioner and affording the opportunity of hearing, strictly in accordance with law.

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