Credit of unadjusted TDS under VAT can be transitioned into GST regime

The Hon'ble Jharkhand High Court in ***M/s Subhash Singh Choudhary v. State of Jharkhand [W.P.(T) No. 2404 of 2020, dated January 9, 2023]*** quashed the order denying migration of unadjusted Tax Deducted at Source ("**TDS**") amount available under the Value Added Tax ("**VAT**") regime. Held that the assessee is entitled for migration of the TDS amount in terms of Section 140(1) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**"). Further held that, restriction on Input Tax Credit (**"ITC"**) only applies if there is an express prohibition under the CGST Act. Any contrary interpretation would have an effect of nullifying and/or setting at naught the real object of the transitional provision.

Facts:

M/s Subhash Singh Choudhary (**'the Petitioner'**) was engaged in the business of supplying machinery and providing engineering, commissioning and operational support services. The Petitioner was registered under the Jharkhand Value Added Tax Act, 2005 (**"JVAT Act"**), and later under the Goods and Services Tax ("**GST**") regime. The Petitioner claimed an excess ITC after filing its returns for the quarter ending June 30, 2017, which comprised of the amount of excess ITC and unadjusted TDS under Section 44 of the JVAT Act and carry forwarded the same in GST regime.

A summary of Show Cause Notice dated December 18, 2017 ("**the Impugned Summary SCN**") was issued by the Revenue Department ("**the Respondent**") alleging that the Petitioner is not entitled for migration of the amount of credit of VAT. Subsequently, a summary of Order in **Form GST DRC-07** dated January 19, 2019 ("**the Impugned Order**") was issued by the Respondent, wherein, the entire amount migrated by the Petitioner was disallowed and interest and penalty was also imposed upon the Petitioner.

Consequently, the Appellant filed an appeal in which, a Rectification Order dated March 13, 2019 was passed by the Respondent, wherein, the denial of migration of entire TDS was

reduced to the amount of excess TDS reflected in the quarterly return of the Petitioner. Thereafter, a second appeal was filed by the Petitioner, which was rejected merely on alleged technicalities.

Being aggrieved this petition has been filed by the Petitioner.

The Petitioner argued for the right to carry forward VAT credit reflected in their return prior to the GST regime under Section 140(1) of the CGST Act. Further, unadjusted TDS is to be treated as the amount equivalent to ITC and, thus, the Petitioners are entitled to migrate the amount of TDS in its Electronic Credit Ledger ("**ECL**") under the GST regime.

Issue:

Whether the Petitioner is entitled to migrate and transition the TDS amount as 'a credit of the amount of VAT' in GST regime in its ECL?

Held:

- Stated that, Section 140(1) of the CGST Act allows for the migration of unadjusted tax paid under previous laws to be carried forward for adjustment against output tax liability in the GST regime. This eliminates the need for a refund and provides a more streamlined process for credit migration.

- Noted that, if the unadjusted TDS amount was not allowed to be carried forward as excess ITC, the Petitioners would have got refund immediately in terms Section 52 of the JVAT Act but instead of claiming refund, the Petitioners in a bona fide manner have migrated the unadjusted TDS amount under GST Regime which is otherwise a revenue neutral situation.

- Observed that, the proviso to Section 140(1)(i) of the CGST Act should be interpreted harmoniously, meaning that the restriction on ITC only applies if there is an express

prohibition under the CGST Act. Any contrary interpretation would have an effect of nullifying and/or setting at naught the real object of the transitional provision.

- Opined that, proviso to Section 140(1)(i) of the CGST Act only restricts migration of such amount of credit, where there is an express prohibition in respect of such transaction of claiming ITC under Section 17(5) of the CGST Act.

- Stated that, if the Petitioner are not allowed to migrate the unadjusted TDS amount under the GST Regime, they would have become entitled for refund of the same with effect from July 1, 2017 and would have certainly been entitled to statutory interest at the rate of 9% on the said amount. Thus, the stand of the Respondent is self-destructive.

- Opined that, the action of the Respondents in passing the Impugned Order denying migration of TDS amount and, consequently, levying interest and penalty thereupon is not sustainable in the eye of law and are liable to be quashed.

- Held that, the Petitioners are entitled for migration of the TDS amount in terms of Section 140(1) of the CGST Act.

Relevant Provisions:

Section 140(1) of the CGST Act:-

"*140 Transitional arrangements for input tax credit;--*

(1) A registered person, other than a person opting to pay tax under section 10 shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law within such time and in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:--

(i) where the said amount of credit is not admissible as input tax credit under this Act; or

(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or

(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government."

(Author can be reached at info@a2ztaxcorp.com)