



GN LAW ASSOCIATES

ARTICLES 2017



www.gnlawassociates.com

Treading the GST Path XXIII – FAQ on Transitional credits



Author: G. Natarajan

Question 1: What is the procedure for carrying forward the credit balance in our ER 1 / ST 3 / VAT returns to GST Regime? Will it be automatically transferred?

Answer : The closing balance in these returns would not be automatically transferred to GST regime. For this purpose, you have to file a Declaration GST TRAN 01, within 90 days from 01.07.2017, i.e. on or before 28th September 2017. The Commissioner can grant further extension for another 90 days, of recommended by the GST Council. The details of closing balance as per the last return under the existing laws shall be indicated in column 5 (a) of GST TRAN 01. Upon filing of the said GST TRAN 01, the credit would be closing balance of credit under ER 1 / ST 3 would be credited to the Electronic Credit Ledger under GST, as CGST credit. Similarly, the credit under VAT return would be credited to the Electronic Credit Ledger under GST, as SGST Credit. Section 140 (1).

Question 2: What are the conditions to be satisfied for transferring the closing balance of credit under earlier law, to GST regime?

Answer : The following conditions have to be satisfied.

- (i) The said amount of credit is admissible as input tax credit under this Act;
- (ii) The claimant has to furnish all the returns required under the existing law for the period of six months immediately preceding the appointed date;
- (iii) The said amount of credit should not relate to goods manufactured and cleared under such exemption notifications as are notified by the Government.

Question 3 : I am a manufacturer service provider registered under Excise law and not availing SSI exemption. My turnover during 2016-17 was Rs. 60 lakhs and I intend to opt for composition scheme under GST. Can I carry forward the cenvat credit balance as per my last ER1 return, to GST?

Answer : No.

Question 4 : Last date for filing ST 3 return for April-June 2017 is extended upto 15.08.2017. Can I file my GST TRAN 1 immediately and claim the credit balance as on 30.06.2017?

Answer : No. GST TRAN 1 can be filed, only after filing ST return for Jan-Mar 2017 and Apr-June 2017.

Question 5 : There is a closing balance of Education CESS Credit and Secondary and Higher Education CESS credit as per my ER 1 / ST 3 return? Can that balance be transferred to GST under the transitional provisions?

Answer : The FAQ issued by the Government says it is not possible.

To quote,

93. Whether closing balance of edu cess and secondary higher education cess prior to 1st Mar 2015 can be carried forward in GST?

No it will not be carried forward in GST as it is not covered by definition of "eligible duties and taxes" under Section 140 of the CGST Act.

But, in our view, the term "eligible duties" is defined in Explanation 1 & 2 under section 140, only for the purposes of sub-sections (3), (4), (5) and (6) and not for the purposes of sub section (1) which deals with transfer of credit balance from the last return under the existing law. The EC/SHEC paid on inputs and input services is eligible for cenvat credit as per Rule 3 (1) of the Cenvat Credit Rules, 2004 and only its utilisation is not possible in as much as there was no EC/SHEC on excisable goods and taxable services. Hence, in our view, the balance of credit under EC/SHEC can be carried forwarded as CGST credit.

Question 6 : I am a manufacturing unit and I have availed 50 % of the duties paid on capital goods received during April-June 2017, already in my ER 1 returns. Can I take the remaining 50 % of the credit in July 2017? What is the procedure for the same?

Answer : Yes. The details of such credit has to be indicated in column 6 (a) of the GST TRAN 01 in respect of Excise duties / CVD / SAD and in column 6 (b) of the GST TRAN 01 in respect of VAT paid on such capital goods.

Question 7 : WE have not availed any cenvat credit for the capital goods received during April 2017 to June 2017. How much credit can be taken in July 2017?

Answer : The entire duties paid on such capital goods can be claimed in July 2017, by filing GST TRAN 01.

Question 8 : We have purchased on Goods Transport Vehicle (Lorry) in April 2017 and have not availed any cenvat credit so far. Can we claim ITC now under GST for the duties suffered on the lorry?

Answer : No. Such lorries fall under Chapter heading 8704 of the Central Excise Tariff and are not eligible for credit under existing law. In order to claim transitional credit under Section 140 (2) for capital goods under GST, such credit should be admissible under both existing law and GST law.

Question 9 : We have purchased some capital goods two years ago and though we are eligible to avail cenvat credit for such capital goods, we have not availed the same. Can we avail that credit now under GST?

Answer : One of the conditions for availing ITC under GST is that no depreciation should be claimed under Income Tax, on the duty portion which is claimed as ITC. Since you have not claimed cenvat credit earlier, you would have already claimed

depreciation, by including the duty portion also in the value of such capital goods. Hence, you would not be entitled to avail any ITC on such capital goods, under GST.

Question 10 : I was manufacturing goods and availing SSI exemption under Central Excise. But I was registered under VAT. What are the transitional credits Am entitled to?

Answer : Under Section 140 (3), you can take credit of the Excise duties paid on the raw materials in stock, contained in work in progress and contained in finished goods, as on 01.07.2017. For this purpose, you have to file GST TRAN 1. Such credit has to be taken on the basis of purchase invoices evidencing Excise duty payment. Such invoices should not be more than one year old. Since you would have already availed VAT credit, you cannot take any transitional credit in respect of VAT.

Question 11 : I was manufacturing goods and availing SSI exemption under Central Excise. I am not having proper excise invoices for purchase of my raw materials lying in stock as on 01.07.2017. Am I entitled to any transitional credit for the stock lying with me?

Answer : No. As per proviso under Section 140 (3), manufacturers and service providers are not entitled to take any transitional credit for stock, if they do not have invoices evidencing payment of taxes.

Question 12 : I am a trader registered under VAT. What are the transitional credits available to me?

Answer : As a trader, you would have already availed VAT credit. if you have proper excise invoices, you can take credit of Excise duties paid on such stock. Such invoices should not be more than one year old. If you do not have Excise invoices, while selling the goods, you would be entitled to deemed credit @ 40 % of CGST paid by you, if the CGST rate is 6 % or less; 60 % of the CGST paid by you, if the CGST rate is 9 % or more. Such facility would be available for the sales made upto 31.12.2017. For this purpose, every month you have to file GST TRAN 2.

Question 13 : I am engaged in construction of residential apartments and I was paying service tax on 40 % of the construction value (excluding UDS land value) as per Rule 2 A (ii) of the Service Tax (Determination of Value) Rules, 2006 and paying VAT under composition scheme. What are the transitional credits entitled for me?

Answer : Construction service providers, who were paying service tax on 30 % of the value, including land value, as per Notification 26/2012 ST Dt. 20.06.2012 are specifically covered under Section 140 (3). That does not mean that who were paying service tax under Rule 2 A of Service Tax (Determination of Value) Rules, 2006 are not entitled for any transitional credit. Section 140 (3) also covers persons who were not liable to be registered under the earlier laws and since you are not registered under Excise law, you can take transitional credit of excise

duties paid on your inputs in stock. Since you would not have availed VAT credit, having opted for composition scheme, you are entitled to avail credit of VAT paid on your inputs in stock also. You would require proper invoice copies to claim such credit and such invoices must be less than one year old.

Question 14 : Continuing with Question 13, am I not entitled for transitional credits for the duties paid on cement / steel, etc. which is contained in unsold / under construction flats?

Answer : Unsold / under construction flats are work in progress / stock in trade for a construction service provider. So you would be entitled to avail transitional credit for the inputs contained in such unsold / under construction flats also, subject to the invoices for purchase of such inputs are less than one year old.

Question 15 : A manufacturer's depot was registered under Central Excise for passing on the credit of excise duty to the buyers. Whether the Depot can take credit of the excise duties / VAT paid on the goods lying in stock?

Answer : Excise duty paid on the goods lying in stock can be claimed as transitional credit on the basis of Excise invoices which are less than one year old. As the goods would have only been stock transferred from the factory to the Depot, no VAT would have been paid and hence no VAT credit can be claimed under transitional provisions.

Question 16 : I am a dealer, who has purchased goods from Second Stage Dealers registered under Central Excise. Under Excise law, I could not pass on the benefit of cenvat credit of excise duties, as it was permitted only upto Second Stage Dealer. Am having stock of excise duty paid goods with me, duly supported by invoices issued by the Second Stage Dealer. Am I entitled to avail transitional credit for the excise duties paid on stock as on 01.07.2017? For some of the goods lying with me, I am not having purchase invoices.

Answer : Yes. You are eligible. In respect of the stock for which you are not in possession of Excise invoices, you can claim deemed credit, as per provision to Section 140 (3).

Question 17 : I am a dealer in various electronic goods and am not in possession of any Excise invoices. How can I claim transitional credit for the excise duty paid on my stock?

Answer : One option is that you can claim deemed credit 40 % of CGST if CGST rate is upto 6 %; 60 % of CGST if the CGST rate is 9 % or more. If IGST is paid on such goods, the above percentages shall be 20 % of IGST if IGST rate is upto 12 %; 30 % of IGST if IGST rate is 18 % or above. Or, if the goods dealt with by you are having unique serial numbers and are having price of more than Rs.25,000 per piece, you can approach the manufacturer of the goods, to issue a Credit Transfer Document to you, on the basis of which you can avail credit of the actual excise duty paid on such goods.

Question 18 : Please given an example, as to how the Deemed Credit scheme operates.

Answer :

A dealer is dealing with Product A, attracting 12 % GST and Product B, attracting 18 % GST. On 01.07.2017, he has stock of 1000 Nos. of A and 750 Nos. of B. The Selling price of A is Rs.1200 per unit and B is Rs.2,500 per unit.

Product A

Month	No. of units sold	Sale Price @ 1200	CGST Payable @ 6 %. IGST payable 12 %	Deemed Credit @ 40 % of CGST
July 17	200	2,40,000	14,400	5,760
Aug 17 (Sold Interstate)	50	60,000	7200 (IGST).	1,440 (20 % of IGST)
Sep 17	NIL	0	0	0
Oct 17	NIL	0	0	0
Nov 17	250	3,00,000	18,000	7200
Dec 17	100	1,20,000	7,200	2,880
Jan 18	200	2,40,000	14,400	No more credit for sales made after six months

Product B

Month	No. of units sold	Sale Price @ Rs.2,500	CGST Payable @ 9 %. IGST payable 18 %	Deemed Credit @ 60 % of CGST
July 17	100	2,50,000	22,500	13,500
Aug 17 (Sold inter-state)	50	1,25,000	22,500	6,750 (30 % of IGST)
Sep 17	NIL	0	0	0
Oct 17	NIL	0	0	0
Nov 17	NIL	0	0	0
Dec 17	100	2,50,000	22,500	13,500
Jan 18	200	5,00,000	45,000	No more credit for sales made after six months

Question 19 : We are manufacturers of Cotton fabric and we have a depot at Tirupur. We were claiming exemption from payment of excise duty and not registered under Excise. We have stock of cotton yarn in our factory, which was procured without payment of duty claiming excise exemption and have stock cotton fabric in our depot, which was also cleared by claiming excise exemption. What is the benefit transitional credit available to us in respect of excise duties?

Answer : In respect of the cotton yarn available in the factory, which you intend to use in your manufacturing of fabric, no transitional credit would be allowed, as the said yarn is not supported by any duty paying document. But, if you intend to sell the yarn, on payment of GST, then you would be entitled to avail deemed credit @ 40 % the CGST (2.5 %) paid on such sale. It may be noted that though the deemed credit facility is not available to a manufacturer, when you sell the yarn as such, you are acting as a trader and hence entitled for deemed credit. Such deemed credit would be allowed for the sale out of the stock, made upto 31.12.2017.

In respect of the cotton fabric available in your depot, though the same is exempted from payment of duty, since the said exemption is not an unconditional exemption, you would be entitled to deemed credit of 40 % of the CGST (2.5%) paid on sale of such fabrics. Such deemed credit would be allowed for the sale out of the stock, made upto 31.12.2017.

Question 20 : I am a dealer in kitchen utensils. I have received these goods from a manufacturer situated in North East State, which were cleared without payment of excise duty, availing area based exemption. Am I entitled to any transitional credit of Excise duty?

Answer : Since the goods are not unconditionally exempt, you are entitled to claim transitional credit on deemed credit basis (@ 40 % of CGST paid by you, if the CGST rate is 6 % or less; 60 % of the CGST paid by you, if the CGST rate is 9 % or more).

Question 21. I am registered as a Second Stage Dealer and I have stock of some goods, for which I am not having Excise invoices. Am I entitled to avail deemed credit for such stock?

Answer : No. A person who was registered under the earlier law is not entitled for deemed credit, as per Rule 117 (4) of the GST Rules, 2017. In this connection, we are of the view, while the proviso to Section 140 (3) bars deemed credit only for manufacturers and service providers, the restriction of deemed credit to all persons who were registered under earlier law, by virtue of this rule, is ultra vires the rule and hence not sustainable.

Question 22 : We are manufacturers of Pipes. We clear our pipes on payment of excise duty and also clear them without payment of excise duty for drinking water supply projects, against District Collectors Certificate. We were availing credit of the excise duties paid on our major raw materials, steel sheets. The pipes supplied to the drinking water projects are applied a special coating and we have stock of such coating materials as on 01.07.2017, on which we have not availed any cenvat credit, as these are exclusively used for the pipes cleared without payment of excise duty. We also have stock of steel sheets. What are the provisions relating to transitional credit for us?

Answer : Section 140 (4) is applicable to you. Since you are manufacturing both dutiable and exempted final products, you would be following the provisions of Rule 6 of the Cenvat Credit Rules, 2004. You would have availed cenvat credit for the common inputs, viz., steel sheets and would not have availed credit on the

coating materials, as they are exclusively to be used in exempted goods. The pipes cleared for drinking water projects are not entitled for any exemption under GST.

The question of reversal of proportionate credit / payment of 6 % of the price of the exempted goods under Rule 6 of the CCR, 2004 would arise only post clearance of the pipes claiming excise exemption. The stock of steel sheets lying in stock, contained in work in progress and finished goods, would henceforth be cleared as pipes only payment of GST and you would have already availed credit of the Excise duty paid on such steel sheets. The Cenvat Credit balance as per your last ER 1 return could be carried forward to GST return, under Section 140 (1). Since you have not availed any credit on the coating materials, you can avail the same in respect of such coating materials lying in stock and contained in work in progress and finished goods under Section 140 (3).

Question 23 : I have received certain goods after 01.07.2017 under the cover of invoice dated prior to 01.07.2017, on payment of Excise Duty and VAT and in some cases, on payment of Excise duty and CST. How can I avail credit?

Answer : As per section 140 (5), if the goods are accounted and booked in your books of accounts on or before 30.07.2017 (subject to extension of another 30 days by the Commissioner) you can take credit of the Excise duty as CGST and VAT as SGST. CST, which is not entitled for credit under earlier law, cannot be availed as credit.

Question 24 : I have paid advance to a service provider in June 2017 and the service provider has paid service tax on the same. I am receiving such service in July 2017 and the service provider charges GST for the balance amount. How can I take credit?

Answer : The Service tax charged by the service provider can be availed as per Section 140 (5). The GST charged by him after 01.07.2017, ITC can be availed in normal course.

Question 25 : I have received certain goods during the last week of June 2017, but the invoice for the same, which was dated in June 2017, was received by me only in July 2017. How to avail credit?

Answer : If you have not filed your ER 1 / ST 3 return for the month / quarter ending June 2017, you can avail such credit in June and file the returns accordingly and the credit balance as per this returns could be carried forward as per Section 140 (1). If you have already filed these returns, you can file a revised return claiming such credit, if you are a service provider. But if you are a manufacturer and filed your ER 1 return for the month of June 2017 you would not be entitled to avail credit of the duties paid on such goods received prior to 01.07.2017, for which invoice was received by you after 01.07.2017.

Question 26 : I am a registered dealer. I have stock of goods purchased from 100 % EOU along with Excise invoices. How to take transitional credit.

Answer : The quantum of credit available in respect of the goods procured from 100 % EOU should be determined as per the formula prescribed under Rule 3 (7) of the Cenvat Credit Rules, 2004.

Question 27 : An Input Service Distributor receives a service tax invoice, post 01.07.2017. How that credit can be distributed by the ISD?

Answer : Under section 140 (7) of the Act, the service tax can be distributed as CGST credit by the ISD.

Question 28 : We have obtained centralised registration under Service Tax and availing all cenvat credit at our registered place, i.e. Hyderabad. Now, we have obtained registration in 10 States, where we are executing various projects. How, the balance of cenvat credit as per our last ST 3 return could be distributed to these 10 registrations.

Answer : There are no basis of such distribution. Either you can retain the entire credit in your Hyderabad registration or distribute among one or more of the 10 registered units, in whatever manner you wish. Section 140 (8). The credit transferred to other registrations should be deducted from the credit at Hyderabad.

Question 29 : We have availed cenvat credit for certain input service, based on the invoice dated 01.01.2017 in the month of January 2017. Since we have not made payment for the said invoice until 31.03.2017, the said credit was reversed in the month of April 2017. How can that credit be taken again?

Answer : If you make payment for the bill on or before 30.09.2017, you can take recredit of such service tax as CGST. If the payment is not made on or before 30.09.2017, the credit could not be taken. Section 140 (9). But, the manner in which such credit could be taken is not prescribed in the Rules and the GST TRAN 1 is not having any columns for this purpose.

Question 30 : What is GST TRAN 1 and what is the due date for filing the same?

Answer : GST TRAN 1 is a declaration to be filed electronically, to claim various transitional credits admissible. The same is to be filed on or before 28.09.2017. On the recommendations of the GST Council, the time can be extended by another ninety days.

Question 31 : If any mistake has been committed in filing GST TRAN 1 and if certain credits are omitted to be claimed, can a revised GST TRAN 1 be filed?

Answer : There are no provisions enabling filing of revised GST TRAN 1.

Question 32 : We are a service provider. By oversight, we have not availed credit for certain invoices received prior to 01.07.2017. How to avail such credits?

Answer : If you have not yet filed your ST 3 return for April-June 2017 (Last date 15.08.2017) you can avail such credit now before filing the return. Even if you have filed the ST 3 return for April-Jun 2017, you can file a revised return, after availing such credits, on or before 45 days from the date of filing the return.

Question 33 : We are a manufacturing unit and we are writing down the value of our inventory based on the age of the inventory and we also reverse cenvat credit availed on such goods, when the value is written down for the first time. How can we avail back such credit?

Answer : As per Rule 3 (5B) of the Cenvat Credit Rules, 2004 recredit can be taken only when such goods are subsequently used. When you use such goods post GST, there are no specific provisions available either in the GST Act / GST Rules, for taking back such credit.

Question 34 : We have availed credit during June 2017, for an input service invoice dated 02.04.2017. We have not payment for the same till 01.04.2017. Whether the credit has to be reversed?

Answer : The three months time limit under CCR, 2004 for making payment would expire on 01.07.2017. But under GST law, the time limit for making payment has been enhanced to six months, vide second proviso under Section 16(2). So you need not reverse the credit, till the expiry of 180 days from the date of invoice.

Question 35: We have imported goods prior to 01.07.2017 and paid customs duties and the goods are still lying in the warehouse and would be received in our factory over a period of time and it would take about two to three months to receive the entire goods in our factory. How to avail credit of the CVD / SAD paid on such imported goods?

Answer : As per Section 140 (5), once you account for the goods in the books of accounts on or before 30.07.2017 (subject to another 30 days extension by the Commissioner), credit would be allowed. It is not necessary that the goods must be received in your factory within this date. You can avail the credit by filing GST TRAN 01 – Column 7 (b).

Question 36 : I am a dealer and I have stock of goods as on 01.07.2017 purchased by me on payment of VAT. But I am not having the purchase invoices. Can I avail deemed credit as per proviso to Section 140 (3) of the Act?

Answer : The facility of deemed credit in respect of VAT would be admissible only in cases, where the goods have suffered VAT at the first point and all subsequent stages of sale are exempted from payment of VAT. In your case, you have purchased goods on payment of VAT and the only reason for claiming deemed credit is that you do not have purchase documents. You are not entitled to any deemed credit. Reference is invited to Rule 117 (4) (a) (i) of the TNGST Rules, 2017. You may look for the corresponding provision under your state GST Rules also.

Question 37 : We are liable to pay Royalty to our parent company and we have booked the royalty for the period April to June 2017 on 30.06.2017. What tax is payable thereon and how credit could be availed?

Answer : For transactions between associated enterprises, the point of taxation as per Service tax law is date of accounting in the books of accounts, i.e.30.06.2017 and hence you are liable to pay Service tax on or before

06.07.2017. There are no explicit provisions enabling availment of ITC of such service tax paid after 01.07.2017 for the services received prior to 01.07.2017. If you account for the royalty in your books of accounts on 01.07.2017, GST is payable by considering the date of accounting as the time of supply {Section 13 (3) of the CGST Act} and ITC of such GST could also be availed.

Question 38 : What are the consequences of sales return in respect of goods sold prior to GST?

Answer :

Situation	Consequences	Remarks
Goods sold to unregistered persons on or after 01.01.2017 and upto 30.06.2017, returned on or before 31.12.2017	The taxes paid under earlier law, could be claimed as refund	Section 142 (1)
Goods sold to registered persons (GST registered) on or after 01.01.2017 and upto 30.06.2017, returned on or before 31.12.2017	Deemed as supply and the person returning the goods shall charge GST.	Proviso under Section 142 (1)
Goods sold to unregistered persons before 01.01.2017 and returned on or after 01.07.2017	Being return by unregistered person no GST payable by him. The receiver of the goods (original seller) should pay GST under RCM, as he receives supply of goods from unregistered person.	Not provided for explicitly anywhere but this is the consequence.
Goods sold to registered persons (GST registered) before 01.01.2017 and returned on or after 01.07.2017	The returning person shall pay GST.	Not provided for explicitly anywhere but this is the consequence.

Question 39 : We have received certain services in the month of April 2017 from a service provider and due to lack of quality of service discussions were going on with him about billing. Finally we have agreed to pay him 50 % of the originally agreed amount and he has raised his invoice after 01.07.2017? What is the tax liability thereon and ITC entitlement?

Answer : Though invoice has to be raised within 30 days from the completion of service, in this case, the service provider was not able to raise his invoice {Circular NO. 144/13/2011 ST Dt. 18.07.2011}. So, when he raises an invoice after 01.07.2017 he is liable to charge GST which can be availed as ITC by you in normal course.

Question 40 : I am a manufacturer. I have purchased raw materials on payment of 2 % Excise duty, under Notification 1/2011 which was not entitled for cenvat credit as per the Cenvat Credit Rules, 2004. Can I claim any transitional credit for the stock of such goods available with me on 01.07.2017?

Answer : The goods on which 2 % ED was paid under notification 1/2011 are considered as "exempted goods" as per CCR, 2004. Further, as per Rule 3 (1) of the CCR, 2004, such 2 % duty cannot be claimed as cenvat credit by the person receiving such goods. With the above back ground, it has to be seen whether any transitional credit could be availed on such goods lying in stock with a person who purchased such goods.

It may be noted that unlike Section 140 (1) for transition of credit as per the last return, for claiming transitional credit for stock under section 140 (3), there is no condition that the credit which is being claimed must be available as credit under the earlier law also. Further, the term "eligible duties" for the purposes of Section 140 (3), covers all excise duties. So, if a person who is having stock of goods purchased on payment of 2 % ED is possession of Excise invoices for such stock, he can claim transitional credit of such 2 % duty, in respect of such goods, lying in stock, contained in work in progress and finished goods.

If a trader, who was not registered under earlier law, is having stock of such goods as on 01.07.2017 and is not in possession of Excise invoices, he would be entitled to deemed credit as per proviso to Section 140 (3). In this connection, it may be observed that though the said goods are defined as "exempted goods" under CCR, 2004, that is not an absolute exemption, but a conditional exemption.

Question 41 : I am a manufacturer of goods, attracting 2 % Excise duty under Notification 1/2011. I was not availing any cenvat credit for my inputs as it was not permissible under CCR, 2004. Now my goods are liable to GST without any restriction on ITC. Can I claim transitional credit for the stock of inputs lying with me, contained in work in progress and finished goods?

Answer : The goods manufactured by you were "exempted goods" under the earlier law and hence you were not entitled to cenvat credit under earlier. Now, as per Section 140 (3) of the CGST Act, you can claim transitional credit for the duties paid on your inputs lying in stock, contained in work in progress and finished goods.

Question 42 : WE have balance in our PLA. How to carry forward this balance to the Electronic Cash Ledger under GST?

Answer : There are no provisions to transfer the balance available in erstwhile PLA to Electronic Cash Ledger. You may seek refund of it separately.

Question 43 : We have stock of imported coal, on which Clean Energy Cess has been paid. Are we entitled to avail credit of the same?

Answer : Clean Energy Cess is not specifically mentioned as one of the eligible duties, either under the Cenvat Credit Rules, 2004 or under the Transitional provisions. But, as per the ratio laid down by the Hon'ble High Court of Karnataka in the case of CCE VS Renuga Sugars Ltd – 2014-TIOL-98-HC-Kar-CX you can avail the credit. But the issue is debatable.

Question 44 : To whom GST TRAN 2 is applicable?

Answer : It is applicable for a person, other than manufacturer or service provider, who was not registered under earlier law, and claiming transitional credit for the stock held by him on deemed basis, who is not having proper excise invoices to claim actual credit. This has to be filed for the first six months from July 2017. For the sales made out of the stock as on 01.07.2017, during the first six months, deemed transitional credit @ 40 % / 60 % of the CGST would be admissible.

Question 45 : What is the procedure for carrying forward the balance of VAT credit as per last VAT return?

Answer : In Column 5 (b) of GST TRAN 1, the details of various forms (Form C / F / H / I) received from April 2015 to March 2017 have to be declared. It may be noted that mere details of the forms received have to be declared here, which means that to this extent ITC is protected.

In column 5 (c) of GST TRAN 1, the total amount of ITC available as per the last VAT return has to be indicated. From that the following amounts have to be reduced.

- (i) Differential tax payable for the Forms pending as on 01.07.2017.
- (ii) Proportionate ITC attributable to such pending forms.

The balance credit can be carried forward.

As and when the pending forms for which ITC has been reversed / differential tax has been paid as above, refund can be claimed.

(The above answers are based on the provisions of the CGST Act, 2017 and TNGSTS Act, 2017 & the rules under the above Acts)

(Published in www.taxindiaonline.com on 17.07.2017)



