

Delhi HC quashes the instructions prohibiting ISDs from transitioning CENVAT credit

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Summary

The Delhi High Court (HC) quashed the instructions dated 5 July 2018 issued by the department and allowed the Input Service Distributor (ISD) to avail the unutilised balance of the Central Value Added Tax (CENVAT) credit in the Goods and Service Tax (GST) regime. The HC further restrained the revenue authorities from enforcing the recovery of accumulated credit transitioned by the petitioner concerning its ISD registration.

Facts of the case

- Hero MotoCorp Ltd ('the petitioner') is registered as an ISD. The petitioner received a communication from the revenue wherein the petitioner's request for allowing credit of unutilised ISD was rejected.
- The petitioner challenged the instruction dated 5 July 2018, which prohibits ISDs from transitioning the accumulated unutilised CENVAT credit.
- The petitioner relied on the rulings of the Bombay HC in the case of Unichem Laboratories Limited, Colgate Palmolive (I) Limited and Gujarat HC in the case of Bodal Chemicals Limited.

Delhi High Court observations and ruling [Writ Petition (c) 2032/2019 dated 10 October 2022]:

- **No recovery of accumulated transitional credit:** The HC noted that post examining the judgments, the revenue was of the view that the writ petition can be allowed. Accordingly, the HC passed the order. Further, the HC quashed the instructions dated 5 July 2018. The HC also restrained the revenue authorities from enforcing recovery of accumulated credit transitioned by the petitioner concerning its ISD registration.

Our comments

The provisions of availing pre-GST credit by ISDs as transitional credit under the GST regime has been a litigative issue. As per Section 140 of the CGST Act, the credit received by an ISD under the pre-GST regime is eligible for distribution as credit under GST within the time and manner provided, even if the invoices for such services are received on or after the appointed day. However, the department issued instructions prohibiting ISDs from transitioning the accumulated unutilised CENVAT credit, resulting in some taxpayers facing demand and recovery proceedings from the department for transitioning such credit in Form GST TRAN-1.

The Delhi HC, in the present ruling, has quashed the instruction issued by the department. This is a welcome ruling and may set precedence in similar matters.

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