It’s high time govt worked with trade to revive economy

EXIM MATTERS
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In a significant judgment, the Delhi High Court has held that the Cenvat credit, which accrued to the assessee under the pre-goods and services tax regime, can be carried over as input tax credit under the current GST regime till the end of June.

When GST was introduced on July 1, 2017, Section 140(1) of the Central GST Act, 2017 permitted carryover of the existing Cenvat credit balance as a transition measure. The Rule 117(1) of the Central GST Rules, 2017 required filing TRAN-1 return within 90 days. This time limit was extended several times, due to problems at the GST Network (GSTN), the electronic platform for filing the returns. Still, many taxpayers could not file the returns and carry over the Credit due to GSTN technical glitches. Some of them approached courts.

The Delhi High Court went into the more fundamental question of whether the government could curtail the accrued and vested right, and restrict it to 90 days by a subordinate legislation and came to the conclusion that on the appointed date (July 1, 2017), the credits which existed under the previous regime, in every sense, stood accumulated, acquired and vested as it was reflected in the said Cenvat credit register in the previous regime and that this credit is the property of the assessee, and is a constitutional right under Article 300A. The High Court held that the period for filing the TRAN-1 (the document for transferring the accrued Cenvat credit) is not considered, either by the legislature or the executive, as sacrosanct or mandatory.

The rule 117 of the Central GST Rules, 2017, being directory in nature, would not result in the forfeiture of the rights, where the credit is not availed within the period prescribed. However, in terms of the residuary provisions of the Limitation Act, a period of three years from the appointed date would be the maximum period for availing of such credit. Other taxpayers who are similarly placed should also be entitled to avail of the benefit of this judgment, said the high court.

The high court also observed that the GSTN is riddled with shortcomings and inadequacies. Extensions have been granted by the government from time to time, largely on account of its inefficient network. It is very unfair on the part of the government, in these circumstances, to expect that the taxpayers should have been fully geared to deal with the new system on Day 1, when they themselves were completely ill-prepared, which led to creation of a complete mess.

Just like the respondents, even the taxpayers required time to adapt to the new systems. This requires sensitivity on the part of the government which has, unfortunately, not been exhibited in adequate measure. The government cannot turn a blind eye, as if there were no errors on the GSTN portal. The respondents cannot adopt different standards - one for themselves, and another for the taxpayers, said the high court.

The government can appeal against the judgment but it would be unwise to do so. This is no time to quarrel. This is the time to work with the trade and industry and take all steps necessary to revive the economy. Already, the government has taken many positive steps to do so and the better policy is to let bygones be bygones.

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