Govt notifies GST law changes, lack of clarity on transitional claims

FE BUREAU
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With the Government notifying the GST-related changes made in the Finance Act, 2020, the recent Delhi high court judgment allowing taxpayers till June 30 to claim the transitional credit would be nullified. The Finance Act, earlier this year, had amended relevant sections of the CGST Act, which would come into effect from Monday.

Earlier this month, the Delhi high court had allowed taxpayers registered under GST to claim accumulated CENVAT credit from pre-GST regime till June 30, 2020, and noted that the benefit of transitional credit will be applicable for three years (since launch of GST on July 1, 2017) which is the period mentioned in the limitation Act.

Under the GST Act, taxpayers were allowed to carry forward input tax credits from excise and service tax regime by filing TRAN-1 form. Although, the original deadline expired in September 2017, the government granted several extensions till December 27, 2017. Further, taxpayers who couldn’t file the claim due to technical glitch in the system were allowed to do so till March 31, 2020.

“This retrospective amendment needs to be challenged at appropriate time. There is no stay on the Delhi high court order and hence the taxpayers who have taken the benefit of the court’s order before the date of the notification are in clear safe zone,” said Abhishek A. Rastogi, partner at Khaitan & Co, who argued for the lead petition on this issue. He added that the amendment will have to be tested on the constitutional validity as any retrospective amendment is after the court order.

While the rule 117 under the GST Act mandated a deadline for claiming the credit, taxpayers have argued in court that input tax credit was a right and not a taxpayer concession, which made a deadline ultra vires.

Rajat Mohan, senior partner at AMRG & Associates said that the high court’s decision was based on the fact the deadline for claiming transitional credit is derived from rules but had no standing in the law as such. He added that with this amendment that particular ground for ruling has been diluted.

Jigar Doshi, founding partner at TMSL said: “The amendment may bring the time-limit issue for claiming CENVAT credit to rest from GST law perspective. However, legal challenges on the other grounds of credit being substantive right and procedural timelines or lapses cannot restrict a company to claim the credit and as well overall Limitation Act being applicable to such cases will continue.”