



Dimensions – 55th Edition

Judgments under GST era

Sutherland Mortgage Services Inc. v. The Principal Commissioner and Ors.¹

Issue for Consideration

Whether the Advance Ruling Authority (AAR) is legally correct in not examining questions pertaining to '*place of supply*' considering the provisions of section 97(2)(e) of CGST Act, 2017?

Discussion

- The Petitioner, a branch office of M/s Sutherland Mortgage Services Inc. USA (Principal), is engaged in providing IT enabled services viz. mortgage orientation, primary servicing, special servicing, cash management and analytics and reporting. The branch doesn't have any separate legal existence apart from the Principal. The Principal being engaged in mortgage business, as per the applicable laws of USA, is prevented from outsourcing its work to any third party. Accordingly, the Petitioner executed an intra-company agreement with the Principal to provide services to customers located outside India.

- The Principal has also entered into agreements with customers outside India for provision of services from USA and the Petitioner. The Principal reimburses the Petitioner for costs incurred to perform the services and invoices are issued by the Petitioner to the USA Corporate Head Office.
- The Petitioner contended that the services were directly provided to the overseas customers and no services were provided to the Principal. Therefore, such services shall qualify as export of services under section 16 of the IGST Act, 2017. Accordingly, an application for advance ruling was filed but the AAR rejected the application since the ruling cannot be granted as determination of '*place of supply*' doesn't come within the permissible issues. Aggrieved, a Writ Petition was filed by the Petitioner.
- The Hon'ble High Court observed as under:
 - Section 97(2)(e) of the CGST Act, 2017 i.e. '*determination of liability to pay tax on any goods or services or both*' is wide in nature. Further, it has been clearly mandated that one can seek advance rulings on the aforesaid issue and the authority is obliged to answer;

¹ TS-148-HC-2020(KER)-NT



- The High Court acknowledged the fact that issue relating to determination of ‘*place of supply*’ is not expressly covered under section 97(2) of the CGST Act, 2017 but such an issue would come within the ambit of the larger issue of ‘*determination of liability to pay tax on any goods or services or both*’;
- The AAR rejected the application and proceeded on a tangent missing the crucial aspect of the matter in taking a very hyper technical view that it lacked jurisdiction since the said issue was not expressly enumerated in the GST law;
- The Court also observed that the view taken by the AAR is legally wrong / faulty and thus the matter required judicial review in the instant proceedings.

Judgment

The Hon’ble High Court disposed of the Writ Petition and remitted the matter back to the AAR for fresh consideration.

Dhruva Comments / Observations

The instant judgment is a welcome decision as the issue of determination of ‘*place of supply*’ though not expressly spelt out in the provisions, would certainly fold into the sub-clause which deals with ‘*determination of liability to pay tax on any goods or services or both*’. Considering the fact that many cases have been rejected by the AAR on the grounds of determination of the ‘*place of supply*’ this judgment holds much relevance. This judgment provides much needed clarity to AAR authorities while considering matters involving ‘*place of supply*’.

***Adfert Technologies Pvt. Ltd. v. The Union of India and Ors.*²**

Issue for Consideration

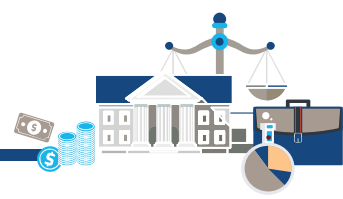
- Whether the Petitioner is entitled to carry forward transitional credits which could not be taken on

account of non-filing or incorrect filing of GST Tran-1?

Discussion

- With the introduction of GST w.e.f. July 1, 2017 (appointed day), the Petitioner migrated from the VAT regime to the GST regime.
- Section 140 of the CGST Act, 2017 enables the Petitioner to carry forward unutilised Cenvat credit and credit of duties / taxes paid on inputs / capital goods lying in stock. No time limit has been prescribed under the said section for carry forward of such credits to the GST regime. Rule 117 of CGST Rules, 2017 prescribes the time limit, which has been extended from time to time and was finally fixed to be December 27, 2017.
- The Petitioner while attempting to file the prescribed form i.e. GST Tran-1 was unable to load it electronically or incorrect form was loaded which could not be corrected within the prescribed time limit.
- On a detailed examination of the relevant provisions and the facts involved, the Hon’ble High Court observed as under:
 - Rule 117(1) of the CGST Rules, 2017 prescribed the last date to file GST Tran-1 as December 27, 2017 but it was extended up to December 31, 2019 vide insertion of rule 117(1A) in cases where the form could not be filed due to technical glitches;
 - The introduction of rule 117(1A) and 120A of the CGST Rules, 2017 and absence of any time period prescribed under section 140 of the CGST Act, 2017 implies that there is no intention of government to deny carry forward of transitional credits on the grounds of time limit;
 - Transitional credit is the vested right of the Petitioner and the same shall not be taken away on account of procedural or technical grounds. The Respondents have complete records and are at liberty to verify facts and figures. In spite of being aware of complete facts and figures, the Respondent cannot deprive Petitioners from their valuable right of credit;

² 2019-VIL-537-P&H



- Reliance was placed upon the judgment pronounced by the Division Bench of the Hon'ble Gujarat High Court in the case of *Siddharth Enterprises v. The Nodal Officer*³ wherein it was held that denial of credit of tax / duty already paid would tantamount to violation of Article 14 and Article 300A of the Constitution of India;
- Denial of the carry forward of transitional credits might severely dent the working capital requirements and impact the continuity of business thereby being violative of the Article 19(1)(g) of the Constitution of India;
- Reliance placed by the Respondents on the judgment of Hon'ble Gujarat High Court in the case of *Willowood Chemicals Pvt. Ltd. v. Union of India*⁴ has been negated as the Gujarat High Court itself in subsequent judgments and Delhi High Court in a number of judgments have permitted the Petitioners therein to file GST Tran-1 even after December 27, 2017.

Judgment

The Respondents were directed to permit the Petitioner to file or revise [where already filed] the GST Tran-1, either electronically or manually. The Respondents are at liberty to verify legitimacy of the claim, but nobody shall be denied the right to carry forward legitimate claim of CENVAT / ITC on the ground of non-filing of GST Tran-1 by December 27, 2017.

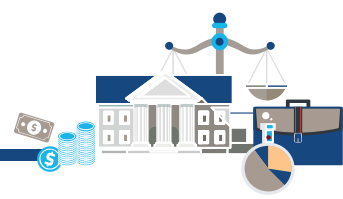
Dhruva Comments / Observations

The issue of carry forward of the transitional credits has been in the limelight since the introduction of the GST in the year 2017. We have witnessed numerous Writ Petitions being filed with the High Courts across the country to permit carry forward of credits denied on the ground of technical glitches or wrong filing of the transitional forms. The SLP⁵ in the instant matter stands dismissed by the Hon'ble Supreme Court. The ruling would have a high persuasive value in ongoing matters.

³ 2019-VIL-442-GUJ

⁴ 2018 (19) GSTL 228 (Guj.)

⁵ 2020-VIL-10-SC





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