

Bombay High Court

Colgate Palmolive (I) Ltd vs Union Of India And 2 Ors on 29 August, 2022

Bench: K.R. Sriram, Shri A. Doctor

Digitally
signed by
MUGDHA
MUGDHA M
M PARANJAPE
PARANJAPE Date:
2022.08.30
10:25:21
+0530

1

403-WP 2168-21.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2168 OF 2021

Colgate Palmolive (I) Limited ... Petitioner
Vs.
Union of India & Ors. Respondents

Mr. Jitendra Motwani, Mr. Chirag Shetty, Mr. Rizwan Khatri for Petitioner.
Mr. Ram Ochani for Respondents.

CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ.

DATED : 29th AUGUST 2022

P.C. :

1. The Petition is filed in relation to the objections raised with regard to transition and distribution of CENVAT Credit by Input Service Distributor (ISD) of the balance of Service Tax/Excise Duty as on 30 th June, 2017.

2. Since filing declaration in Form GST TRAN-1 was the only route for transitioning of the accumulated CENVAT credit balance in the ISD registration under the erstwhile service tax regime, Petitioner had filed the declaration in Form GST TRAN-1 for transitioning the credit of Rs.13,69,01,936/- under Section 140 of the CGST Act within the prescribed time and in the prescribed manner.

Mugdha

2

403-WP 2168-21.doc

1 o

3. The transition of the aforesaid CENVAT credit was permitted and the said balance of Rs.13,69,01,936/- got credited to the Electronic Credit Ledger ("ECL") of the ISD registration on the GST common portal.

4. Petitioner issued the invoices to transfer the transitional credit being accumulated ISD credit to its other units and further disclosed the said transfer to the recipient units through Column 9 of Table 8 in Form GST TRAN-1. Basis the same, the respective units availed the input tax credit in its Electronic Credit Ledger by disclosing the respective amount of ISD Credit transferred in its returns filed under GST in Form GSTR-3B.

5. Show Cause Notice F. No.03/JC/Dn.III/2019-20 [Centralized SCN No.26/CGST-NM/JC/VR/2019-20] dated 18th June, 2020 has been issued to Petitioner which is impugned in the Petition. The case of the Respondents is that (i) Petitioner has wrongly transitioned the balance of ISD credit in Form GST TRAN-1 as ISD is not eligible to carry forward its balance credit to electronic credit ledger under Section 140(1) of the CGST; (ii) Migration of ISD registration from the existing law to the GST regime as an ISD is prohibited under GST; and (iii) the ISD has transitioned credit with respect to invoices which were not received by it prior to 30th June, 2017.

Mugdha

2 of 6

3

403-WP 2168-21.doc

6. It is Petitioner's case that there is no dispute with regard to the eligibility of Petitioner to the claim and/or transition the aforesaid Credit. The entire dispute only pertains to the procedure for transition of the said CENVAT credit being balance of the ISD credit and its distribution to the other units of Petitioner. It is not the case of the department, that Petitioner has transitioned/distributed ineligible credit i.e. there is no loss to revenue on account of the said transition/distribution of the credit. Even for invoices received post 30th June, 2017, credit can be availed under Section 140(7) of the CGST Act.

7. It appears that most of the procedural issues have arisen due to the fact that the GST was at the nascent stage of its implementation and there was a prevalent ambiguity with regard to the transitional provisions.

8. The Hon'ble Apex Court to aid the assesses to overcome the procedural technical hurdles in the case of Union of India & Another Vs. Filco Trade Centre Pvt. Ltd. & Another 1 and other similar batch of Petitions in relation to the transition of credit from the erstwhile regime to the GST regime by an order dated 22 nd July, 2022, has inter alia observed as follows :-

1 2022 (7) TMI 1232

Mugdha

3 of 6

4

403-WP 2168-21.doc

"Having heard learned Additional Solicitor General, learned counsel appearing for different States and learned counsel appearing for different private parties and having perused the record, we are of the view that it is just and proper to issue the following directions in these cases:

1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.
2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).
3. GSTN has to ensure that there are no technical glitch during the said time.
4. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.
5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.
6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims."
9. We also intend to adopt the same approach. Therefore, we hereby direct Respondents to open the common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months, i.e., with effect from 1 st September, 2022 to 31st October, 2022 in compliance with the order of the Hon'ble Supreme Court of India in Filco Trade (supra).

Mugdha

5

403-WP 2168-21.doc

4 of 6

10. Accordingly, Petitioner's recipient units can file revised declaration in Form GST TRAN-1, either electronically or manually (where electronically is not possible), for taking the credit already distributed to them by the ISD registration of Petitioner by issuing invoices.

11. Once, such a revised declaration is filed by the concerned recipient units of Petitioner, the credit already taken by the said units shall be treated to have been taken validly on the date on which it was originally taken. However, no further credit based on revised declaration in Form TRAN-1 shall be claimed by Petitioner, as the said filing is purely for regularizing the earlier action of transition and distribution of Cenvat credit by the ISD registration of Petitioner.

12. In case the said credit is once again reflected in the Electronic Credit Ledger of the recipient units, Petitioner undertakes that its recipient units shall make a debit entry in the Electronic Credit Ledger to the extent such credit has already been claimed earlier.

13. Once, the credit taken by the respective units is regularized by filing revised electronic or manual declaration (as the case may be) in Form GST TRAN-1, the credit balance shown in Electronic Credit Ledger of Mugdha 5 of 6 6 403-WP 2168-21.doc Petitioner being the balance of ISD credit transitioned shall be deemed to have lapsed/deleted.

14. Respondents and the authorities concerned shall not proceed to adjudicate the above impugned Show Cause Notice issued to Petitioner for transition of ISD credit balance and its subsequent distribution.

15. Liberty to Petitioner to raise all other issues/contentions/ reliefs raised in this Writ Petition in the appropriate proceedings at appropriate time, if need arises.

16. Petition disposed.

(A.S. DOCTOR, J.)

(K.R. SHRIRAM, J.)

Mugdha

6 of 6