



## **Last chance to claim transitional credit – Now or Never!!!**

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India moved into the new regime of the GST taxation, which left the taxpayers with the stock on which the existing tax was paid (central excise and VAT) and also with the balance of the tax credit of the existing law and may other challenges considering this Chapter XX of the Central Goods and Service Tax Act, 2017 has transitional provisions from section 139 to 142.

In order to eliminate double taxation at the time of transition into GST, all taxpayers were given a facility to carry forward the unutilized input credits under pre-GST regime under section 140(1) by filing a online form named 'TRAN-1' and also allow the credit of taxes paid on the stock as on 30th June 2017 as GST credit under section 140(3) of CGST Act r/w Rule 117 of CGST rules, 2017 as amended *inter alia* requires the taxpayers to file Form GST TRAN-1 & GST TRAN-2 electronically. Initially, the due date to file Form TRAN-1 was set to be 27.12.2017. However, many taxpayers could not complete the filing of Form GST TRAN-1 within the said due date account of IT-related glitches and also due to lack of knowledge. As a result, a large number of such Form GST TRAN-1s were stuck in the system. At this juncture, it is to be noted that section 140 does not provide any time limit for the transition benefit but will only give powers to prescribe the manner and hence Rule 117 prescribing the time limit would be ultra vires the act.

Numerous petitions have been filed across the country and the Hon'ble High courts have time & again directed the Government either to reopen the portal or to allow the manual filing of the forms. Some courts have suggested the Government to set up a redressal committee.

In light of these developments and acknowledging the genuine problems faced by the taxpayers, the Government has provided a window enabling the taxpayers to file the Form Tran-1 till 31.03.2019 and which is now extended till 31.12.2019. **It should be noted that this facility is available only to the persons who have attempted to file the FORM GST TRAN-1 within the initial due date i.e., 27.12.2017 but could not file the same due to technical glitches in the portal and further has digital evidence to prove the same (category-1).** Hence, taxpayers who can substantiate electronic audit trail and have digital evidence like screenshots, help desk correspondence, etc., can take benefit of this date extension and avail the earlier missed out transitional credits now. **For this, an application shall be made to the Nodal officer of the IT redressal committee, not beyond 31.12.2019.**

However, the aforesaid relief is not applicable to those taxpayers who:



- have made errors or mistakes in filing and TRAN-1 could not be revised **(category-2)**
- attempted filing TRAN-1 online within the due date but could not possess digital evidence like screenshots, help desk correspondence, etc. **(category-3)**
- did not file TRAN-1 until now due to various reasons such as lack of awareness and ignorance, lack of IT infrastructure, inexperience of accountants in filing such complex forms, etc. **(category-4)**

The category 2, 3 & 4 of the taxpayers do not have any option but to approach the High courts. Further, in case such taxpayers are not allowed to carry forward unutilized credits via filing of TRAN-1, then they could apply for refund in terms of Section 142(3) of CGST Act as they have a vested right towards such credits.

In recent times, there are a series of decisions delivered by the various High courts. Noted decisions sorted category wise:

#### **Applicable for category 2**

- In the case of **Blue Bird Pure Pvt. Ltd. Vs Union of India & Ors. (Delhi High Court)**, it was held that transitional credit cannot be denied due to inadvertent error and directed to allow the rectification of Form Tran-1.
- In the case of **Jakap Metind Pvt. Ltd. vs. Union of India (Gujarat High Court)**, HC directs the Revenue to either open the online portal so as to enable the assessee to again file the rectified FORM GST TRAN-1 electronically or accept the manually filed FORM GST TRAN-1 with corrections
- While the assessee had filed the form, but on account of not properly understanding the nature of columns provided in form, due to inadvertent error, mentioned the details of credit amount in the wrong column;
- Referring to Delhi HC decisions in Blue Bird Pure Pvt. Ltd. & Bhargava Motors, it was held that Revenue has no legal authority to retain the amount of credit to which the petitioner is duly entitled and retention of the same is violative of Article 265 of the Constitution of India” while asserting further that non-grant of the credit “is bad in law”.

#### **Applicable for category 2, 3 & 4**

- **In Adfert Technologies Pvt. Ltd. Vs Union of India & Ors. (Punjab & Haryana High Court)** dealt with the two types of cases namely
  - Taxpayers did/could not file Tran-1 by the due date and have no evidence of an attempt to load Tran-1
  - Taxpayers loaded Tran-1 by the due date but there were mistakes and wanted to revise.
- And it was held that the Introduction of Rule 117(1A) & Rule 120A and absence of any time period prescribed under Section 140 of the Act indicate that there is no



intention of the Government to deny carry forward of unutilized credit of duty/tax already paid on the ground of time limit.

- GST is an electronic-based tax regime and most of the people of India are not well conversant with electronic mechanisms.
- Unutilized credit arising on account of duty/tax paid under erstwhile Acts is vested right which cannot be taken away on procedural or technical grounds.
- There were a number of steps and columns in TRAN-1 forms thus possibility of mistake cannot be ruled out.
- The revenue authorities were having a complete record of already registered persons and at present, they are free to verify facts and figures of any Petitioner thus in spite of being aware of complete facts and figures, the revenue department cannot deprive petitioners from their valuable right of credit
- **It had directed Revenue to permit filing of TRAN-1 or revision of incorrect TRAN-1 either electronically or manually on or before 30.11.2019.**
- It was also held that Revenue is at liberty to verify the genuineness of the claim but cannot deny to carry forward legitimate claim of CENVAT ITC on ground of non-filing of TRAN-1 by 27.12.2017.

#### **Applicable for category 3 & 4**

- In the case of **Siddharth Enterprises Vs NODAL Officer (Gujarat High Court)** it was held that The right to carry forward credit is a right or privilege, acquired and accrued under the repealed Central Excise Act, 1944 (1 of 1944) and it has been saved under Section 174(2)(c) of the CGST Act, 2017 and, therefore, it cannot be allowed to lapse under Rule 117 of the CGST, 2017, for failure to file declaration form GST Tran-1 within the due date, i. e. 27. 12. 2017;
- The time limit prescribed under Rule 117 to allow the availment of the ITC with respect to the purchase of goods and services made in the pre-GST regime and post-GST regime is arbitrary, irrational and unreasonable and, therefore, it is violative of Article 14 of the Constitution;
- The due date contemplated under Rule 117 of the CGST Rules to claim the transitional credit is procedural in nature and thus merely directory and not a mandatory provision;
- By not allowing the right to carry forward the CENVAT credit for not being able to file the form GST TRAN-1 within the due date may severely dent the writ-applicants working capital and may diminish their ability to continue with the business and such action violates the mandate of Article 19(1)(g) of the Constitution;
- The liability to pay GST on sale of stock carried forward from the previous tax regime without corresponding input tax credit would lead to double taxation on the same subject matter and is, therefore, arbitrary and irrational;
- The phrase *“technical difficulties on the common portal”* should be given a liberal interpretation because it is a settled principle of law that an interpretation unduly

restricting the scope of a beneficial provision should be avoided so that it may not take away with one hand what the policy gives with the other;

- In the case of **Tara Exports Vs Union of India (Madras High Court)** it was held that the due date contemplated under the laws to claim the transitional credit is procedural in nature. In view of the GST regime and the IT platform being new, it may not be justifiable to expect the users to back up digital evidence. Even under the old taxation laws, it is a settled legal position that substantive input credits cannot be denied or altered on account of procedural grounds.
- In the case of **Tyre Plaza Vs Union of India & Ors. (Delhi High Court)**, it was held that there appear to be technical errors or technical glitches of various kinds in the GST system, which is still in the 'trial and error' phase. If it was not able to even connect with the server, the fact of a failed attempt at filing a return may not even be registered on the system. Hence, directed to allow the filing of form Tran-1.

***Suggested course of action – category wise:***

**Category 1:** *Taxpayers who have attempted to file but could not due to technical glitches in the common portal and possess digital evidence to corroborate the same*

1. Application to be given to respective Nodal officer of the IT redressal committee of the respective area on or before 31.12.2019.
2. Application should include facts and information of the case, details of input to be carried forward as TRAN-1 credit. It is very important to note that due professional care needs to be taken in making such an application.
3. The corroborative digital evidence like screenshots, helpdesk correspondence, etc should be attached in order to establish an electronic audit trail for the department.

**Category 2:** *Taxpayers who have made errors or mistakes in filing and TRAN-1 could not be revised*

1. Application to be given to respective Nodal officer of the IT redressal committee of respective area (*preferably before 30.11.2019 as per the latest Landmark Judgement of Adfert Technologies discussed above*)
2. Application should include facts and information of the case, details of previously filed TRAN-1 and revised or correct details of input to be carried forward as TRAN-1 credit.
3. The corroborative digital evidence of attempt of revision like screenshots, helpdesk correspondence, etc if any could be attached in order to establish an electronic audit trail for the department.
4. If the application is rejected or not acted in a reasonable time, file a writ petition before the Jurisdictional HC for necessary directions



**Category 3:** *Taxpayers who have attempted to file but could not due to technical glitches in the common portal and does not possess digital evidence to corroborate the same*

1. Application to be given to respective Nodal officer of the IT redressal committee of respective area
2. Application should include facts and information of the case and the details of the attempt.
3. The Nodal officer can get the report from the IT to check if the attempt was made.
4. If the application is rejected or not acted in a reasonable time, file a writ petition before the Jurisdictional HC for necessary directions

**Category 4:** *Taxpayers who did not file TRAN-1 until now*

1. Application to be given to respective Nodal officer of the IT redressal committee of respective area (*preferably before 30.11.2019 as per the latest Landmark Judgement of Adfert Technologies discussed above*)
2. Application should include facts and information of the case, details of input to be carried forward as TRAN-1 credit. It is very critical that all the facts and the grounds need to be taken at this stage.
3. If the application is rejected or not acted in a reasonable time, file a writ petition before the Jurisdictional HC for necessary directions

**Action points require in general :**

1. First to make the assessment of the what all transition benefit the company is eligible
2. What has been missed
3. Quantification of the missed benefit
4. Documentation for the same
5. Decide on the approach one needs to take
6. Professional representation on merits before the appropriate authority

Link for reference of List of Nodal officer for application - <https://cbic-gst.gov.in/cgst-nodal-officer.html>

**FAQ's:**

**Q1.** I had made several attempts to file Tran-1 before 27.12.2017 but could not file due to unknown errors and system glitches in the GST portal. I had also made several assistance requests to the GST helpdesk. Can I file the TRAN- 1 again now? If yes when and how?

Ans – Yes, TRAN-1 can be filed now. Application for the same needs to be given to the Nodal officer on or before 31.12.2019 with evidence of correspondence of helpdesk. For further information - Please follow the steps given for category-1 taxpayers.



**Q2.** I had filed TRAN-1 but had made some errors in filing due to which there remains some missed out credits. I had attempted to revise TRAN-1 but could not do so due to system limitations as the porta would not allow for any rectification. Is rectification possible now?

Ans – In reliance to the latest judgments being in favor of the assessee, it is suggested to apply for the same. An application needs to be given to the Nodal officer at the earliest; preferably before 30.11.2019 with details of the previous form and revised input details. For further information - Please follow the steps given for category-2 taxpayers.

**Q3.** I did not file TRAN-1 form due to a lack of appropriate knowledge and no time for collating information due to the continuous pressure of GST implementation and its stringent due dates of monthly return filing. Can I file the TRAN-1 now and claim unutilized CENVAT credits?

Ans - In reliance on the latest judgments being in favor of the assessee, it is suggested to apply for the same. An application needs to be given to the Nodal officer at the earliest; preferably before 30.11.2019 with appropriate details of CENVAT credits to be carried forward. For further information - Please follow the steps given for category-4 taxpayers.

**Q4.** What if there is no appropriate response from the Nodal officer or my application is rejected? Do I have any other solution or course of action?

Ans- If the application is rejected or not acted in a reasonable time, file a writ petition before the Jurisdictional High Court for necessary directions. In view of numerous favorable HC judgments on the subject, there is a high possibility that HC may allow filing TRAN-1 electronically or manually since inputs tax credit is a vested legitimate right of the assessee.

This article was published in Taxguru at the below link:

<https://taxguru.in/goods-and-service-tax/last-chance-claim-transitional-credit-gst.html>

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