

GIB/TN/SUTHERLAND GLOBAL/05-09-2019 /HC-103

High Court Category : Input Tax Credit

State : Tamil Nadu

Order No.: GIB/TN/SUTHERLAND GLOBAL/05-09-2019 /HC-103

Name of Entry :

Sutherland Global Services Pvt. Ltd.

Date : 05-09-2019

Breif Issue :

Facts & Issue of the case

M/s Sutherland Global Services Private Limited (“**the Petitioner**”) is a company providing Information Technology enabled services to customers worldwide. Prior to GST, the Petitioner was centralized registered in-service tax and was availing CENVAT credit on inputs, capital goods, and input services, utilizing the same against payment of service tax liability.

The Petitioner followed the procedure for carrying forward CENVAT credit availed under the erstwhile regime, set out in terms of Rule 117 of the Central Goods and Services Tax Rules, 2017 (“**CGST Rules**”). The Rules provide that every person entitled to the input tax credit (“**ITC**”) under Section 140 shall submit a declaration electronically in Form GST Tran-1 within 90 days of the appointed date, being July 1, 2017, for carrying forward such credit to be utilized against turnover from taxable services.

The provisions of Section 140(8) of the CGST Act, 2017 (“**CGST Act**”) provide for Centralised Registration in respect of all the Petitioners’ units, pan India, and this was reflected in the Tran-1 return filed by it.

The request of the Petitioner for carry forward and utilisation of credit was rejected vide impugned order dated February 9, 2018 on the ground that credit could be set-off only as against the specific duties and taxes enumerated in the Explanation to Section 140(1) of the CGST Act read with Rule 117 of the CGST Rules. According to the Assessing Officer, since the explanation did not cover cesses such as EC, SHEC, and KKC, the same could not be carried forward. The Petitioner was thus directed to reverse the aforesaid credits. The Petitioner challenged the order dated February 9, 2018.

Petitioner’s contentions:

1. Section 140(8) of the CGST Act entitle it to avail utilization of the credits carried forward in a return relating to the period ending with the day immediately preceding the appointed day.
2. For the purpose of the Central Excise Act, 1944 and Rules framed therein, EC, SHEC as well as KKC are ‘credits’ and thus, in the light of the explanation to Section 140 of the

- CGST Act, such credits would also be eligible to be credited, transitioned and utilized.
3. The proviso to Section 140(1) of the CGST Act specifically delineates those circumstances/conditions under which credit availed may not be utilized and there is nothing thereunder, to militate against the availment in question.
 4. The term used in Section 140(8) of the CGST Act is 'CENVAT credit' and not 'eligible duties and taxes'. Therefore, even though Rule 117 of the CGST Rules refers to Section 140 of the CGST Act as a whole, on a conjoint reading, it becomes evident that the term 'eligible duties and taxes' is applicable only to credit sought to be transitioned under Section 140(5) of the CGST Act and not to other sub-sections.

Decision of Advance Ruling Authority :

Decision:

Since the provision inserting Explanation 3 to Section 140 (introduced vide clause 28(d) of the CGST Amendment Act, 2018) is among those which have been operationalized with effect from February 1, 2019, the Hon'ble HC, Madras has revised its above judgment under Para 21, 47 and 49 of the order.

Importantly, now the Court has expressly allowed the transition of cesses to the Petitioner even under the amended CGST Act. Para 49 of the revised order states as under:

- The amendment proposed, to insert the phrase 'eligible duties' after the phrase 'cenvat credit' is restricted only to Section 140(1) and the Explanation (1) defining 'eligible duties' that was originally made applicable only to sub-sections (3) and (4) of Section 140 was extended to cover sub-section (1) as well.
- However, Section 140(8) remains untouched. As a result, Section 140(8) continues, as on date, to read that where a registered person having a centralized registration under the existing law has obtained a registration under the CGST Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of cenvat credit carried forward in a return furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed.
- Thus, even if one were to assume that EC, SHEC, and KKC are not liable to be transitioned, since they are not 'eligible', though the provisions of sub-sections (1), (3) (4) and (6) may contain a limitation to this effect, sub-section (8) contains no such limitation and any credit carried forward, without restriction of eligibility or otherwise, can be transitioned.
- The HC also made it clear that this conclusion is over and above its conclusion on the larger issue of eligibility under Section 140(1), which the Court has held in favour of the assessee.