

SUMMARY OF IMPORTANT JUDICIAL PRONOUNCEMENTS
FROM THE CHAMBERS OF ADVOCATE ANKIT KANODIA
REFERENCE NO- SKKA/106/2022

BASIC INFORMATION

IN THE MATTER OF	M/S BODAL CHEMICALS LTD
NAME OF Authority	IN THE HIGH COURT OF JUDICATURE AT AHMEDABAD
Petition/Appeal No.	R/SPECIAL CIVIL APPLICATION No. 9151 of 2021
Link to	2022-TIOL-303-HC-AHM-GST
Date of Order	11-02-2022
Relevant Section/Rule	Form GSTR - 6, Form GST TRAN - 1/ Section 140 of CGST Act 2017

FACTS IN BRIEF

The petitioner, M/s Bodal Chemicals Ltd was registered as the Input Service Distributor (ISD) under the erstwhile IDT regime. Post the implementation of GST w.e.f from 01.07.2017 the un-utilized credit lying in the credit register of the assessee were allowed to be transferred and carried forward to electronic credit ledger under the CGST Act by filing a return in Form ST-3. A declaration in Form GST TRAN - 1 was also required to be filed by the registered person by 27.12.17. The petitioner, in November 2017, filed GST TRAN-1 wherein the balance of the Cenvat Credit as on 30.06.17 including the un-utilized balance of ISD Cenvat Credit was Rs. 20,52,989 and filed a return in Form GSTR-06 for transferring of such credit to GST regime. However, on account of an error in GST network, the ISD balance was not added and the Cenvat Credit balance in the return was shown at Rs. 2,96,528. Many representations were filed to the Nodal Officer and the jurisdictional Assistant Commissioner as regards the aforesaid but of no avail. The petitioner filed a Writ Petition under Article 226 of the Constitution of India, seeking direction or order thereby directing the respondents to allow the petitioner to furnish if necessary manually, GSTR-6 return with the details of ISD credit and allow utilization of such credit.

JUDGEMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court while allowing the Writ Petition stated that :-
-In the view that a Coordinate Bench of this Court had considered an identical matter as the present one in the case of M/s Vishnu Aroma Pouching Pvt. Ltd. Vs. The Union of India, Special Civil Application No. 5629 of 2019 decided on 14.11.19, **it was held that the respondents cannot raise their hands in despair saying that it is not possible to correct or take care of the technical glitches.** The petitioner had been running from pillar to post requesting the respondents to provide a solution and take care of the technical error and glitch that occurred as regards furnishing the GTR -6 return for recording and distributing the ISD credit of Rs.20,52,989 and thereby resulting in disallowance to distribute the ISD credit of such amount.
-**The credit is a tax paid by the registered person on input transactions and therefore, the credit of such tax already paid to the credit of the Central Government is a vested right of the person.** Such a vested right cannot be defeated on account of irregularity in the system evolved by the Government. For the aforesaid reasons, the respondents were directed to allow the petitioner to furnish manually the GSTR- 6 return with details of ISD credit of Rs.20,52,989 and also permit distribution of such credit to the constituents of the petitioner within a period of six weeks from the date of the receipt of the said order.

OUR COMMENTS

With this judgment the Hon'ble High Court has clearly validated the point that the credit of the tax already paid to the Central Government is a vested right of the person and such vested right is indefeasible even on account of any irregularity in the system evolved by the Government. Further, the Court has taken a stringent approach on the respondent by stating that despite the fact that the petitioner had approached them at the earliest point of time, the respondent authorities maintained silence for a considerable point of time and did not provide remedial measures till directed by this Court. This will act as a relief to many taxpayers who are denied availing of such credit not on account of their fault but due to the default of the system evolved by the Government.