

Treading the GST Path – IV

Transitional Credit - Explained

(G. Natarajan, Advocate, Swamy Associates)

1.0 Sections 143 to 145 of the model GST Act deals with allowing transitional Input Tax Credit in certain circumstances.

2.0 As per section 143, the Cenvat Credit balance as per the last return filed by a tax payer under the earlier law (Central Excise Law), would be allowed to be carried forward as CGST credit and similarly, the input tax credit balance as per the last return filed by the tax payer under the earlier law (VAT law), would be allowed to be carried forward as SGST credit. Assuming GST is implemented from 1st April 2017, the cenvat credit / input tax credit balance as per the returns filed by the tax payer for the month of March 2017, would be allowed to be carried forward as CGST credit and SGST credit, respectively.

3.0 As per Section 144, the unavailed portion of credit for capital goods (as per Cenvat credit Rules, 2004 only 50 % would have been availed in the year of receipt and when the balance has not yet been availed), can be availed as CGST credit / SGST credit in respect of the unavailed portion of Central Excise duty credit and VAT credit respectively.

4.0 As per Section 145, a registered taxable person under GST, who was not registered under the earlier law or who was manufacturing exempted goods under the earlier law, but who is liable to pay GST is entitled to take input tax credit of the duties and taxes in respect of inputs held in stock, contained in semi finished goods or finished goods.

5.0 By way of an Explanation under Section 145, the term "eligible duties and taxes" which can be availed under Section 145 and 146 (which deals with allowing credit for stock of inputs for a person who switches over from composition scheme to a regular scheme) is defined, wherein various duties have been listed out. Curiously, the list also contains "service tax leviable under section 66 B of the Finance Act, 1994".

5.1 It is a common knowledge that no service tax is leviable on goods. Is it just a copy and paste mistake or can we read more into it?

5.2 It may be noted that as per sections 145 and 146, what is allowed as transitional credit is "eligible duties and taxes in respect of inputs held stock and inputs contained in semi finished or finished goods held in stock" and not eligible duties and taxes paid on inputs held stock and inputs contained in semi finished or finished goods held in stock.

5.3 Can it be argued that service tax paid in respect of inputs held stock and inputs contained in semi finished or finished goods held in stock can also be availed as credit under these transitional provisions? For example, the services used for procuring inputs, bringing them to the factory premises, services utilised in the manufacturing process, which resulted in conversion of such inputs into semi finished goods and finished goods, to the extent of their

stock on hand is also entitled for transitional credit? If that be so, how to quantify such credit?

6.0 Education CESS and Secondary and Higher Education CESS were leviable on Excise duty, upto 28.02.2015. The same were also levialble on service tax upto 31.05.2015. The said Education CESS and Secondary and Higher Education CESS paid on inputs / capital goods / input services was also cenvatable under the Cenvat Credit Rules, 2004 and such credit can be used only to pay the said levies, respectively. Once the Education CESS and Secondary and Higher Education CESS ceases to be leviable from 01.03.2015 (On excise duties) and from 01.06.2015 (On service tax), the balance of such Education CESS and Secondary and Higher Education CESS available with all tax payers has become redundant and could not be used for any purpose. Had that credit balance been carried forwarded as such in all the returns and upto March 2017 return, can such balance of Education CESS and Secondary and Higher Education CESS be availed as transitional CGST credit under the GST law?

6.1 Section 143 which deals with transitional credit in respect of the credit balance as per the last return under pre GST law, does not list down the duties and taxes which are entitled for such transitional credit under that provision. The said section requires that such credit should be admissible both under the earlier law and the GST law. Under the earlier law, credit of Education CESS and Secondary and Higher Education CESS was very much entitled and only it could not be utilised as there was no levy of Education CESS and Secondary and Higher Education CESS on the excisable goods and output services, from 01.03.2015 and 01.06.2015 respectively. The goods and services in respect of which such Education CESS and Secondary and Higher Education CESS have been paid, are entitled for input tax credit under GST law also.

6.2 In such circumstances, the argument that the balance of Education CESS and Secondary and Higher Education CESS credit, if shown in the last return under the pre GST law, can be carried forward as CGST credit under GST law, seems to be sustainable.

(Published in www.taxindiaonline.com on 03.09.2016)