

Chapter XX

Transitional Provisions

FAQ's

Q1. Whether KKC, Education Cess and Secondary & Higher Education Cess are allowed to be carried forward in the GST?

Ans. Input tax credit allowable as per Rule 3 of the CENVAT Credit Rules, 2004 will be eligible as CGST. However, credit of Krishi Kalyan Cess (KKC), Education Cess (EC) and Secondary and Higher Education Cess (SHEC) shall not be allowed. KKC, EC and SHEC are not included in list of "*eligible duties and taxes*" as provided in Explanation to section 140.

This further has been clarified by amendment made in Section 140 by the CGST Amendment Act, 2018 that credit of cesses will not be available.

Q2. Whether transitional credit carried forward under GST could be claimed as refund by exporter of services?

Ans. If the exports of services have been making export of services under LUT, it may claim refund of input tax credits availed only during the tax period in which export has been made. Further, it has been clarified in *Circular No 349/47/2017-GST dated 15th March 2018* that, transitional credits carried forward under GST regime cannot be claimed as refund in case of exports made under LUT.

However, if the supplier of services has made export of services on payment of IGST, he may utilise the credits (including carried forward credits from the erstwhile law also) for payment of IGST and can claim the refund of the same.

Q3. Assessee registered in pre-GST regime, got provisional ID at the time of GST migration but did not obtained final registration. Whether assessee can obtain GSTIN now?

Ans. The GST Council in its 28th meeting permitted to open the migration window for taxpayers, who received provisional IDs but could not complete the migration process. In this regard, the Central Government *vide Notification No.31/2018-Central Tax dated 6th August 2018* has provided that the persons who did not file the complete **FORM GST REG-26** of the CGST Rules, 2017 but received only a Provisional Identification Number till the 31st December, 2017 may now apply for Goods and Services Tax Identification Number (GSTIN).

Such taxpayers who filed **Part A of FORM GST REG-26**, but not **Part B** of the said FORM are required to approach the jurisdictional Central Tax/State Tax nodal officers with the necessary details on or before 31st August 2018.

It has also been allowed to waive the late fee payable for delayed filing of return in such cases. Such taxpayers are required to first file the returns on payment of late fees, and the waiver will be effected by way of reversal of the amount paid as late fees in the cash ledger under the tax head.

Q4. Is input tax credit balance as on transition date is vested right or accrued right for the taxpayer? Whether such credit lapses if, **FORM GST TRAN-1** not filed?

Ans. Credit balance is a vested right and **FORM GST TRAN-1** is a procedure to facilitate continuity of credit when the earlier laws stood repealed. To fail in failing **FORM GST TRAN-1** does not cast obligation on Government to find another way to preserve this right when the assessee was given time and opportunity to preserve their rights. Therefore, there is much doubt that infeasible nature of this vested right will continue despite of inaction by the assessee.

Q5. Will the vested right not be saved by section 6 of General Clauses Act, 1897?

Ans. Section 6 of General Clauses Act, 1897 saves vested rights and section 140 does not deny credit. In fact, it allows transition of credit without any re-examination of the credits, whether allowable or not. **FORM GST TRAN-1** is the measure to transition credit in GST regime. And requirement to file **FORM GST TRAN-1** is not an onerous task but compliance with procedure for continuation of credit balance.

Q6. After failure to file **FORM GST TRAN-1**, is there any relief that can be obtained from Proper Officer?

Ans. Given that this is the requirement in the CGST Act, there is no power for any Proper Officer to grant any relief. Grievance redressal forum is created by CBIC to examine cases where there may have been bona fide difficulty in filing **Form GST TRAN-1**. However, to secure credit without filing **Form GST TRAN-1**, there is remedy under the CGST Act.

Q7. Legal services availed in pre-GST period where service tax was not paid under Reverse Charge Mechanism but has been paid after implementation of GST. Whether benefit of the same may be claimed?

Ans. There is no transitional provision to provide for availing the credit/refund of the tax paid under Reverse Charge Mechanism in respect of services availed in pre-GST period. The matter needs to be suitably presented before Government to provide for the refund/credit of the same.

Q8. Will there be tax liability if transactions entered into prior to transition date are executed after introduction of GST?

- Ans. Overlapping transactions will not be liable to tax and the declaration filed under section 142(11) will have a bearing – whether the same has been disclosed as having already been subject to VAT and/or Service tax or not. Failure to disclose such transactions in transition declaration can attract GST incidence if any other event in section 12 or 13 of the CGST Act occur after introduction of GST. In view of the risk of litigation, it is important to review alignment of tax already paid and its disclosure under section 142(11).
- Q9. State the legal provisions relating to recovery of arrears arising out of proceedings under the erstwhile law covered under the ambit of [Circular No. 42/16/2018-GST dated 13th April, 2018](#) ?
- Ans. [Circular No. 42/16/2018-GST dated 13th April, 2018](#) specified the procedure to be followed for recovery of arrears arising out of proceedings under the erstwhile law. Following are the legal provisions relating to recovery of arrears of central excise duty and service tax and CENVAT credit thereof arising out of proceedings under the earlier are:
- (1) **Recovery of arrears of wrongly availed CENVAT Credit:** Any claim for CENVAT credit recoverable out of any proceeding of appeal, review or reference initiated, whether before, on or after the appointed day, under the existing law, shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [**Section 142(6)(b) of the CGST Act**].
 - (2) **Recovery of CENVAT Credit carried forward wrongly:** CENVAT credit of central excise duty/service tax availed under the existing law, not admissible in terms of section 140 of the CGST Act, shall be recovered as an arrear of tax **under section 79 of the CGST Act**.
 - (3) **Recovery of arrears of central excise duty and service tax:**
 - (a) Any amount of tax, interest, fine or penalty becomes recoverable as a result of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [**Section 142(8)(a) of the CGST Act**].
 - (b) Any amount of output duty or tax becomes recoverable, as a result of any proceedings of appeal, review or reference relating to output duty or tax liability initiated, whether before, on or after the appointed day, under the existing law, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [**Section 142(7)(a) of the CGST Act**].
 - (4) **Recovery of arrears due to revision of return under the existing law:** Where any return, furnished under the existing law, is revised after the appointed day

and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [**Section 142(9) (a) of the CGST Act**].

Q10. What are the procedure to be followed for recovery of arrears arising out of proceedings under the erstwhile law?

Ans. The Central Government vide [Circular No. 42/16/2018-GST dated 13th April, 2018](#) specified the procedure to be followed for recovery of arrears arising out of proceedings under the erstwhile law is as under:

1. **Recovery of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law and inadmissible transitional credit:**
 - The CENVAT credit of central excise duty or service tax wrongly carried forward as transitional credit shall be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (**FORM GST PMT-01**).
 - The arrears of central excise duty, service tax or wrongly availed CENVAT credit shall, unless recovered under the existing law, be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (**FORM GST PMT-01**).
2. **Recovery of interest, penalty and late fee payable:**
 - The arrears of interest, penalty and late fee in relation to CENVAT credit wrongly carried forward, arising out of any of the situations discussed above, shall be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).
 - Further, the arrears of interest, penalty and late fee in relation to arrears of central excise duty, service tax or wrongly availed CENVAT credit shall, unless recovered under the existing law, be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in the electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).
3. **Payment of central excise duty & service tax on account of returns filed for the past period:** With effect from 1st April 2018, the return filed on portal

www.aces.gov.in, the registered person shall be automatically taken to the payment portal i.e. ICEGATE portal for the payment relating to Central Excise / Service Tax return.

4. **Recovery of arrears from assessee under the existing law in cases where such assessee are not registered under the CGST Act, 2017:** Such arrears shall be recovered in cash, under the provisions of the existing law and the payment of the same shall be made as per the procedure mentioned in point 3 above.

It is pertinent to mention here, the aforesaid Circular *interalia* provides that the recovery of arrears arising under the existing law shall be made as central tax liability to be paid through the utilization of the amount available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (**FORM GST PMT-01**). However, the functionality to record this liability in the electronic liability register is not available on the common portal. Therefore alternative method of recovery has been provided vide Circular No. 58/32/2018-GST dated 4th September, 2018 this method of recovery, taxpayers may reverse the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of **FORM GSTR-3B**. The applicable interest and penalty shall apply on all such reversals which shall be paid through entry in column 9 of Table 6.1 of **FORM GSTR-3B**.