

**TRAN 01 Allowed – Assessee’s can claim Transitional Credit till 30th June 2020
[Delhi HC Judgement – Brand Equity Treaties Ltd Vs UOI – May 2020]**

Assessee filed or attempted to file Form TRAN-1 within the period of three years, permitted to file relevant TRAN-1 Form on or before 30.06.2020 and avail the Input Tax Credit accruing to them

Government to either open the online portal for filing of Tran 1 or accept the same manually

Highlights of the Judgement are as under:

- CENVAT credit which stood accrued and vested is the property of the assesseees, and is a constitutional right under Article 300A of the Constitution. The same cannot be taken away merely by way of delegated legislation by framing rules, without there being any overarching provision in the GST Act.
- Rule 117, whereby the mechanism for availing the credits has been prescribed, is procedural and directory, and cannot affect the substantive right of the registered taxpayer to avail of the existing / accrued and vested CENVAT credit. The procedure could not run contrary to the substantive right vested under sub Section (1) of Section 140.
- Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice.
[Ref: Salem Advocates Bar Association v. Union of India AIR 2003 SC 189]
- The purport of the transitory provisions is to allow a smooth migration from the erstwhile service tax regime to the new GST regime and the interpretation must be in consonance with the said purpose.
- This does not mean credit can be availed in perpetuity. Residuary provision of Limitation Act should be the guiding principle and maximum period for availing Cenvat Credit is 3 years from the appointed day.