

# Service Tax Paid in GST Regime is Eligible as Input Tax Credit



This is to apprise you about a welcome decision of Hon'ble Madras High Court in ***Ganges International Pvt Ltd v. AC GST & CE, (WP Nos. 1092 of 2019)***. The Court was dealing with a situation where the taxpayer paid Service Tax ('ST') under Goods and Services Tax ('GST') regime but could not avail the Input Tax Credit ('ITC') as the time limit to file ST return was elapsed.

## Facts

- The Petitioner, *inter alia*, provides construction services to Government. During the erstwhile ST regime, the Petitioner procured mining rights from the State Government and paid royalty as consideration to the Government.
- After introduction of GST, it was pointed that the Petitioner is liable to pay ST on such royalty, under reverse charge. The Petitioner, therefore, paid the same along with interest.
- The Petitioner wished to claim ITC on such payment of ST under the GST regime. However, the last date of filing of Form TRAN-1 and amendment of ST return was already elapsed.
- The GST Authorities too denied the request of the Petitioner to claim such ITC in the absence of any machinery provision since Section 142(3) only empowers refund of CENVAT credit in specified situation and does not allow transition of credit.

## High Court Decision

- The Hon'ble HC invoked the '***Doctrine of Necessity***' and construed that if Section 142(3) is not permitted to be invoked, then it would render the taxpayers remediless in the situations like the present one.

- The HC directed the Department to consider the application of Petitioner under Section 142(3) for taking credit and not refund.

#### **GABA & CO. | Remarks**

- *The judgment is a great news for the taxpayers. The decision not only applies to ST but also to CVD and excise duty paid under GST regime where credit could not be transitioned or refunded.*
- *This would also be true for CVD paid for non-fulfilment of export obligations under various scheme like EPCG, Advance license etc.*

#### **Disclaimer:**

*The views expressed in the update are strictly personal, based on our understanding of the underlying law. We are not responsible for any injury, loss or cost arising to any person who refers this update and acts or refrains from any act accordingly. We would suggest that a detailed legal advice must be sought before relying on this update.*

**GABA & CO.**

CHARTERED ACCOUNTANTS