

No. EXN—C009(08)/1/2021-GST CELL-E&T-Part-I- ~~368~~ 36875-93  
Government of Himachal Pradesh,  
Department of State Taxes and Excise.

To

1. The Additional/Jt. Commissioner of State Taxes and Excise,  
(South Zone, North Zone, Central Zone), Shimla, Palampur, Mandi,  
H.P.
2. The Joint Commissioner of State Taxes and Excise,  
Enforcement Zone, (Central Zone, North Zone, South Zone), Una,  
Palampur, Parwanoo, H.P.
3. The Dy. Commissioner of State Taxes and Excise,  
Shimla, Solan, Una, Sirmour, Bilaspur, Hamirpur, Mandi, Kullu,  
Chamba, Kangra, Revenue Distt Nurpur and BBN Baddi, H.P.
4. The Asstt. Commissioner of State Taxes and Excise,  
Incharge Distt. Kinnour, H.P.

Dated

Shimla-9

30 Nov., 2022.

Madam/Sir,

**Subject: Guidelines for verifying the Transitional Credit in light of the order of the Hon'ble Supreme Court in the Union of India vs. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018, order dated 22.07.2022& 02.09.2022-reg.**

Attention is invited to the directions issued by the Hon'ble Supreme Court vide order dated 22.07.2022 in the matter of Union of India vs. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018. The operative portion of the judgment is as follows:

- "1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.*
- 2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).*
- 3. GSTN has to ensure that there are no technical glitch during the said time.*
- 4. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.*
- 5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.*
- 6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims. The Special Leave Petitions are disposed of accordingly. Pending applications, if any, also stand disposed of."*

1.2. Subsequently in Miscellaneous Application No.1545-1546/2022 in SLP(C) No. 32709-32710/2018, Hon'ble Supreme Court vide order dated 2<sup>nd</sup> September, 2022 has inter-alia ordered as follows:

*“The time for opening the GST Common Portal is extended for a further period of four weeks from today.*

*It is clarified that all questions of law decided by the respective High Courts concerning Section 140 of the Central Goods and Service Tax Act, 2017 read with the corresponding Rule/Notification or direction are kept open.”*

2. As is clear from the above, the Hon'ble Court has directed that the common portal be opened for filing prescribed forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months from 01.10.2022 to 30.11.2022 for the aggrieved registered assessee (henceforth, referred as 'applicant'). The Transitional Credit claimed by the applicant shall be credited in his electronic credit ledger to the extent allowed by the jurisdictional tax officer through an order after carrying out necessary verifications. As per the Hon'ble Court's order, the said verification has to be carried out within 90 days after completion of the above window of two months, i.e. within 90 days from 01.12.2022 i.e. upto 28.02.2023.

2.1 It is to be noted that while allowing the applicant to file/revise TRAN-1/TRAN-2 during this window of 2 months, Hon'ble Supreme Court has kept all questions of law open.

2.2 It may be mentioned that Hon'ble Supreme Court has only allowed filing of TRAN 1/TRAN-2 or revising the TRAN-1/TRAN-2 already filed by the applicant and has not allowed the applicant to file revised returns under the existing laws.

3. Reference is also invited to the Department's Circular No. 180/12/2022 vide which guidelines have been issued for the applicants for filing new TRAN-1/TRAN-2 or revising the already filed TRAN-1/TRAN-2 on the common portal.

4. To ensure uniformity in the implementation of the directions of the Hon'ble Supreme Court across field formations, in exercise of its powers conferred by section 168 of the Himachal Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as "HPGST Act"), the following guidelines are hereby issued for verifying the Transitional Credit:

#### **5. Verification of the Transitional Credit**

5.1 The jurisdictional tax officers can access the TRAN-1/TRAN-2 filed/revise by the applicant on their BO portal. Further, a self-certified downloaded copy of TRAN-1/TRAN-2 filed/revise by the applicant shall also be made available to the jurisdictional tax officer by the said applicant as mentioned in Para 4.5 of Circular 180/12/2022.

5.2 The verification of the transitional credit shall be conducted by the jurisdictional tax officer who will pass an appropriate order regarding the veracity of the claim filed by the applicant, based



on all the facts and the provisions of the law. In respect of TRAN-1/TRAN-2 filed/revised by the applicant under the administrative control of the state tax authorities, such verification and issuance of order shall be done by the jurisdictional officer of state tax, whereas in respect of TRAN-1/TRAN-2 filed/revised by the applicant under the administrative control of the central tax authorities, the same shall be done by the jurisdictional officer of central tax. The jurisdictional tax officer shall start the verification process immediately on availability of TRAN-1/TRAN-2 filed/revised by the applicant on the back office system or on receipt of self-certified downloaded copy of the same from the applicant, whichever is earlier. It is needless to mention that principles of natural justice shall be followed in the process of passing the order relating to allowance or disallowance of the Transitional Credit.

**5.3** The jurisdictional tax officer shall, on the basis of declaration made by the applicant in the format specified in **Annexure A** to Circular no. 180/12/2022, and on the basis of data available on the back office system, shall check whether the applicant had earlier filed TRAN-1/ TRAN-2 or not. In cases where TRAN-1/ TRAN-2 had already been filed by the applicant earlier, the tax officer shall check whether there is any change from the earlier filed TRAN-1/TRAN-2 or not. In case, there is no change from the earlier filed TRAN-1/ TRAN-2, then such claim of transitional credit is liable for rejection by the tax officer, through a reasoned order, after providing due reasonable opportunity to the applicant.

**5.3.1** In other cases, the jurisdictional tax officer shall proceed for verification of claim of transitional credit made by the applicant in FORM TRAN-1/TRAN-2. In this regard, in respect of transitional credit pertaining to state tax, he may refer to the points detailed in **Annexure I** to this circular. In respect of verification of transitional credit pertaining to the central Tax, the tax officer may refer to the guidelines issued by the CBIC.

**5.3.2** There may be cases where the transitional credit claim filed/revised by the applicant may have components of both central tax and state tax. In such cases, where the applicant is under the jurisdiction of state tax officer and where the transitional credit claimed has component of central tax also, the jurisdictional state tax officer shall refer the said claim for verification of component of central tax to his counterpart central tax officer. For this purpose, he shall share the list of GSTINs/ARNs with the counterpart officer, in respect of which verification report is needed from him, on a weekly basis, along with an intimation of the same to the nodal officer of state tax as well as central tax referred in **Para 6.1** below through his official email ID or physically. Similar action, as above, shall also be taken by the jurisdictional central tax officers in cases where the applicant is under the jurisdiction of central tax officer and where the transitional credit claimed has component of state tax also.

**5.3.3** The jurisdictional tax officer shall, in parallel, continue the verification of the remaining portion of the transitional credit at his end.

**5.3.4** The jurisdictional tax officer and the counterpart tax officer shall verify the transitional credit claimed under the SGST or the CGST head, as the case may be, by referring to the points detailed in **Annexure I** to this circular for transitional credit pertaining to state tax and the guidelines issued by

the **CBIC** for verification of transitional credit pertaining to the **Central Tax**, as applicable. While conducting the verification, the officer must also check whether any adjudication or appeal proceedings in TRAN-1/TRAN-2 related matter are pending/concluded against the applicant. In such cases, where any adjudication or appellate proceedings have been initiated against the applicant in respect of TRAN-1/TRAN-2, the officer should take a note of the relevant facts in the notice/order, and the grounds/reasons for inadmissibility of transitional credit, if any, in the said notice/order.

**5.3.5** In respect of verification done by the counterpart officer, after verification, he will prepare a verification report, in the format detailed in **Annexure-II** of this circular, specifying the amount of transitional credit which may be allowed to be credited to the electronic credit ledger of the applicant and the amount which is liable for rejection, along with detailed reasons/ grounds on which the said amount is liable to be rejected. Such duly signed verification report shall be sent by the counterpart officer to the jurisdictional tax officer at the earliest, though generally not later than ten days from the date of receipt of the request from the jurisdictional officer. In case, where the adjudication or appeal proceedings in respect of TRAN-1/TRAN-2 related matter are pending/concluded against the applicant, the counterpart officer shall categorically bring out the relevant facts in his/her verification report alongwith his detailed findings, admissibility/ inadmissibility, reasons of inadmissibility thereof and the copy of the relevant notice and/or orders.

**5.3.6** For the purpose of verification of the claim of the transitional credit, the jurisdictional tax officer as well as the counterpart tax officer, if required, may call for relevant records including requisite documents/returns/invoices, as the case may be, from the applicant.

**5.3.7** After receiving the verification report from the counterpart officer, the jurisdictional tax officer shall decide upon the admissibility of the credit claimed by the applicant. In case the jurisdictional tax officer finds that the transitional credit claimed by the applicant is partly or wholly inadmissible as per the provisions of the Act and the rules thereof, then a notice shall be issued by the jurisdictional tax officer to the applicant preferably within a period of seven days from the receipt of report from the counterpart officer, seeking explanation of the applicant as to why the said credit claimed by him should not be denied wholly/partly, as the case may be. The applicant shall also be provided an opportunity of personal hearing by the jurisdictional tax officer in such cases. If required, the jurisdictional tax officer may seek comments of the counterpart officer on the submissions made by the applicant in so far as the said submission relates to the tax (State or **Central**) being administered by such counterpart officer.

**5.3.8** After considering the facts of the case, including verification report received from the counterpart officer, submissions made by the applicant and the comments, if any, of the counterpart officer on the same, the jurisdictional tax officer shall proceed to pass a reasoned order, preferably within a period of fifteen days from the date of personal hearing, specifying the amount of transitional credit allowed to be transferred to the electronic credit ledger of the applicant and upload a pdf copy of the said order, on the common portal for crediting the amount of allowed transitional credit to the electronic credit ledger of the applicant. In any case, such order shall be passed within a period of 90 days from 01.12.2022 i.e. upto 28.02.2023.



5.3.9 Where the amount credited to the electronic credit ledger pursuant to the originally filed TRAN-1/TRAN-2 exceeds the amount of credit admissible in terms of the revised TRAN-1/TRAN-2 filed by the applicant, such excess credit is liable to be demanded and recovered from the applicant, along with interest and penalty, in accordance with the provisions of Chapter XV of the Act and the rules made there under.

5.3.10 GSTN will also issue a separate advisory for entering the details on the portal by the tax officers.

6. **Modalities of coordination between state tax authorities and central tax authorities**

6.1 It is to be noted that **Deputy/Assistant Commissioner of State Taxes and Excise/ incharges of revenue districts** shall act as nodal officer(s) in their respective jurisdictions for proper co-ordination between **state** and **central** authorities for verification of transitional credit claims and shall make available the details of their phone numbers and email IDs, to the counterpart tax authority. The nodal officers i.e Deputy/Asstt. Commissioner of State Taxes & Excise/ incharges of revenue districts shall ensure that the verification reports/comments sought by the central jurisdictional tax officers are being sent in a timely manner.

6.2 It is the responsibility of the **Additional/Joint Commissioner of State Taxes and Excise incharges of Administrative Zones i.e. South Zone at Shimla, Central Zone at Mandi, North Zone at Palampur** to regularly monitor the progress made in this regard so that the timelines mentioned in the Hon'ble Supreme Court's order dated 22.07.2022 and 02.09.2022 are strictly adhered to by the circles/revenue districts.

7. This circular shall come into force from the date of issuance of corresponding circular by central government and in accordance with directions issued by this office letter no. 12-4/78-EXN-Tax—(278/25) dated 18<sup>th</sup> Jan, 2021.

8. Difficulties, if any, in implementation of this circular may be brought to the notice of this office.

Yours Faithfully,

**Yunus, (IAS)**  
**Commissioner of State Taxes and Excise,**  
**Himachal Pradesh**

ANNEXURE-I

**POINTS FOR VERIFICATION OF SGST TRANSITIONAL CREDIT CLAIMED BY  
THE APPLICANT IN TRAN-1/TRAN-2**

In the Form TRAN 1 the following entries decide all the SGST credit which is posted in the electronic credit ledger. These entries are briefly described below. It is advised that the SGST credit with regard to each entry is examined in detail and allowed after proper verification/scrutiny.

| S. No. | Table No. inTRAN-1      | Provision in HPGST Act | Indicative list of nature of Credit  |
|--------|-------------------------|------------------------|--|
| 1.     | Col. 10 in table 5(c)   | 140(1),140(4)(a)       | This table captures detail of VAT credit carried forward in the return VAT XV or VAT XVA-relating to the period ending with 30.06.2017, subject to conditions specified in section 140(1) of HPGST Act.  |
| 2.     | Column10 of table 6(b)  | 140(2)                 | This table captures details of un-availed credit of capital goods in the pre-GST era. This table is meant to be used by the taxpayers who have availed apportion of VAT credit on capital goods through VAT XV or VAT XVA return and now intend to <b>avail remaining credit in respect of capital goods which has not been availed through VAT XV or VAT XVA</b> . The said amount of credit should have been admissible as input tax credit under GST law as well as under existing law. |
| 3.     | Column (9) in Table7(b) | 140(5)                 | This table captures transitional credit taken on such <b>inputs or input services which were received after 1st of July, 2017</b> but taxes on which were paid under the existing law(Goods). It does not apply to capital goods.  |

|    |                                  |                          |   |   |
|----|----------------------------------|--------------------------|---|---|
| 4. | Table 7(c)                       | Column (8) in Table 7(c) | 140(3), 140(4)(b) and 140(6)                        | This table pertains to credit claim by new taxpayers or taxpayers who were either not registered or were not part of VAT Credit chain earlier. Here, Credit can be claimed in TRAN-1 in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day based on invoice / document evidencing payment of tax ,subject to fulfillment of other conditions specified in section 140(3), 140(4)(b) and 140(6) as the case maybe.                                     |
| 5. | Coulmn6 in Table 10(a) and 10(b) |                          | 142(14)   | This table pertains to the credit claimed by the agent, if any goods or capital goods belonging to the principal are lying at the premises of the agent on the appointed day, the agent can take credit of the tax paid on such goods or capital goods  |
| 6. | Column(7)inTable11               |                          | Section 142(11)(c) read with Rule 118of-HPGST Rules | Transition of credit in respect of supplies which attracted both VAT and Service Tax in pre-GST era and where VAT and Service Tax both were paid, before 1st July 2017, on any supply but the supply is made after 1 <sup>st</sup> July,2017.The taxable person is entitled to take as-SGST credit, the VAT paid under the existing law to the extent of supplies made after 1st July, 2017 as he would be liable to pay SGST in respect of such supplies. (VAT credit cannot be taken as Service tax credit and vice versa). |



**Notes:**

- 1) Check that credit which is being claimed through TRAN 1/TRAN-2 is not taken through return in FORM GSTR-3B. This can lead to double credit being taken.
- 2) Clarifications issued vide circular no. 33/07/2018-GST dated 23.02.2018 regarding disputed credit and blocked credit may be followed during the verification process of the transitional credit.

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VERIFICATION REPORT FOR TRAN-1/TRAN-2 TO BE SUBMITTED BY THE  
COUNTERPART OFFICER TO THE JURISDICTIONAL TAX OFFICER

1. Basic information:

|     |   |         |
|-----|---|---------|
| (a) | Name                                      |         |
| (b) | GSTIN                                     |         |
| (d) | Whether transition credit claimed earlier | Yes/ No |

2. (a) Whether SCN/Adjudication order issued in respect of credit availed through TRAN-1/TRAN-2 filed earlier; if "Yes", provide reference number and date:

(b) If answer to (a) above is "Yes", then amount of transitional credit disallowed/proposed to be disallowed out of total claim filed by the applicant earlier:

|     | *Table of TRAN-1/TRAN-2 | # Amount of credit disallowed/ proposed to be disallowed | @Grounds on which credit is disallowed/ proposed to be disallowed | § Whether recovered |
|-----|-------------------------|--|---|---------------------|
| (a) |                         |  |   |                     |
| (b) |                         |  |   |                     |
| (c) |                         |  |   |                     |

Notes:

- 1) Add additional rows if required
- 2) \*Specify the serial number of the Table (of earlier filed TRAN-1/TRAN-2), the credit in respect of which has either been disallowed through an order or is proposed to be disallowed through an SCN
- 3) #Specify the amount which has been disallowed/proposed to be disallowed
- 4) @Specify the grounds for disallowance of the said credit
- 5) §Specify whether amount has been recovered, either in cash or debit to credit ledger
- 6) Attach copies of the relevant notice/ adjudication order

3. (a) Whether appeal has been filed against the adjudication order, if any, specified in serial number 2 above; if "Yes", provide appeal number and date of filing appeal.

(b) If appeal has been disposed of, then provide order number and date:

(c) Details relating to Appellate Order:

|     | *Table of<br>TRAN-<br>1/TRAN-2 | Findings of<br>Appellate<br>Authority | <sup>5</sup> Whether<br>recovered |
|-----|--------------------------------|---------------------------------------|-----------------------------------|
| (a) |                                |                                       |                                   |
| (b) |                                |                                       |                                   |
| (c) |                                |                                       |                                   |

Notes:

- 1) Add additional rows if required
  - 2) \*Specify the serial number of the Table (as mentioned in Table at serial number 2 above) and the amount of tax the claim in respect of which has been adjudicated and the appeal has been decided.
  - 3) Specify whether amount has been recovered, either in cash or debit to credit ledger
  - 4) Attach copies of the order of the appellate authority
4. Amount of credit claimed afresh/revised (as per TRAN-1/ TRAN-2 filed/ revised during the present window of two months) by the applicant, the amount admissible, the amount inadmissible, if any, along with the grounds/ reasons for non-admissibility thereof:

|     | Table                     | Amount Claimed<br>in newly filed/<br>revised TRAN-1<br>/ TRAN-2 |                | Amount<br>Admissible |                | Amount<br>inadmissible, if<br>any |                | Grounds of<br>inadmissibility,<br>along with the<br>relevant<br>provisions of<br>law/ rules |
|-----|---------------------------|---|----------------|----------------------|----------------|-----------------------------------|----------------|---|
|     |                           | CGST  | SGST/<br>UTGST | CGST                 | SGST/<br>UTGST | CGST                              | SGST/<br>UTGST |   |
| (a) | 5(a) of<br>TRAN -1        |   |                |                      |                |                                   |                |   |
| (b) | 5(c) of<br>TRAN-1         |   |                |                      |                |                                   |                |   |
| (c) | 6(a) of<br>TRAN-1         |   |                |                      |                |                                   |                |   |
| (d) | 6(b) of<br>TRAN-1         |   |                |                      |                |                                   |                |   |
| (e) | 7(a)(7A)<br>of TRAN-<br>1 |   |                |                      |                |                                   |                |   |



|     |                                |  |  |  |  |  |  |  |
|-----|--------------------------------|--|--|--|--|--|--|--|
| (f) | 7(a)(7B) of TRAN-1             |  |  |  |  |  |  |  |
| (g) | 7(b) of TRAN-1                 |  |  |  |  |  |  |  |
| (h) | 7(c) of TRAN-1                 |  |  |  |  |  |  |  |
| (i) | 8 of TRAN-1                    |  |  |  |  |  |  |  |
| (j) | 10(a) of TRAN-1                |  |  |  |  |  |  |  |
| (k) | 10(b) of TRAN-1                |  |  |  |  |  |  |  |
| (l) | 11 of TRAN-1                   |  |  |  |  |  |  |  |
| (m) | Aggregate of Table 4 of TRAN-2 |  |  |  |  |  |  |  |
| (n) | Aggregate of Table 5 of TRAN-2 |  |  |  |  |  |  |  |

5. Other relevant information, if any (Please give details):

Place:

Date: Signature of counterpart officer

· (Name and designation of counterpart officer)