



आयुक्त(अपील)काकार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2018/2021 / 1670 - 1676

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-ADC-20/2022-23**

दिनांक Date : **14-06-2022** जारी करने की तारीख Date of Issue : 14-06-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **05/AK/SUPDT/GST/2021-22** dated **09.04.2021** issued by Superintendent, AR-III, Central Goods and Service Tax, Division Kadi, Gandhinagar Commissionerate

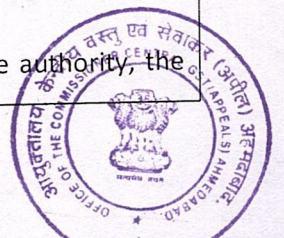
ध अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s Aksharchem (India) Limited

166-169, Kadi Kalol Road, Indrad Kadi,

Mehsana, Gujarat - 382727

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| (A) | इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way. |
| (i) | National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017. |
| (ii) | State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017 |
| (iii) | Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand. |
| (B) | Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online. |
| (i) | Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed. |
| (ii) | The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later. |
| (C) | उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the websitewww.cbic.gov.in . |



ORDER- IN- APPEAL

This appeal has been filed under Section 107 of the Central Goods and Service Tax Act, 2017 by M/s, Aksharchem (India) Ltd, 166-169, Kadi Kalol Road, Indrad Kadi, Mehsana, Gujarat-382727 [hereinafter referred as to as 'appellant'] against the Order-in- Original No. 05/AK/SUPDT/GST/2021-22 dated 09.04.2021 (herein after called as the " impugned order") passed by the Superintendent, CGST, AR-III, Kadi Division (hereinafter called as the " adjudicating authority")

2. Brief Facts of the case

2.1 During course of the EA-2000 audit of the appellant, it was observed that the appellant filed FORM GST TRAN-1 on 26.12.2017 and claimed transitional credit of Rs. 2,79,576/- as Input Tax Credit of CGST as closing balance for ST-3 for service tax Reg. AABCA2805MSD002 under Section 140(1) of the CGST, Act, 2017(details as Table 5(a) FORM GST TRAN-1), it was observed that said credit was required to have been claimed in Table 7b under Section 140(3), 140(4)(b) *ibid*. Further, it was also noticed that closing balance of Cenvat Credit in ST-3 filed for the period of April to June 2017-18 was nil therefore the it appear that the Cenvat Credit of Rs. 2,79,576/- was wrongly transferred as Input Tax Credit under Section 140(1) in Table 5(a) of FORM TRAN-1.

2.3 The Jurisdictional Range Superintendent issued a Show Cause Notice to the appellant as to why:-

(i) The excess amount of transitional credit of Rs.2,79,576/- taken as Input Tax Credit taken as Input Tax Credit of CGST in Table 5(a) of Form GST Tran-1 in contravention of Section 140(1) of CGST Act, 2017 should not be demanded and recovered from them in terms of Rule 121 of Central Goods and Service Tax Rules, 2017 read with Section 73 of CGST Act, 2017.

(ii) Interest at the applicable rate should not be demanded and recovered from them on excess transitional credit availed under the provisions of Section 50 of Central Goods and Service Tax Act, 2017.

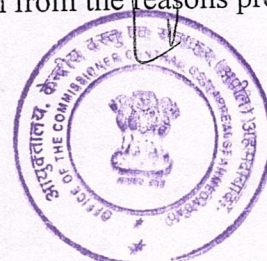
(iii) Penalty shall not imposed on them under Section 122(2)(a) of CGST Act, 2017.

2.4 After considering the reply of appellant the adjudicating authority confirmed the demand under Section 73(1) of CGST Act, 2017 with applicable Interest under Section 50 of CGST Act, 2017 and imposed penalty under Section 122(2)(a) of CGST, Act, 2017.

3. Aggrieved with the Order No. 05/AK/SUPDT/GST/2021-22 dated 09.04.2021, passed by the Superintendent, CGST, AR-III, Division Kadi, the appellant filed the present appeal with the following ground:-

(i) That before the Ld. Superintendent it was stated that money of service tax under reverse charge was receivable as a credit and same was supposed to use against the excise liability.

(ii) That in the show cause issued, it was alleged that appellant has claimed transaction credit under a different table whereas in the order passed, there is a deviation from the reasons provided in the show cause notice.



(iii) That primary objection for the wrong column of the claim for transition credit was raised by the Department and suddenly in the order passed, a diametric opposite view has been taken which goes against the recitals of the show cause notice issued to the appellant.

(iv) The appellant argued that there is not that there is no iota of doubt about the admissibility of the claim of the amount paid under reverse charge worth Rs. 2, 79,576/- as a transition credit. Therefore, on this sole ground only the claim of transaction credit stands admissible.

(v) That the appellant has submitted that there is no merit in say that the appellant was supposed to file revised service tax returns. They submitted that the amount which is so paid as reverse charge and claimed as transition credit does not form a part of any prohibited credit under the erstwhile law. Based on the said analogy the question of denial transition credit never arises.

(vi) Further the appellant submitted that disputes revolves around the claim of transition credit of RCM paid of service tax for invoices which bore the date prior to the appointed date under the GST Act, 2017. Naturally since invoices bore the date prior to 1st July 17 there was onus on the appellant to discharge the liability under the previous regime which the appellant complied with. Naturally since the invoice come late and there is a procedure to verify the invoices and services actually received, the invoices of date prior to 1st July 2017 could not be considered as invoices falling under GST Act. Therefore, when the invoices bore the date of prior to July 17 the allegation of the Ld. Officer that the appellant admit that he has received service in June 17 and the Section 140(5) does not hold good . Unless the appellant agrees to provision of service received there cannot be a presumption to same.

(vii) That the appellant argues that merely for want of reflecting a figure in particular manner can never be act as barrier to the claim of transition credit when substantive conditions are complied with. In the instant case when there is no dispute about the admissibility of the amount paid as credit under the erstwhile regime, merely on manner of reflecting the same in way other than specified can never be the reason for denial of tax credit as it is a well settled principle that for a procedural flaw the benefit cannot be denied

(viii) The appellant has also submitted that imposition of penalty and demand of interest was not legal and must be removed.

(ix) The appellant has submitted that it has brought on record all the chain of events and the circumstances under which transition credit was claimed and demonstrated the amount which it had paid as service tax under RCM worth Rs. 2,79,576/- was missed in the service tax return but they are entitled of input tax credit of the same

4. PERSONAL HEARING

Personal hearing in the case on virtual mode in the case was held on 12.05.2022.CA, Soham Mashruwala authorized representative of the appellant attended the hearing. He has nothing more to add to their written submissions till date.

5. DISCUSSIONS AND FINDINGS



I have gone through the Show Cause notice and submissions made by the appellant in defense reply and during the personal hearing. The issues before me to be decided in the case are as under:-

- (a) Whether Service Tax paid under Reverse Charge Mechanism for the services received viz. Goods Transport Agency and Security service but not avail in ST-3 for April to June, 2017, however carried forwarded as transitional Credit in Table 5(a) of FORM GST TRAN-1 can be allowed or not.
- (b) Whether the appellant's request to consider the transitional credit under sub-section 140(5) and 140(7) in table 7(b) of TRAN-1 can be considered or not.

5.2 First I take up the issue about the transitional credit carried forwarded in Table 5(a) of Form GST Tran -1 is eligible or not. I find that the petitioner is inter alia engaged in manufacture activities and is registered under the CGST Act. Under the erstwhile Central Excise provisions the petitioner has two Central Excise and Service Tax registrations. At the time of migration to GST regime, the petitioner had CGST transitional credit to be claimed /transferred to its GST electronic credit ledger in terms of sub-section (1) of section 140, sub-section (2) section 140 and sub-section (5) section 140 of the CGST Act. In terms of the provisions of section 140 of the CGST Act, post migration to GST, the petitioner was entitled for the input tax credit of the following:

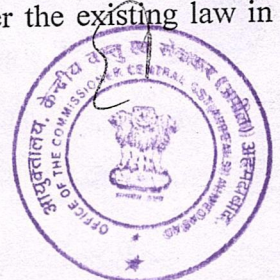
- Input credit of closing balance under ER-1/ST-3.
- Input or input services in respect of which the supplier has already paid duty under the erstwhile Central Excise Act, 1944 and service tax under Finance Act, 1994.

5.3. I find that appellant had filed monthly returns in form of ST-3 for the Month of April – June, 2017. The closing balance of the Cenvat Credit for ST-3 the balance was 0/-.

5.4 I find that the petitioner while filing FORM GST TRAN-1 provided details of balance credit amounting to Rs.2, 79,576/- under ST-3 returns under column 5 of Tran-1 Table.

5.5. I find that the appellant is entitled to carry forward balance cenvat credit available in ST-3 in terms of sub-section (1) of section 140 of CGST Act. Referring to the provisions of section 140 of the CGST Act, this to the extent the same are relevant for the present purpose read as under:

"140. Transitional arrangements for input tax credit.-- (1) A registered person, other than a person opting to pay tax under Section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:



Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:--

- (i) Where the said amount of credit is not admissible as input tax credit under this Act; or
- (ii) Where he has not furnished all the returns required under the existing law for the period of six months.

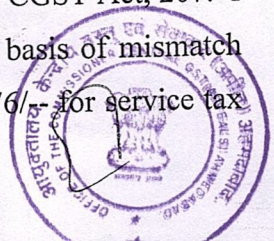
5.6 I find that as per circular dated 28th September 2017, after amended of ST-3 the appellant was to be transferred Input service tax credit in column 5 of Tran-1 Table. As the column 5 of Tran-1, the appellant is entitled to carry forward balance cenvat credit available in ST-3 in terms of sub-section (1) of section 140 of CGST Act. I find the balance of Cenvat Credit in ST- 3 for the period of April to June 2017 was 0/- . Hence, the appellant had carried forwarded Cenvat credit of Rs. 2, 79,576/- without having any closing balance in ST-3 of April to June-2017. The appellant submitted due to the circumstances the TRAN-1 was missed in the serviced tax return.

5.6 I find that the appellant has submitted that they had received the Invoices after the appointed day hence they falls in the category of Section 140(3) of CSGT Act, 2017 and credit was to be shown in column 7 of TRaAN-1. I find that appellant has himself admitted that the all the invoices were dated before the appointed day i.e. 30.06.2017. The service was competed in June'2017. Hence the appellant's argument is not to the point. Further, it is observed that the payment of service tax of RCM was made on 06/07/2017.

5.7 I find that the adjudicating authority has disallowed the transitional input tax credit for reason that the appellant had nil balance in ST-3 return filed for the period April to June 2017 and they had taken input tax credit in column 5 of Tran-1 as per Section 140(1) of GST Act, 2017.

5.8 I find that on perusal of C.B.E. & C Circular No. 207/5/2017-S.T., dated 28.09.2017 it is clearly stated that in cases where the service was received before 01.07.2017 and payment of the value of service was also made before 01.07.2017 and service tax credit would be available after the payment of service tax. The appellant had paid service tax on reverse charge basis after the appointed day. In such cases, details of credit arising as a consequence of payment of service tax on reverse charge basis after 30th June 2017. The details were to be indicated in ST-3 as per sr. 2.2 of the Circular. In case the return has already been filed by or after the due date, these details should be indicated in the revised return, the time for filing of which is 45 days from the date of filing. I find that the appellant had filed ST-3 return on 14.08.2017 and Tran-1 was filed on 26.12.2017. I find that the appellant could have easily filed amended ST-3 but they have failed to do so.

5.8 I find that the appellant has disclosed that they were required to transfer the input tax credit in head 7 of GST Tran-1 under Section 140(5) of the CGST Act, 2017. I find that the argument of the appellant is not proper. The appellant could have amended the ST-3 return and balance of cenvat was to be transferred in head 5 of TRAN-1 under Section 140(1) of the CGST Act, 207. I find that the adjudicating authority has disallowed transitional credit on the basis of mismatch was reflected on the common indicating that transitional credit of Rs. 2,79,576/- for service tax



registration return filed on 14.08.2017 was not available in ST-3 filed. I find that the appellant has relied upon the Judgment in case of M/s.Jakap Metind Pvt. Ltd. Vs. UOI and Others [76 GSTR 220] wherein it has been held that the claim of transition credit cannot be denied merely because there was an error in filling the details in the wrong column. The ratio of this decision squarely applies to the instant case.

5.09 I find that in case of judgment rendered by a Division Bench of the Hon'ble Punjab & Haryana High Court in Adfert Technologies Pvt. Ltd. Vs. Union of India & Ors. (CWP No. 30949 of 2018 (O & M) (4 of 9) [CW-275/2020] decided on 4.11.2019) , relevant portion of which is reads as under:

“5. Counsel for the Petitioners contended that there were so many reasons for non-filing of CENVAT/ITC of duty/tax paid under Central Excise Act/VAT Act is vested right of Petitioners which cannot be washed away and any contrary interpretation For Subsequent orders see CWP-29279-2019 Decided by HON'BLE MR JUSTICE JASWANT SINGH; HON'BLE MR. JUSTICE SANT PARKASH 5 of 38 CWP No.30949 of 2018(O&M) #6# would amount to violation of Article 14 as well 3000A of Constitution of India. It would further amount to double taxation which cannot be permitted in any taxation regime. The Petitioners prior to July' 2017 were duly registered with tax authorities under Central Excise Act, Finance Act, 1994 (Service Tax) and/or State VAT Act and Respondent department has completed record of unutilized CENVAT/ITC thus department has no authority to deny credit on technical or procedural grounds. An assessee is entitled to ITC of GST paid on inputs/capital goods purchased after 01.07.2017 so there is no logic to deny ITC of duty/tax paid under old taxation regime.

5.11 I find that Union of India has preferred Special Leave to Appeal (C) No. 4408/2020 before the Hon'ble Supreme Court against the judgment rendered in Adfert Technologies Pvt. Ltd. Vs. Union of India & Ors(supra) which was decided on 28.02.2020, while affirming the judgment rendered by the Division Bench of the Hon'ble Punjab & Haryana High Court. I find that adjudicating authority in his finding has not questioned the eligibility of Cenvat Credit transferred in TRAN-1. I find that it is fact the appellant has not followed provisions contained in Section 140 (1) of CGST Act, 2017 but looking to the findings given by the various High Courts I hold that when there is no question about the admissibility of Cenvat Credit, the procedural lapses should be ignored and substantial benefit cannot be denied

5.12 I also rely on the judgment of M/s. **The India Cements Limited vs The Union Of India** on 15 March, 2021 relevant portion of judgment which read as under:-

9. Having scrutinized record of the case(s) and heard arguments of both sides, we find that on the introduction of GST regime, Government granted opportunity to registered persons to carry forward unutilized credit of duties/taxes paid under different erstwhile taxing statues. GST is an electronic based tax regime and most of people of India are not well conversant with electronic mechanism. Most of us are not able to load simple forms electronically whereas there were a



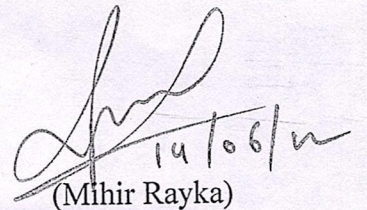
number of steps and columns in TRAN-1 forms thus possibility of mistake cannot be ruled out. Various reasons assigned by Petitioners seem to be plausible and we find ourselves in consonance with the argument of Petitioners that unutilized credit arising on account of duty/tax paid under erstwhile Acts is vested right which cannot be taken away on procedural or technical grounds. The Petitioners who were registered under Central Excise Act or VAT Act must be filing their returns and it is one of the requirements of Section 140 of CGST Act, 2017 to carry forward unutilized credit. The (6 of 9) [CW-275/2020] Respondent authorities were having complete record of already registered persons and at present they are free to verify fact and figures of any Petitioner thus inspite of being aware of complete facts and figures, the Respondent cannot deprive Petitioners from their valuable right of credit.

6. From the judgments refereed above it can be safely inferred that if the admissibility of Cenvat credit is not in question, then the substantial benefit of appellant cannot be denied.

7. I find that as regard to **availment of Tran-1 credit of Rs. 279576/-** the appellant has produced Challan No. 18094 dated 06.07.2017 and had paid service tax in RCM to the tune of Rs. 371458/-. In view of the forgoing discussions, I allow the appeal and set aside the order passed by the adjudicating authority. The appellant is directed to submit all the relevant documents/ submission before adjudicating authority.

8. अपील कर्था द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

8. The appeals filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: .06.2022

Attested



(H. S. Meena)
Superintendent
Central Tax (Appeals)
Ahmedabad



By R.P.A.D.

To,

M/s, Aksharchem (India) Ltd,
166-169, Kadi Kalol Road, Indrad Kadi,
Mehsana, Gujarat-382727

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C.Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Commissionerate- Gandhinagar
4. The Assistant Commissioner, CGST & C.Ex, Division-Kadi, Gandhinagar
Commissionerate-
5. Superintendent, CGST, AR-~~II~~ Kadi Division, Gandhinagar
Commissionerate.
6. The Additional Commissioner, Central Tax (System), Gandhinagar
Commissionerate -.
- ✓ 7. Guard File.
8. P.A. File

