



# 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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DIN NO. : 20220664SW0000569249

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1151/2021/1677-1683

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-ADC-21/2022-23**  
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 **03/AK/SUPDT/GST/2021-22** dated **06.04.2021** issued by Superintendent, AR-1, Central Goods and Service Tax, Division Kadi, Gandhinagar Commissionerate

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

M/s Shreenathji Rasayan Pvt. Ltd.  
Survey No. 1418, Rajpur, Kadi,  
Mehesana, Mehsana, Gujarat - 382715

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 website <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .





**ORDER- IN- APPEAL**

This appeal has been filed under Section 107 of the Central Goods and Service Tax Act, 2017 by M/s, Shreenathji Rasayan Private Limited, Survey No. 1418, Rajpur, Kadi, Mehsana, Mehsana, Gujarat-382715 [ hereinafter referred as to as 'appellant'] against the Order-in-Original No. 03/AK/SUPDT/GST/2021-22 dated 06.04.2021 ( herein after called as the "impugned order") passed by the Superintendent, CGST, AR-1, Kadi Division ( hereinafter called as the " adjudicating authority" )

**2. Brief Facts of the case**

2.1 The appellant having GSTIN 24AAKCS3181M1ZZ is engaged in business activities of Factory/ Manufacturing. The appellant filed FORM GST Tran-1 under Rule 117 of CGST Rules, 2017 and claimed transitional credit of Rs. 43, 71,957/- as Input Tax Credit of CGST under Section 140(1) of CGST Act, 2017.

2.2 During the verification of Form GST Tran-1 it was noticed that the closing balance of Cenvat Credit of Service Tax in ER-1 filed for the Central Excise Registration No. AAKCS3181MXM001 for the month June, 2017 as well as ST-3 Return filed for Service Tax Registration No. AAKCS3181MSD001 for the April –June, 2017-18 was Rs. 0/-. However, the appellant has claimed Transitional Credit as Input Tax Credit to the tune of Rs. 1, 09,740/- for the last return filed for ST registration.

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. 1, 09,740/- taken as Input Tax Credit pf CGST in Table 5(a) of Form GST Tran-1 in contravention of Section 140 of CGST Act, 2017 should not be demanded and recovered from 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 140(1) of CGST Act, 2017 and 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. 03/AK/SUPDT/GST/2021-22 dated 06.04.2021, passed by the Superintendent, CGST, AR-1, Division Kadi, the appellant filed the present appeal with the following ground:-

(i) That combined reading of Rules 7 of Point of Taxation Rules, 2011 and Section 140(5) of CGST Act, 2017, it is clear that the services which have been received after appointed day and the registered person has paid tax under the earlier provisions of





law then the credit of such tax shall be available in his electronic credit ledger; in the given case where the appellant has recorded transactions in the books of account before the appointed day and payment has been made after the appointed day along with service tax under RCM. In case of services under RCM the services are deemed to be provided after the appointed day i.e. 01/07/2017, the appellant is eligible to take credit according to section 140(5) in his electronic credit ledger by filing Form GST Tran-1 in accordance with Rule 117 of CGST Act, 2017.

- (ii) That the adjudicating have stated circular No. 207/5/2017-Service Tax dated 28.09.2017 which clarifies certain transitional issues with respect to payment of service tax made after the 30.06.2017; the circular in point 2.1 clarifies the transitional credit issues where the services was received before 01/07/2017. In the given case the services have been received after 01/07/2017 and payment with respect to such services was also made after 01/07/2017. Hence, the cited circular is not at all applicable to the appellant.
- (iii) Further it has been submitted that in case of credit claimed under Section 140(5), the same has to be shown in head 7 of GST Tran-1 form, which has been inadvertently shown by the appellant under head 5. This was merely a procedural error and there is no dispute about availability of credit.
- (iv) Further, there is no dispute as the genuineness of the cenvat credit and its validity available to the appellant. Only because of procedural error or not disclosing the credit under separate head, the benefit of ITC should not be taken away. The appellant had also approached department and helpdesk for guidance in the said matter and advised to claim credit by filing Tran-1.
- (v) The appellant has submitted that similar nature of cases has been disposed by the various Hon'ble High Court on the grounds that in case of inadvertent mistake on filing return or revised return or due to any technical error/mistake, the genuine taxpayer should not suffer. The appellant has relied upon with the following cases as given below:-
  - (a) M/s. Blue Bird Pure Pvt. Ltd. Versus Union of India & Ors. [ 2019(7) TMI 1102-Delhi High Court
  - (b) M/s. SKM Steels Ltd. , Authorized Distributors of Tata steel Limited Versus Union of India Through Minister of Finance & Ors[ 2020(4) TMI 267- Madhya Pradesh High Court ]
- (vi) The appellant has submitted that appellant was required to revise ST 3 return in accordance with the Circular No. 207/5/2017-Service Tax dated 28.09.2017. However, from the provisions of law stated above it can be understood that there was no need to revise ST-3 return and credit claimed is proper.
- (vii) Further , it has been submitted that with respect to amount of Rs. 2131/- pertains to service tax paid which was inadvertently not disclosed in ST-3 returns and requested to allow the credit.





(viii) The appellant has requested to set aside the order.

#### 4. PERSONAL HEARING

Personal hearing in the case on virtual mode in the case was held on 12.05.2022. Shri CA, Shri Punit Prajapati 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.
- (c) Whether, credit of Rs. 2131/- not taken can be allowed 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 ER-1 and ST-3 for the Month of June, 2017 and April – June, 2017 respectively. The closing balance of the Cenvat Credit for the ER-1 was Rs. 43, 71,957/- and 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.1, 09,740/- 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, which 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 the as per circular dated 28<sup>th</sup> 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. 1, 09,740/- without having any closing balance in ST-3 of April to June-2017.

5.6 I find that the appellant has submitted that they are eligible to take credit according to Section 140(5) in his electronic credit ledger by filing of Tran-1 and they have submitted that in case of credit claim under 140(5), the same has to be shown in head 7 of GST Tran-1 form, which has been inadvertently shown by the appellant under head 5. The interpretation of the circular made by the appellant is not proper.

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 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. The adjudicating authority has also stated in his finding that the in view of the C.B.E. & C Circular No. 207/5/2017-S.T., dated 28.09.2017 they were given an opportunity to file a revised return till 30.09.2017 (as per para 2.2 of said circular ).

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 on 05-07-





2017. In such cases, details of credit arising as a consequence of payment of service tax on reverse charge basis after 30<sup>th</sup> June 2017 by 5<sup>th</sup> or 6<sup>th</sup> July 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 29.09.2017. I find that the appellant could have easily filed amended ST-3 but they have failed to do so.

5.9 I find that in case of Cenvat Credit transferred in TRAN-1 in respect of invoice dated 27.06.2017 for Rs. 2131/- the adjudicating authority has disallowed cenvat credit with the reason that they have not taken the cenvat credit in ST-3 filed for the period of April- June 2017. They could have filed revised ST-3 and TRAN-1 returns as per circular and take the credit in Tran-1.

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, 2017. Further I find that the adjudicating authority has not questioned the admissibility of the Input Tax credit transferred by the them. 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. 109740/- 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. Blue Bird Pure Pvt. Ltd. Versus ) Union of India & Ors. [ 2019( 7) TMI 1102-Delhi High Court ], M/s. SKM Steels Ltd., Authorized Distributions of Tata Steel Limited Versus Union of India Through Minister of Finance & Others [2020 (4) TMI 267-Madhya Pradesh High Court ] wherein it has been held by the Hon'ble High Court that due to procedural error such as non – filling of return, error in disclosure in correct head, etc the benefit of legitimate cenvat /ITC shall not be denied.

5.9 I find that the ongoing through the Judgments of Hon'ble High Courts relied upon by the appellant it is observed that in all the cases the appellants did try to file the revise the Tran-1 but system did not allow the appellant to rectify the Tran-1 and Hon'ble High Court has directed to the Department to open the system and allow the appellant to filed the revised Tran-1 and if the system is not permitted to revise the Tran-1, then the revised Tran-1 should be accepted manually.

5.10 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 complete 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, hence I am of the view that 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.



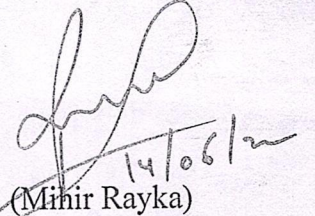


7. In view of the forgoing discussions, I allow the Transitional Credit to the tune of Rs. 1,09,740/- (Rs. 1,07,609/-+ Rs. 2131/-).

8. I allow the appeal filed by the appellant and set aside the order passed by the adjudicating authority.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeal 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. Shreenathji Rasayan Private Limited ,  
Survey No. 1418, Rajpur, Kadi, Mehsana, Mehsana,  
Gujarat-382715

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-Kalol, Gandhinagar Commissionerate-
5. Superintendent, CGST, AR-1, Kadi Division, Gandhinagar Commissionerate.
6. The Additional Commissioner, Central Tax (System), Gandhinagar Commissionerate -.
- ✓ 7. Guard File.
- 8 P.A. File