आयुक्त(अपील)काकार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

सत्यमेव जयते

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DIN NO. : **20221064SW00008378DA**

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2505/2021 / 3964 -72

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-ADC-52/2022-23**

दिनाँक Date : **11-10-2022** जारी करने की तारीख Date of Issue : 12-10-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZD2404210095014 (04/AK/SUPDT/GST/2021-22)** dated **08.04.2021** issued by Superintendent, Central Goods and Service Tax, AR-I, Division Kadi, Gandhinagar Commissionerate

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

M/s Sundek India Ltd
1421, Kalol Mehsana Highway,
Rajpur, 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) **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 वेबसाइटwww.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, Sundek India Ltd., 1421, Kalol- Mehsana Highway, Rajpur, Mehsana, Gujarat-382715 [hereinafter referred as to as 'appellant'] against the Order-in- Original No. ZD2404210095014 dated 08.04.2021(Order-in-Original No. 04 / AK / SUPDT / GST / 2021-22 dated 08.04.2021) (herein after called as the " impugned order") passed by The Superintendent, CGST, AR-I, Kadi Division (hereinafter called as the " adjudicating authority")

2. Brief Facts of the case

2.1 During the course of the EA-2000 audit of the appellant, it was observed that the appellant filed FORM GST TRAN-1 under Rule 117 of CGST Rules, 2017 (as amended) on 22.12.2017 and claimed transitional credit of Rs. 4,34,767/- as Input Tax Credit of CGST under Section 142 (11) (c) of Central Goods and Service Tax Act, 2017 (details as per Table 11 of FORM GST TRAN-1), whereas said credit was required to have been claimed under Section 140 *ibid.*

2.2 Vide letter No. NIL dated 20.11.2018 addressed to Range Superintendent, the appellant submitted that they agreed with the observation of Audit and submitted that said credit of Rs. 4,34,767/- was of their unavailed goods & service tax balance as on 30.06.2017; that it was procedural lapse on their part and since no facility for correction of TRAN-1 form was available online therefore they requested that the declaration in TRAN-1 under Section 142 may be corrected and revised to Section 140(3) of CGST Act, 2017.

2.3 Further, it was also observed by the audit officers that the appellant has carried forwarded transitional credit of Rs. 2,00,067/- of Service Tax on Man Power & GTA Service however Service Tax on the same was not paid at the material time i.e. at the time of filing of TRAN-1 and same was recovered along-with interest during the course of audit.

2.4 Further on verification of FORM GST TRAN-1 it was noticed that the closing balance of CENVAT Credit in ER-1 filed for Central Excise Registration No. AACCS0897AXM001 for the month of June 2017-18 was Rs. 0-(Nil) therefore it appeared that the said CENVAT Credit of Rs. 1860/- was wrongly carried forward as Input Tax Credit under Section 140(1) *ibid* in table 5(a) of FORM TRAN-1.

2.5 Therefore, the Jurisdictional Range Superintendent issued a Show Cause Notice to the appellant as to why:-

(i) The excess amount of transitional credit of Rs.6,36,694/- taken as Input Tax Credit taken as Input Tax Credit of CGST in FORM GST TRAN-1 return should not be demanded and recovered from them in terms of Rule 121 of Central Goods and Service Tax Rules,2017 read with Section 74 of CGST Act, 2017.

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

(iii) Penalty shall not be imposed under Section 122 of CGST Act, 2017.

2.6 After considering the reply of appellant the adjudicating authority confirmed the demand as under:-

(i) I confirm the demand of Rs. 1860/- under Section 74(1) of CGST Act, 2017 carried forward as transitional credit in contravention of Section 140(1) of CGST Act, 2017.

(ii) I order to recover interest under Section 50 of CGST Act 2017 on demand confirmed in (i) above.

(iii) I impose penalty of Rs. 10,000/- under Section 122(2)(b) of CGST Act, 2017 on wrongly carried forwarded as transitional credit of Rs. 1860/- in contravention of Section 140(1) of CGST Act, 2017

(iv) I reject the request of the noticee to reconsider the transitional credit claimed under Section 142(11) (c) of CGST Act, 2017 under Section 140(3) *ibid* and I confirm the demand of CGST of Rs. 4,34,767/- under Section 74(1) of CGST Act, 2017.

(v) I order to recover interest under Section 50 of CGST Act, 2017 on demand confirmed in (iv) above.

(vi) I impose penalty of Rs. 4,34,767/- under Section 122(2) (b) of CGST Act, 2017 on wrongly carried forwarded as transitional credit of Rs. 4,34,767/-.

3. Aggrieved with the impugned Order 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 the appellant was not conversant with or having previous experience with legal provisions of the newly implemented CGST Act and claiming of transitional credit under Section 142(11)(c) instead of Section 140(1) is purely human error. The appellant has further submitted that they have neither claimed double credit not excess amount of transitional credit than what they are eligible as per Section 140 of CGST Act, 2017.

(ii) That the appellant had submitted application for revision of Tran-1 to the Range Superintendent requesting to change transitional credit was claimed under Section 142 instead of Section 140(1) of CGST Act, 2017. The appellant has placed reliance upon the judgment of Allahabad High Court in **Writ Tax No. 381 of 2019 (M/s. Jai Laxmi Cement Co. Pvt. Ltd. v. Union of India & Ors.)** to press that the authorities ought to have considered the request for revision of GST TRAN- 1. The appellant further submitted that the department did not give the reply for accepting or rejecting their request. The appellant further placed reliance of judgment in case of **R. P. Foam Pvt. Ltd. vs Union of India [2021] 124 taxman.com. 553(All), Allahabad**

High Court held that the rejection of application for revision of GST TRAN-1 without hearing arguments was unjustified.

(iii) That the appellant has erroneously missed the payment of Rs. 2,00,067/- of Service Tax on Manpower and GTA Services on the date of filling GST TRAN-1 FORM. The error was rectified at the time of EA-2000 audit and said amount was paid along-with interest and penalty on 26.10.2018. The appellant has submitted that the revenue has already recovered the short payment of tax and now rejecting the transitional credit for Rs. 2,00,067/- will amount to mistake under Section 72 of the Contract Act. The appellant has placed the reliance upon the judgment in case of Willowood Chemicals Pvt. Ltd. Vs. Union of India (2018) 66 GST642 (GUJ). and referred the Supreme Court decision in the case of Mafatlal Industries Limited & Ors. Vs. Union of India & Ors., reported in [1997] 5 SCC 536. The appellant has submitted that in such judgment, various issues concerning the refund applications under the Central Excise and Customs and other taxing statutes came up for considering before the Nine Judge Bench of Supreme Court wherein it held that term "mistake" used in Section 72 of the Contract Act, 1872 in the context of payment of tax. It was held and observed that the true principle is that if one party under mistake –whether of fact or law, passed to another party money which is not due by contract C/SCA/4552/2018 JUDGEMENT or otherwise, that money must be repaid. The mistake lie in thinking that the money was due when in fact it was not due and that mistake if established entitles the party who paid the money to recover it back from the party receiving the same. The appellant has further placed the reliance on the Judgment of Hon'ble High Court of Delhi in case of SKH Sheet Metals Components Vs Union of India & Ors. wherein it has been held by revising the return, based on footing of a "human error" and not "technically difficulty on common portal" is wholly unreasonable, being irrational and arbitrary and therefore, violates Article 14 of the Constitution. Rule No. 117 of the CGST rules does not indicate any consequences of non-compliances of the condition. Both the Act and Rules do not provide any specific consequences on failure to adhere to the timeline.

(iv) The appellant further submitted that they are regular in filling the Central Excise and Service Tax Returns, and audit was conducing at regular interval, the department was never of the view that the appellant tried to evade tax. The appellant had paid taxes according to the information furnished and therefore it should not have been penalized. The appellant placed upon reliance in the case of **Hindustan Steel P. Ltd. Vs. State of Orisssa (1930) 25 STC 211(SC)**.

(v) That the appellant has prayed that the penalty of Rs.10,000/- imposed by the adjudicating authority be quashed and set aside. To allow the Transitional credit of Rs.4,34,767/- under Section 140(1) CGST Act, 2017; to quash and set aside the interest under Section 50 of CGST Act 2017.

PERSONAL HEARING

Personal hearing in the case on virtual mode in the case was held on 16.08.2022, Shri Alok Sharma authorized representative of the appellant attended the hearing. He has nothing more to add to their written submissions till date. The appellant has also submitted additional submissions on 16th August 2022.

5. DISCUSSIONS AND FINDINGS

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

(a) Whether the Penalty to the tune of Rs. 10,000/- Imposed under Section 122(2) (b) of CGST Act, 2017 for wrongly carried forwarded as transitional credit of Rs. 1860/- in contravention of Section 140(1) of CGST Act, 2017 was justified or otherwise.

(b) Whether the appellant's request to reconsider the transitional credit to the tune of Rs. 4,34,767/- claimed under Section 142(11) (c) of CGST Act, 2017 in TRAN-1 under section 140(3) and again request in appeal memorandum into reconsider same in Section 140(1) of CGST Act, 2017 may be considered or not.

(c) Whether penalty to the Tune of Rs. 4, 34,767/- imposed under Section 122(b) of CGST Act, 2017 is rightly imposed or otherwise.

5.2 First I take up the issue with regard to request of the Appellant to reconsider the transitional credit of Rs. 4,34,767/- as Input Tax Credit carried forwarded in Table 142(11)(c) of Form GST Tran -1 under Section 140(1) ibid in Table 5(a) of FORM TRAN-1.

(a) I find that the appellant has carried forwarded transitional credit in TRAN-1 to the tune of Rs. 4,34,767/- as per Section 142 (11) (c) *ibid* whereas credit was *required to have been claimed under* Section 140(1) of CGST Act, 2017. This mistake was detected by the audit at the time of conducting of EA-2000 audit.

(b) I find that after the mistake pointed out by the audit, the appellant had agreed with the audit observation and the appellant vide application dated 20.11.2018 had requested to the Superintendent, CGST Nandasan that during Excise Audit for period of August 2015 to June 2017, audit party drawn their attention that they have filed TRAN- 1 under wrong Section of GST Act, 2017. In short instead of filing TRAN-1 under Section 140(3), they have filed it wrongly u/s 142. Hence, they have requested to correct / change section from 142 to 140(3) in their TRAN- 1 and consider their return filed as under Section 140(3) under their intimation; that it was procedural

lapse on their part and since there is no facility for correction of TRAN-1 form is available online. I find that the appellant had again committed the mistake by referring Section 140(3) instead of Section 140(1) of CGST Act, 2017

I find that appellant had filed TRAN-1 in stipulated time under Section 142(11) (c) of CGST Act, 2017 instead Section 140(1) of the CGST Act, 2017. After the observation made by the audit they have submitted a application to the Superintendent Central GST, Nandasan, requesting him to consider the transitional Credit in Section 140(3) of CGST Act, 2017. I find that the appellant has again mentioned incorrect Section in their application. I find that the appellant has submitted in appeal memorandum that they did not receive any reply to the application submitted on 20.11.2018. I find that the appellant has submitted that the claiming of transitional credit under Section 142(11) (c) instead of Section 140(1) is purely human error. The appellant has placed the reliance upon the ***Judgment of Allahabad High Court in Writ Tax No. 381 of 2019 (M/s. Jai Laxmi Cement Co. Pvt. Ltd. v. Union of India & Ors.)*** According to the judgment it has been observed by the Hon'ble High Court that the authorities ought to have considered the request for revision of GST TRAN-1. I find that it is relevant to refer the judgment of the *Hon'ble High Court of Madras in the case of Commissioner of GST And Central TAX vs M/s. Bharat Electronics Limited W. A. No. 2203 of 2021.* Relevant portion is extracted under:-

> *10. We concur with the order of the learned Single Judge directing the respondent to enable filing of revised Form TRAN-1 by respondent by opening the portal for following reasons:-*
>
> *(a) It is admitted that respondent had filed their Form TRAN-1 in time and had also shown the correct amount in Column 5(b) of Form TRAN-1.*
>
> *1. The only error is that in Column 6 of Form TRAN-1, the respondent had erroneously shown a sum of Rs.80,98,936/- instead of Rs. 14,97,28,201/-.*
>
> *(b) The respondent/assessee have complied with the requirement of filing Form-1 within time, to transition credit of Rs. 14,97,28,201/- stated to be legitimately earned under the erstwhile regime. Thus, there is substantial compliance with the requirement of Section 140 of the GST Act which provides for transition of credit under erstwhile regime to GST. In this regard, it may be useful to refer to decision of the Constitutional Bench of the Hon'ble Supreme Court in the case Commissioner of Customs Vs. Dilipkumar and Co. (2018) 9 SCC 1: 2018 SCC Online SC 747, wherein the "Doctrine of Substantial compliance was held to be applicable even while considering a claim of exemption, thus, the above doctrine would apply to claim of Input Tax Credit.*
>
> *(c) The submission of the appellant that the inadvertent mistake in filling in the wrong figures in Column 6 of Form TRAN-1 would prove fatal to the respondent's*

claims of ITC, even if they are otherwise entitled to, appear to be an objection which is technical and more importantly, could frustrate the very objective of extending the benefit of transition of Input Tax Credit from the erstwhile regime of GST. In this regard, it may be relevant to refer to the decision of the Division Bench of the High Court of Bombay in the case Heritage Lifestyles and Developers Private Limited vs. Union of India reported in 2020 SCC 43 GSTL 33: (2021) 1 Bom CR 345@2021)86 GSTR 321, wherein after finding that the respondent could not file the Form of TRAN-1 by 27.12. 2017 due to lack of awareness of the procedures, technical glitches, GST being new and a complex system to operate and after recording that the denial was only view of the fact that the taxpayer has neither tried for saving/submitting or filing form TRAN-1, had proceeded to hold that undue emphasis on technically is unwarranted and extended the benefit to the assessee /petitioner therein. While doing so, reliance was placed on the decision of the Supreme Court in the case of Manglore Chemicals and Fertilizers Ltd. vs. Deputy Commissioner [(1991)55 ELT 437 (SC).

(d) While there is no doubt that the Input tax credit is concession, and conditions attached thereto ought to be strictly compiled, it is equally true that the Input Tax Credit is a beneficial scheme which is framed in larger public interest to bring down the cascading effect of multiple taxes/multi–point taxes. One cannot lose sight of the larger objective behind Input Tax Scheme. Keeping the above objective in mind and also the fact that GST was a new law and there was a number of initial hiccups which was taken cognizance of, by the Legislature and Executive and remedial actions were duly taken, including timelines for statutory compliance to ameliorate the difficulties faced by the trade, thus, denial to the transition of credit for a clerical mistake may not be warranted.

2. Thus, there seems to be consistent view that if there was substantial compliance, denial of benefit of Input Tax Credit which is a beneficial scheme and framed with larger public interest of bringing down the cascading effect of multiple taxes ought not be frustrated on the ground of technicalities, In view of the above, we are inclined to affirm the order of learned single Judge in directing the petitioner / respondent to enable respondent herein to file a revised Form TRAN-1, by opening of the portal and that such exercise is to be completed within a period of 8 weeks from the date if issue of this order.

5.3 I also extract the relevant portion of the decision of the Hon'ble High Court of Punjab & Haryana in case of Adfert Technologies Pvt. Ltd. vs. Union of India And others as under:-

43. In the result, all the four writ-applications succeed and are hereby allowed. The respondents are directed to permit the writ applicants to allow filing of declaration in form GST TRAN-1 and GST TRAN-2 so as to enable them to claim transitional credit of the eligible duties in respect of the inputs held in stock on the

appointed day in terms of Section 140(3) of the Act. It is further declared that the due date For Subsequent orders see CWP-29279-2019 Decided by HON'BLE MR JUSTICE JASWANT SINGH;

HON'BLE MR. JUSTICE SANT PARKASH 30 of 38 CWP No.30949 of 2018(O&M) #31# contemplated under Rule 117 of the CGST Rules for the purposes of claiming 8/25/22, 10:55 AM Adfert Technologies Pvt. Ltd vs Union Of India And Others on 4 November, 2019 https://indiankanoon.org/doc/155452764/ 39/50 transitional credit is procedural in nature and thus should not be construed as a mandatory provision. "

11. Delhi High Court in a series of cases has expressed similar view as by Gujarat High Court. In its recent judgment in the case of Krish Authomotors Pvt. Ltd. Vs UOI and others 2019-TIOL-2153-HC-DEL
GST, Delhi High Court has noted its various previous orders and directed as under:

11. Accordingly, a direction is issued to the Respondents to permit the Petitioner to either submit the TRAN-1 form electronically by opening the electronic portal for that purpose or allow the Petitioner to tender said form manually on or before 15th October, 2019 and thereafter, process the Petitioner's claim for ITC in accordance with law. The petition is disposed of in the above terms.

12. We fully agree with findings of Hon'ble Gujrat and Delhi High Court noticed hereinabove and fined no reason to take any contrary view. We are not in agreement with the cited judgment by the Revenue of Hon'ble Gujrat High Court in Willowood Chemicals case (Supra) as the Gujrat High Court itself in subsequent judgments and Delhi High Court in a number of judgments (as noticed hereinabove) have permitted petitioners (therein) to file TRAN-I Forms even after 27.12.2017. We also find that the Sub Rule (1A) added/inserted to Rule 117 w.e.f. 10.09.2018 has not been noticed in the said cited judgment by the Revenue, which goes to the roots of findings recorded by the Hon'ble Gujrat High Court. Thus all the petitions deserve to succeed and are hereby allowed.
Accordingly, we direct Respondents to permit the Petitioners to For Subsequent orders see CWP-29279-2019 Decided by HON'BLE MR JUSTICE JASWANT SINGH;

HON'BLE MR. JUSTICE SANT PARKASH 31 of 38 CWP No.30949 of 2018(O&M) #32# file or revise where already filed incorrect TRAN-1 either electronically or manually 8/25/22, 10:55 AM Adfert Technologies Pvt. Ltd vs Union Of India And Others on 4 November, 2019 https://indiankanoon.org/doc/155452764/ 40/50 statutory Form(s) TRAN-1 on or before 30th November 2019. The Respondents are

at liberty to verify genuineness of claim of Petitioners but nobody shall be denied to carry forward legitimate claim of CENVAT / ITC on the ground of non-filing of TRAN-I by 27.12.2017. No order as to cost.

6. In respect of transferring the input tax credit to the tune of Rs. 2,00,067/- in TRAN-1 without payment of Service Tax at the material time. I find that the appellant has deliberately transferred Input Tax Credit without payment of required Service Tax. I find that there is no provision available in Transitional Provisions i.e in Section 140 (1) of CGST Act, 2017 read with Rule 117 of CGST Rules 2017 where duty has been paid by the appellant on pointed out during the course of audit and the said Input Tax Credit can be transferred in TRAN-1 after 31.07.2017.

6.1 I find that as per Section 142(8) of the CGST Act,2017 according to which when in pursuance of an assessment of adjudication proceedings instituted, whether before, on or after appointed day under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from person, the same shall, unless recovered under existing law, be recovered as an error of tax under this Act and amount so recovered shall not be admissible as input tax credit (ITC) under the CGST Act, 2017. I find that the provisions of Service Tax have been ceased to be an end as on 30.06.2017. The Service Tax paid by the appellant cannot be termed as Service Tax and cannot be allowed to transfer input tax credit in TRAN-1 under Section 140(1) of the CGST Act, 2017. I find that this benefit of transfer of input tax credit could have been availed by the appellant only after the payment of required Service Tax at the material time and payment particulars shown in ST-3. I also find that without being pointed out by the Audit, the appellant would have been enjoying the credit of not paying the Service tax on the Manpower and GTA service. By paying service tax along-with interest and penalty (@15% of service tax) was their duty and by doing so they have not made any obligation to the government exchequer. However, the appellant is silent in their appeal memorandum as well as in their written submission that they have wrongly taken ineligible credit without payment of service tax on Manpower and GTA service and subsequently claimed the credit under FORM GST TRAN-1.

6.2 In terms of provision of Transitional Credit Chapter XX of CGST Act, 2017 a registered person can claim and carry forward the credit available with him under the existing provisions only if proper returns have been filed, documents related evidencing payment of duty are available with the taxpayer and most important Central Excise Duty and Service Tax, as the case may be, is duly paid.

Further, Section 17(5) (i) of the CGST Act, 2017, stipulates as under:

"Section 17 : Apportionment of credit and blocked credits

XXXXXXXX

(5) Notwithstanding anything contained in sub-section (1) of Section 16 and sub-section (1) of Section 18, **input tax credit shall not be** available in respect of the following, namely : -

[(a) .....

(b) .....

(c) .....

(d) .....

(e) .....

(f) .....

(g) .....

(i) any tax paid in accordance with the provisions of Section 74, 129 and 130."

It is proved that the appellant have paid tax along-with interest and penalty in accordance with the provisions of Section 74 of the CGST Act, 2017. Therefore, in terms of Section 17(5) (i) law of the CGST Act, no input tax credit would be admissible in cases, where tax has been paid in accordance with the provisions of Section 74 of CGST Act, 2017. I find that the appellant being registered in Central Excise and Service Tax, the appellant supposed to know that without payment of Service Tax they cannot avail input tax Credit or Service Tax credit as applicable in this case.

6.3 I hold that the appellant was not eligible for Transitional credit to the tune of Rs. 2,00,067/- at the material time. Thus, by wrong availing of tax credit the appellant has suppressed the facts before the department and accordingly attract the actions under Section 74 of the CGST Act, 2017 and recovery under Rule 121 of CGST Rules, 2017. I uphold the demand of the Transitional credit to the tune of Rs. 2,00,067/-. Thus, I further uphold the recovery of interest and imposition of penalty.

7. I find that in respect of demand of CGST of Rs. 1860/- under Section 74(1) CGST Act, 2017 and Interest under Section 50 of CGST Act, 2017, the appellant has accepted their error and has paid the duty of Rs. 1860/- and Interest thereon. I also find that the appellant has not paid the Penalty of Rs. 10000/- imposed under Section 122(2) (b). I uphold the penalty imposed by the Adjudicating authority under Section 122(2) (b) of CGST Act, 2017. Since the duty amount is less than to the thousand Rupees. Hence I imposed the penalty of Rs. 10,000/- on the appellant.

8. In respect of remaining input tax credit of Rs.2,34,700/- (i.e Rs.4,34,767/- - Rs.2,00,067/-). I find that the appellant has filed the TRAN-1 under Rule 117 of CGST Rules, 2017 on 22.12.2017 within time lime and claimed transitional credit of Rs. 4,34,767/- u/s 141(11)(c) of the CGST Act, 2017 instead of Section 140(1) of CGST Act, 2017 which includes the transitional credit of Rs. 2,00,067/- which was wrongly availed as Service Tax on the same was not paid at the material time. I find that as soon as mistake pointed out by the Excise Audit, the appellant filed an application to the Range Superintendent with a request to change declaration under Section 140(3) instead of Section 142(11)(c) of the Act. I further find that the appellat has again mentioned wrong section but in appeal memorandum they have mentioned Section 140(1). I find that the adjudicating authority has disallowed the CENVAT credit on the ground that the transitional credit carried forwarded by the appellant neither met the conditions specified under Section 142(11) (c) ibid nor conditions specified under Section 140 (3) ibid. I hold that, in number of judgements passed bye the various Courts it has been hold if substantial compliance, denial of benefit of Input Tax Credit which is a beneficial scheme and framed with large public interest of bringing down the cascading effect of multiple taxes ought not to be frustrate on the ground of technicalities. I hold that out of total TRAN-1 credit of Rs. 4,34,767/-, the transitional credit to the tune of Rs.2,34,700/- transferred in TRAN-1 is allowed as per Section 140(1) of the Act and set aside the order of the adjudicating authority to that extent. Thus, I set aside the recovery of interest and imposition of penalty against this amount i.e Rs. 2,34,700/-.

9. I find that the transactions were recorded in the books of accounts and after the wrong availment of CENVAT credit was pointed out by the audit, the appellant has admitted their mistake and paid the credit along with interest. Since wrong availment of credit was apparent from the books of account and admitted by the appellant. I find that the quantum of penalty under section 122(2) (b) was also prescribed as ten thousand rupees or ten percent of the tax due, whichever is higher. Since, minimum penalty amount both under Section 122(2) (a) and 122 (2) (b) is prescribed as Rs.10,000/-. Penalty imposed under Section 122(2)(b) of Act does not alter the quantum of penalty imposed in this case. Hence, I do not intend to interfere with the impugned order passed by the adjudicating authority imposing penalty of Rs. 10,000/- and upheld the order to such extent.

10 (i) I set aside the impugned order to the extent of disallowing transitional credit of Rs. 2,34,700/- and ordering recovery of the same and allow the appeal filed by the appellant to such extent. I also set aside the recovery of interest and imposition of penalty against this amount.

(ii) I uphold the impugned order to the extent of disallowing credit of Rs. 2,00,067/- and order to recover the same and reject the appeal filed the appellant to such extent. I also upheld the recovery of interest and imposition of penalty.

(iii) I also uphold the impugned order to the extent of imposing penalty of Rs. 10,000/- for wrong availment of credit of Rs.1860/- and reject the appeal filed by the appellant to such extent.

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

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

11/10/22

(Mihir Rayka)
Additional Commissioner (Appeals)

Date: .10.2022

Attested

12/10/2022

(TEJAS J MISTRY)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s. Sundek India Ltd., 1421, Kalol- Mehsana Highway,
Rajpur, 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- Kadi, Gandhinagar Commissionerate.
5. The Superintendent, CGST, AR-1, Kadi Division, Gandhinagar Commissionerate.
6. The Additional Commissioner, Central Tax (System), Gandhinagar Commissionerate.
7. Guard File.
8. P.A. File