



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,

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- 20240164SW000071717C

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/3563/2023 -APPEAL / 998 - 1005

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-JC- 65 /2023-24

दिनांक Date : 30.01.2024 जारी करने की तारीख Date of Issue : 30.01.2024

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. 04/GK/SUPDT/GST/2023-24 dated 28/07/2023 issued by The Superintendent, CGST Range-II, Division- Kalol, Gandhinagar.

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

Appellant	Respondent
M/s Sunrise Stainless Private Limited, 1/8, G.I.D.C., Kalol, Gandhinagar, Gujarat, 382721	The Superintendent, CGST Range-II, Division- Kalol, Gandhinagar

(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 website www.cbic.gov.in.



ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Sunrise Stainless Pvt Ltd., 1/8, G.I.D.C, Kalol, Gandhinagar, Gujarat-382721 (hereinafter referred as 'Appellant') has filed the appeal against Order-in-Original No. 04/GK/Supdt/GST/2023-24 dated 28.07.2023 (hereinafter referred as 'Impugned Order') passed by the Superintendent, CGST, Range-II, Division - Kalol, Gandhinagar Commissionerate (hereinafter referred as 'Adjudicating Authority').

2(i). Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTIN No.24AAPCS0726F11ZG has filed the present appeal on 03.10.2023. During the course of CERA Audit, it was found that the appellant has carried forward CENVAT credit amounting to 62,54,858/- under table 7(b) of TRAN-1. Further scrutiny of statement of credit claimed under table 7(b) revealed that one invoice/Bill of Entry on which amount of 7,57,595/- was taken, was recorded in the book of account after a period of thirty days from the appointed date.

2(ii). During the course of the scrutiny of the documents submitted by the appellant, it was noticed that the appellant has recorded the invoice/Bill of Entry on 24.08.2017 in their books of account, as per the Column (8) in Table 7 (b) in GST TRAN-1 form, filed by the appellant. Therefore, the appellant took more than thirty days for recording of the Invoice/Bill of Entry in their books of account. Whereas, period of thirty days has been allotted to taxpayers for recording of documents in their books of accounts as per Section 140 (5) of CGST, Act 2017. Therefore, the appellant irregularly carried forward the cenvat credit of Rs. 7,57,595/- in Column (8) in Table 7 (b) in GST TRAN-1 Form, filed by the appellant.

3. In view of the above, a SCN dated 05.04.2022 was issued. Accordingly, the Adjudicating Authority has passed the impugned order on 26.07.2023 and disallowed irregular carried forward of cenvat credit of Rs. 7,57,595/-, in TRAN-I under the provisions of Section 73(1) of the CGST Act read with the provisions of Section 20 of the IGST Act; Confirmed the demand of interest on Rs. 7,57,595/- under Section 50(1) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act and confirmed the penalty of Rs. 75,759/- under the provisions of Section 73(1) of the CGST Act read with the provisions of Section 122(2)(a) of the Act ibid and Section 20 of the IGST Act on the demand of IGST, on the following grounds:

- That the appellant had recorded the invoice/Bill of Entry on 24.08.2017 in their books of account, as per the Column (8) in Table 7 (b) in GST



TRAN-I form and took more than thirty days for recording of the Invoice/Bill of Entry in their books of account. Whereas, period of thirty days has been allotted to taxpayers for recording of documents in their books of accounts as per Section 140 (5) of CGST, Act 2017;

- Therefore, the noticee irregularly carried forward the cenvat credit of Rs. 7,57,595/- in Column (8) in Table 7 (b) in GST TRAN-1 Form; filed by the noticee.
- that the noticee has contravened Section 140(5) of the Central Goods and Services Tax Act, 2017 and the ITC amounting to Rs.7,57,595/- availed on the basis of the subject Bill of Entry in the TRAN-1 is inadmissible;
- that the noticee is also liable for interest on the amount of inadmissible ITC utilized, under Section 50 (1) of the CGST Act, 2017 and also liable for penalty for the said contravention under Section 122(2)(a) of the CGST Act, 2017.

4. Being aggrieved with the impugned order dated 26.07.2023 the appellant has filed the present appeal on following grounds –

- Confirming the demand merely by considering the date of Bill of Entry and date on which transaction recorded in books of accounts by completely ignoring the facts that assessment, examination and out of charge order passed by the customs authority on 21/08/2017 then how it can be recorded in the books of account within 30 days of appointed day;
- Confirming the demand despite the fact that first proviso of section 140(5) of CGST/SGST Act, 2017 empowers to the Commissioner to extend the period of thirty days by further period not exceeding thirty days on sufficient cause being shown. In this present situation to grant extension is much needed requirement because on the face of records it shows that since, out of charge order passed on 21/08/2017, extension must be given;
- Confirming the demand merely on procedural lapse, is unjustifiable and bad in law and ultra vires to the object of implementing GST;
- Confirming the demand on the ground that the appellant had not fulfilled the requirement of section 140(5) of CGST/SGST Act, 2017 by completely ignoring material fact that since, customs authority had not given out of charge order within 30 days of appointed day how it can be recorded in the books of account within that period;



- *Confirming the demand by completely ignoring that GST being new law for everyone in the country, and this is the case of very nascent stage of implementing GST where no one have sound knowledge of GST not even with the government because every day they came up with new circulars and notifications;*
- *Imposing interest and penalty where there is no payment of tax required to be made,*

In view of the above the appellant pray to quashed and set aside the order on the grounds stated above.

Personal Hearing:

5. Personal Hearing in the matter was held on 14.12.2023 wherein Mr. Punit Prajapati, CA and Mr.Keyur Kamdar, CA appeared on behalf of the 'Appellant' as authorized representatives. During P.H. they have submitted that that thing is beyond the control of the taxpayer. He further reiterated the written submission and requested to allow appeal.

Discussion and Findings :

6(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum. In the instant case it is observed that the 'Appellant' has carried forward CENVAT credit amounting to 62,54,858/- under table 7(b) of TRAN-1. Further one invoice/Bill of Entry on which amount of 7,57,595/- was taken, was recorded in the book of account after a period of thirty days from the appointed date. Whereas, period of thirty days has been allotted to taxpayers for recording of documents in their books of accounts as per Section 140 (5) of CGST, Act 2017.

6(ii). A Show Cause Notice dated 05.04.2022 was issued to the appellant in this regard. Thereafter, the *adjudicating authority* vide *impugned order* dated 26.07.2023 has disallowed irregular carried forward of cenvat credit of Rs. 7,57,595/-, in TRAN-I under the provisions of Section 73(1) of the CGST Act read with the provisions of Section 20 of the IGST Act alongwith interest and penalty. Transitional credit of Rs. 7,57,595/-, is rejected on the ground that the appellant in one invoice/Bill of Entry on which amount of 7,57,595/- was taken, was recorded in the book of account after a period of thirty days from the appointed date.

6(iii). In the instant case, it is observed that the appellant have claimed the said ITC of Rs. 7,57,595/- on the receipt of Goods under Bill of Entry No. 2064088 Dt. 12.06.2017; The date of Bill of Entry was 12.06.2017; The assessment Date of Bill of Entry was 19-08-2017; The Payment date of Duties was 21.08.2017; The Examination of Goods was 21.08.2017; the Out



of Charge of Goods was done on 21.08.2017 and taken ITC in books of accounts on 24.08.2017.

7(i). In view of above facts, I refer to provisions of Section 140(5) of the CGST Act, 2017 relating to subject case which is as under:

140 (5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or taxpaying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days: Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

8. As per above statutory provisions, only in the case where the duty on the goods has been paid under the existing law and the goods have not reached the factory before the appointed day, can come under the purview of the said Section. In the instant case it is observed that the bill of entry was assessed on 19.08.2017 and duty on the said goods was paid on 21.08.2017 by the appellant and the goods were given out of charge on the same day, though the duty paying document i.e. Bill of Entry No. 2064088 is dated 12.06.2017. The said transaction was recorded in the books of account only on 24.08.2017 which is beyond the period of 30 days stipulated under Sub Section 5 of Section 140 of the Act. As, period of thirty days has been allotted to taxpayers for recording of documents in their books of accounts as per Section 140 (5) of CGST, Act 2017. Therefore, it is observed that the appellant has irregularly carried forward the cenvat credit of Rs. 7,57,595/- in Column (8) in Table 7 (b) in GST TRAN-1 Form, filed by the appellant.

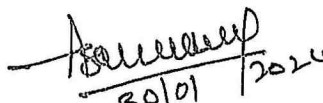
9. However in the instant case, it is observed that the bill of entry was assessed on 19.08.2017 and Out of Charge of Goods was done on 21.08.2017 and taken ITC in books of accounts on 24.08.2017. Accordingly, as per the provisions of Section 140(5) of the CGST Act, 2017, i.e. "Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days: Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken



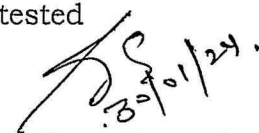
under this sub-section" the appellant had the opportunity upto 31.08.2017 to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day, however the appellant failed to do so.

10. As appellate authority is a creature of the statute and has to act as per the provisions contained in the CGST Act, therefore, I do not intend to provide any relief on this aspect at this stage. However, the appellant may avail re-course of action as per the proviso of Section 140(5) of the CGST Act, 2017 within 60 days from the receipt of this order and recovery proceedings will be kept in abeyance till the outcome of re-course of action as per the proviso of Section 140(5) of the CGST Act, 2017, if availed by the appellant.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.


30/01/2024
(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 30.01.2024

Attested


(Sandheer Kumar)
Superintendent (Appeals)



By R.P.A.D.

To,
M/s. Sunrise Stainless Pvt Ltd.,
1/8, G.I.D.C, Kalol, Gandhinagar,
Gujarat-382721.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Gandhinagar Commissionerate.
4. The Dy./Asstt. Commissioner, CGST, Division-Kalol, Gandhinagar.
5. The Dy./Asstt. Commissioner (R.R.A), CGST, Gandhinagar Commissionerate.
6. The Superintendent, CGST, Range-II, Division-Kalol, Gandhinagar.
7. The Superintendent (Systems), CGST Appeals, Ahmedabad.
8. Guard File.
9. P.A. File.

