आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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सत्यमेव जयते

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/GSTP/1/2023-APPEAL 9558-63
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-COM-187/2022-23 and 10.03.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	17.03.2023
(ङ)	Arising out of Order-in-Original No. 30/ADC/GB/2022-23 dated: 24.06.2022, issued by Additional Commissioner, CGST, Ahmedabad-North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Nirma Ltd., Nirma House, Ashram Road, Ahmedabad-380009

(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

The present appeal has been filed by M/s. Nirma Ltd, Nirma House, Ashram Road, Ahmedabad–380009 (*hereinafter referred to as "the appellant")* against Order-in-Original No. 30/ADC/GB/2022-23 dated 24.06.2022 (*hereinafter referred to as "the impugned order")* passed by the Additional Commissioner, Central GST & Central Excise, Ahmedabad North (*hereinafter referred to as "the adjudicating authority"*).

2. The fact of the case, in brief, are that the appellant are registered with the department under Central Excise Act, 1944 as well as under Finance Act, 1994. They are engaged in supply of goods (falling under HSN code 3401, 3817, 2836, 1515 etc) and in supply of taxable services (such as Goods Transport Agency, Legal Consultancy service etc). After the implementation of CGST Act, 2017, w.e.f. 01.07.2017, they have migrated their registration under the CGST Act, 2017 and were availing the benefit of input tax credit on inputs, capital goods, and input services under the CGST Act, 2017.

2.1 In terms of Section 140 of CGST Act, 2017, the credit of central excise duty paid under erstwhile Central Excise Act 1944 and credit of service tax paid under the Finance Act 1944 maybe transited under CGST Act, 2017 in form of TRAN-1. The appellant had transited the credit amounting to Rs. 53,87,19,978/- pertaining to various units in their TRAN-1, under different categories. During the course of TRAN-1 verification, certain discrepancies were noticed in the credit so transited. Similarly, CERA Audit has also issued Half Margin Memo No.69, 70, 71 all dated 01.04.2021 for the discrepancies noticed on verification of TRAN-1 filed by the appellant. The discrepancies are listed below in the tabular form:-

SCN Para	Credit availed under Section	Column of TRAN-1	Discrepancy	Total credit availed in TRAN-1 (Amount in Rs.)	Wrongly availed credit (Amount in Rs.)
6.1	140(2)	6(a)- 50% of credit pertaining to capital goods received in F.Y. 2016-17	Total credit availed instead of availing 50% of the credit	8,57,52,517/-	42,21,114/-
6.2	140(5)	7(b) Credit pertaining to inputs & input services of the F.Y.2016-17	Neither the input or input services were received after the appointed day nor the payment was made in existing law, but in their books of accounts they have accounted for in the month of July, 2017	12,39,27,092/-	5,42,14,604/-
6.3	140(5)	7(b) Credit pertaining to invoices issued in existing law after 01.07.2017	The invoices were raised in existing law but payment of tax under RCM was made after implementation of GST for which revised ST-3 returns were not filed as instructed vide Board's Circular No.207/5/2017-ST dated 28.09.2017	12,39,27,092/-	6,52,368/-
6.7	140(5)	7(b) Credit of inputs &	The payment for the invoices pertaining to	12,39,27,092/-	6,88,46,954/-

		input services pertaining to April, 2017 to June, 2017	01.06.2017 to 30.06.2017 was made in July,2017 which proves that the input & input services were received prior to appointed date.		
6.4	140(2)	6(a) – 100% Credit availed on capital goods	As per **H.M.69 issued by CERA,** the appellant availed entire credit of capital goods though 50% of the credit was availed earlier	8,57,52,517/-	94,06,792/-
6.6	140(5)	7(b) Credit of input & input invoices recorded in the books of accounts after a period of 30 days	As per **H.M.71 issued by CERA,** few invoices were recorded in the book of account after a period of 30 days from the appointed date. No permission for such extension was sought by the appellant	12,39,27,092/-	2,13,166/-
				TOTAL	**13,75,54,998/-**
6.5	140(5)	7(b)	As per **H.M.70 issued by CERA,** twice the credit of duty/tax paid on the same invoice was noticed.	12,39,27,092/-	71,25,418/- (As the credit was already reversed, no excess credit availed by the appellant.)

2.2 The appellant was asked to clarify the above discrepancies. However, the reply submitted was not found satisfactory. Hence, a Show Cause Notice (SCN)No.GST/15-321/OA/2021 dated 15.02.2022 was issued to the appellant proposing the demand of Input Tax Credit of Rs.13,75,54,998/- (wrongly availed in their TRAN-1) under proviso to Section 73(1) of the Act. Recovery of interest under Section 73(5) and penalty under Section 73(1) was also proposed. The irregular credit of Rs.73,35,542/- availed by the appellant, as pointed out by CERA which was subsequently reversed by the appellant, was also proposed to be appropriated. Interest on said amount was also proposed to be demanded.

2.3 The said SCN was adjudicated vide the impugned order, wherein the credit to the tune of Rs.13,66,94,746/- was allowed and credit to the tune of Rs.8,60,252/- (Rs.2,13,166/- + Rs.6,47,086/-) was disallowed to be transited and ordered to be recovered alongwith interest. Penalty of Rs.8,60,252/- was also imposed under Section 73(1) of the Act.

3. Being aggrieved with the impugned order, the appellant have preferred the present appeals contesting the disallowed amount of Rs.8,60,252/- on the grounds elaborated below:

- It is claimed that in the respect of the credit of **Rs.2,13,166/-** disallowed by the adjudicating authority, an amount of Rs.82,176/- pertains to re-credit of amount earlier reversed on account of non-receipt of job-work goods within 180 days in terms of provision of Rule 4(5)(a) of CCR, 2004. Under the existing law, the raw material was sent to job workers (M/s. Nirav Lamination and Karan Paper Mills) for job work under Rule 4(5)(a) of the CCR, 2004. As the goods were not received within 180 days, the credit was reversed. However, subsequently, the goods were

received from the job-worker, hence, the re-credit of the amount reversed earlier was taken. Due to implementation of GST and operational difficulties, the job-work material was received only in the month of July, 2017 & August, 2017. As the dates for filing of ER-1 return was over on 10.7.2017, they declared the said quantity in the Column 9(a) of the TRAN-1 pertaining to details of goods sent to job-worker and held in stock on behalf of principal as per Section 140 of the CGST Act. Though the goods were received after 01.07.2017, but the credit was availed and reflected in table column 7(b) of the TRAN-1 in terms of Section 140(5) of the CGST, Act. The details of re-credit availed and documents are submitted.

- The adjudicating authority for the same set of facts has taken a divergent view. At para 11.4 of the impugned order, the adjudicating authority allowed the credit of Rs.78,376/- in respect of the credit of goods sent for job-work goods, on which credit was reversed earlier but subsequently taken. Considering the divergent view the credit of Rs.86,176/- taken in respect of goods received from job-worker cannot be disallowed.

- The amount of Rs.1,30,990/- disallowed pertains to service tax paid under Reverse Charge Mechanism (RCM), where the invoices of service provider are prior to 01.07.2017 and the payment of service tax was made after 01.07.2017. The Notification No.18/2017-ST dated 22.06.2017 and Circular No.207/5/2017-ST dated 28.09.2017 issued were trade facilitating measure for smooth transition of eligible credit of service tax paid under old regime. The service tax liability was discharged after July, 2017 and revised ST-3 returns were also filed. However, due to oversight the credit were not shown in entries 13.1.206, 13.2.3 & 13.3.2.6 in ST-3 but availed the same in GST TRAN-1 return. This is just a procedural lapse, hence, substantial right of input tax credit on service tax paid on eligible input service cannot be denied. They placed reliance on following case laws:-
  - Circor Flow Technologies India Pvt. Ltd- 2022 (59) GSTL 63
  - Flexi Capes Polymers Pvt. Ltd- 2022 (58) GSTL 545
  - Mithila Drugs F.O.No.50159/2022 dtd 02.02.2022
  - NSSL Pvt. Ltd- 2021 (5) GSTL 410
  - Thorogood Associated India Pvt. Ltd.- 2021(53) GSTL 406

- The credit of **Rs.6,47,086/-** disallowed pertained to service tax paid under RCM on input services like GTA, Manpower Service, Security Service, Works Contract, Legal Service. Invoices were issued prior to 01.07.2017 and payment of service tax was made after 01.07.2017. Therefore, in terms of Board's Circular dated 08.09.2017, the credit is disallowed only if the service tax credit of tax paid under RCM is not reflected in the credit column of ST-3 Returns or if the return is not revised and claims the credit directly in TRAN-1 return. As per the Board's Circular, the assessee who have filed the ST-3 returns, they can revise their TRAN-1 return and show the balance credit pertaining to tax paid under RCM taken in ST-3 Returns. Here, instead of showing the credit in ST-3 returns, the same was shown in TRAN-1, the effect is one and the same. Such procedural lapse cannot be a ground to reject the credit which otherwise is held admissible. Even otherwise, if the Cenvat credit is not claimed in TRAN-1, the refund can be

claimed under the transitional provisions as per Section 142 of the CGST Act. This was also held by the adjudicating authority.

- When the credit is admissible the recovery of interest does not arise.

- Imposition of penalty of Rs.86,025/- under Section 73(1) is not sustainable as the credit availed was duly declared in the TRAN-1 return. As the input tax credit has not been wrongly availed and utilized, penalty under Section 122(2) (a) cannot be imposed

4. Personal hearing in the matter was held on 15.02.2023. Shri Vikram Singh Jhala, Assistant General Manager & Authorized Representative, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the submissions made at the time of personal hearing. The issue to be decided in the present appeal is whether the input tax credit of Rs.2,13,166/- and Rs.6,47,086/- disallowed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise?

6. It is observed that the credit of Rs.2,13,166/- was disallowed by the adjudicating authority on the grounds that the invoices in question were recorded beyond thirty days of the appointed day, as stipulated in Section 140 (5) of the CGST Act, 2017. The appellant, in the appeal memorandum as well as before the adjudicating authority, however have claimed that out of the total credit of Rs.2,13,166/- disallowed, the credit of Rs.82,176/- pertains to the raw material sent to job workers (M/s. Nirav Lamination and Karan Paper Mills) under Rule 4(5)(a) of the CCR, 2004, which was earlier availed, but subsequently reversed when the goods were not received within 180 days. Subsequently, after the receipt of goods from the job-worker in the month of July, 2017 & August, 2017, the amount was re-credited in their CENVAT account. But, by that time the dates for filing of ER-1 return was over, hence they could not reflect this re-credit in ER-1 Returns. Instead, they declared the said quantity in the Column 9(a) of the TRAN-1 (held in stock on behalf of principal) as per Section 140 of the CGST Act. They have claimed that though the goods were received after 01.07.2017, the credit was availed and reflected in table column 7(b) of the TRAN-1 in terms of Section 140(5) of the CGST, Act. They also contended that the remaining amount of Rs.1,30,990/- disallowed pertains to service tax paid under Reverse Charge Mechanism (RCM), where the invoices of service provider were issued prior to 01.07.2017 but the payment of service tax was made after 01.07.2017 for which revised ST-3 returns were also filed. However, due to oversight, the credit of such taxes paid under RCM was not reflected in Pt-I of Form ST-3 in entries 13.1.2.6, 13.2.3 & 13.3.2.6, but the credit was directly availed in GST TRAN-1 return. They have placed reliance on various case laws as well as Notification No.18/2017-ST dated 22.06.2017 and Circular No.207/5/2017-ST dated 28.09.2017 issued in this regard.

6.1 In order to examine the issue in proper perspective, the relevant Section 140(5) of the CGST Act, 2017 is re-produced below:-

Section 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, within such time and in such manner as may be prescribed], subject to the condition that the invoice or any other duty or tax paying 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.*

The above sub-section (5) of Section 140 of the CGST Act, 2017, allows a registered person, credit of eligible duties and tax in respect of inputs or input services, which were received on or after the appointed day, but on which the tax was paid earlier and the invoice or other duty or tax paying documents of the same were recorded in the books of account of such person within thirty days from the appointed day. Based on these legal provisions, the adjudicating authority has observed that few invoices were recorded beyond thirty days of the appointed day as stipulated in Section 140 (5) of the CGST Act, 2017 and hence the credit transferred by the appellant was disallowed.

6.2 I find that the adjudicating authority has completely ignored the submission made by the appellant that the credit amounting to Rs.86,176/- pertained to goods sent for job-work. To deal with the transitional provisions relating to job-work, there is a separate Section 141 of the CGST Act, which envisages that where inputs as such or partially processed inputs which are sent to a job-worker prior to introduction of GST under the provisions of existing law [Central Excise] and if such goods are returned within 6 months from the appointed day, i.e. 1st July, 2017, no tax would be payable. If such goods are not returned within prescribed time, the input tax credit availed on such goods will be liable to be recovered. Also, if manufactured goods are removed, prior to the appointed day, without payment of duty for testing or any other process which does not amount to manufacture, and such goods are returned within six months from the appointed day, then no tax will be payable. However, for the purpose of these provisions during the transitional period, the manufacturer and the job worker are required to declare the details of such goods sent/received for job work in prescribed format GST TRAN-1, within 90 days of the introduction of GST. Relevant Section 141 is re-produced below;

SECTION 141. Transitional provisions relating to job work. *— (1) Where any inputs received at a place of business had been removed as such or removed after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of existing law prior to the appointed day and such inputs are returned to the said place on or after the appointed day, no tax shall be payable if such inputs, after completion of the job work or otherwise, are returned to the said place within six months from the appointed day :*

Provided *that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months :*

Provided *further that if such inputs are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142.*

(2) Where any semi-finished goods had been removed from the place of business to any other premises for carrying out certain manufacturing processes in accordance with the provisions of existing law prior to the appointed day and such goods (hereafter in this section referred to as "the said goods") are returned to the said place on or after the appointed day, no tax shall be payable, if the said goods, after undergoing manufacturing processes or otherwise, are returned to the said place within six months from the appointed day :

Provided *that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months :*

Provided *further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142 :*

Provided *also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods to the premises of any registered person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.*

(3) Where any excisable goods manufactured at a place of business had been removed without payment of duty for carrying out tests or any other process not amounting to manufacture, to any other premises, whether registered or not, in accordance with the provisions of existing law prior to the appointed day and such goods, are returned to the said place on or after the appointed day, no tax shall be payable if the said goods, after undergoing tests or any other process, are returned to the said place within six months from the appointed day :

Provided *that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months :*

Provided *further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142 :*

Provided *also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.*

(4) The tax under sub-sections (1), (2) and (3) shall not be payable, only if the manufacturer and the job worker declare the details of the inputs or goods held in stock by the job worker on behalf of the manufacturer on the appointed day in such form and manner and within such time as may be prescribed.

6.3 In the present case, the goods were sent to job-worker under existing law and were not received within 180 days. Hence, the credit was reversed by the appellant and as the dates for filing of ER-1 return was over on 10.7.2017, they could not reflect the same in respective ER-1. The goods, however, were subsequently received in July, 2017

& August, 2017 i.e. after the appointed day. Therefore, the credit of such goods was directly reflected in Column 7(b) of TRAN-1. In terms of Section 141, inputs as such or partially processed inputs which are sent to a job-worker prior to introduction of GST under the provisions of existing law [Central Excise Act] and if such goods are returned within 6 months from the appointed day, i.e. 1st July, 2017, no tax would be payable. However, if such goods are not returned within prescribed time, the input tax credit availed on such goods will be liable to be recovered. In the case on hand as the goods were returned within six months from the appointed day, the credit of Rs.82,176/- shall be admissible to the appellant in light of above provisions.

6.4 It is observed that in similar case, the adjudicating authority at Para 11.4 of the impugned order, allowed the credit of Rs.78376/- on the inputs which were send to job-worker. The inputs were not received within 180 days therefore the appellant reversed the credit. Further, on receipt of the inputs from the job-worker, the credit was taken by the appellant, in terms of Rule 4(5)(a) of the CENVAT Credit Rules, 2004. This credit was allowed to be transited by the adjudicating authority. In the instant case, also the inputs were sent to job-worker under the existing law and such inputs were returned to the appellant after the appointed day. Hence, no tax shall be payable in terms of Section 141, as such inputs, were received within six months from the appointed day.

6.5 As regards the remaining amount of **Rs.1,30,990/-** disallowed by the adjudicating authority, the appellant have claimed that it pertains to service tax paid under Reverse Charge Mechanism (RCM) on input services like GTA, Legal Consultancy Service, Manpower Supply service, where the invoices by the service provider were issued prior to 01.07.2017 and the payment of service tax was made after 01.07.2017 for which revised ST-3 returns were also filed. However, due to oversight these credit were not shown in Entries 13.1.206, 13.2.3 & 13.3.2.6 in ST-3, but credit was availed in GST TRAN-1 return. They placed reliance on various case laws as well as Notification No.18/2017-ST dated 22.06.2017 and Circular No.207/5/2017-ST dated 28.09.2017 issued in this regard in support of their contention.

6.6 I have gone through the Notification No.18/2017-ST dated 22.06.2017 and Circular No.207/5/2017-ST dated 28.09.2017. As per the said notification, in terms of Rule 7(2) of the Service Tax Rules, 1994, the return for the period from the 1st April, 2017 to the 30th June, 2017 was to be filed by 15th August, 2017, in Form 'ST-3' or 'ST-3C', as the case may be. Further, in terms of Rule 7B(1), the revised return for the period from 1st April, 2017 to 30th June, 2017 was to be filed within a period of forty-five (45) days from the date of submission of the return under Rule 7. Similarly, the Circular dated 28.09.2017, clarifies certain transitional issues arising with respect to payment of service tax after 30th June, 2017. In has been clarified that the cases where credit is arising as a consequence of payment of service tax on reverse charge basis after 30th June, 2017 by 5th/6th July, 2017, the details should be indicated in Part I of Form ST-3 in entries, I3.1.2.6, I3 2.2.6 and I3 3.2.6. Linked entries should be made in Part H of Form ST-3. In case the return has already been filed by or after the due date, these details should be indicated in the revised ST-3 return, the time for filing of which is 45 days from the date of filing of the return. Once details of such credit are reflected in the ST-3, the assessee may proceed to fill in the details in Form GST TRAN-1.

6.7 In the instant case, the appellant have claimed that they have filed the revised ST-3 returns but due to oversight the credit were not shown in Entries 13.1.206, 13.2.3 & 13.3.2.6 in ST-3, hence the credit was directly availed in GST TRAN-1 return. The adjudicating authority has, by invoking the provisions of Section 140(5), disallowed the credit to the appellant and observed that the appellant should have claimed the refund of such credit under Section 142 of the CGST Act, 2017.

6.8 It is observed that Section 140(5) envisages that a registered assessee shall be entitled to take credit where the input/input services are received on or after the appointed day but duties/taxes were paid by the supplier under the existing law provided such invoices of duty paid documents are recorded in the books of accounts of such persons within 30 days from the appointed day. I find that Section 140(5) of the CGST Act, 2017 has no applicability to the facts and circumstances of this case as the services were received by the appellant prior to the appointed day and the taxes were paid after the appointed day. I, therefore, do not find merit in above findings of the adjudicating authority.

6.9 So far as the admissibility of credit is not disputed by the department, I find that such admissible credit cannot be denied merely because of some procedural lapse. The CENVAT credit of service tax paid under Section 66B of the Finance Act, 1994 was available as transitional credit under Section 140(1) of the CGST Act. The Circular No. 87/06/2019-GST, dated 2-1-2019, has clarified that the expression "eligible duties" in Section 140(1) which are allowed to be transitioned would cover within its fold the duties which are listed as "eligible duties" at sl. no. (i) to (vii) of explanation 1, and "eligible duties and taxes" at sl. no. (i) to (viii) of explanation 2 to section 140, since the expression "eligible duties and taxes" has not been used elsewhere in the Act. Relevant Section 140(1) of the Act is reproduced below:-

> ***SECTION 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 [of eligible duties] 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 [within such time and] 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 immediately preceding the appointed date; or*
>
> *(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.*

6.10 Further, I also place reliance on the judgment passed by Hon'ble High Court of Gujarat in the case of Deendayal Port Trust reported at 2020 (35) G.S.T.L. 188 (Guj.) covering similar issue. Relevant text of the said judgment is reproduced below:-

"3.1 The petitioner is a body corporate notified under the Major Port Trusts Act, 1963 established for developing, operating and managing a major port in Kandla.

3.2 The petitioner follows the cash system of accounting. The petitioner filed return of Service Tax in Form ST-3 for the period from 1st April, 2017 to 30th June, 2017 on 14-8-2017.

3.3 It is the case of the petitioner that after filing of such return, it was realized that there were certain invoices pertaining to the said period which remained unaccounted and consequently, input tax credit (for short the "ITC") involved in such invoices could not be claimed in the return of Service Tax in Form ST-3. The petitioner, therefore, using online facility available on the Automation of Central Excise and Service Tax (for short the "ACES") filed revised Form ST-3 on 17-9-2017, wherein ITC of Rs. 6,94,19,228/- was claimed.

3.4 It is the case of the petitioner that it was further realized that some more invoices remained unaccounted and ITC involved therein amounting to Rs. 99,46,810/- was left out even in the revised return in Form ST-3. The petitioner, therefore, again tried to file second revise return so as to claim correct amount of ITC.

3.5 It is the case of the petitioner that online ACES did not permit the petitioner to file revised return for the second time. The petitioner, therefore, could not claim the ITC to the tune of Rs. 99,46,810/-. The petitioner, vide letter dated 9-11-2017, requested the Assistant Commissioner of Goods and Service Tax, Gandhidham to consider additional claim of ITC which could not be claimed since the ACES portal did not permit the second time revision of the return in Form ST-3.

XXXX

9. Having heard Learned Advocates for the respective parties and having gone through material available on record, in order to consider the issue raised in this petition with regard to the terms of filing of revised Service Tax return for the second time, it would be germane to refer Rule 7B of the Rules, 1994 which reads as under :-

"7B(1) An assessee may submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of (ninety) days from the date of submission of the return under rule 7 :

Provided that the revised return for the period from the 1st day of April-2017, to the 30th day of June, 2017, shall be submitted within a period of forty five days from the date of submission of the return under rule 7.

(2) An assessee who has filed the annual return referred to in sub-rule (3A) of Rule 7 by the due date may submit a revised return within a period of one month from the date of submission of the said annual return.

Explanation. - Where an assessee submits a revised return, the "relevant date" for the purpose of recovery of Service Tax, if any, under Section 73 of the Act shall be the date of submission of such revised return."

10. On perusal of the aforesaid Rule 7B of the Rules, 1994, it permits the assessee to file revised return in form ST-3, in triplicate, to correct a mistake or omission, within a period of ninety days from the date of submission of return under Rule 7. Rule 7 prescribes for return to be filed under Form ST-3. As per Rule 7B, it appears that the assessee can revise the return filed under Rule 7 within a period of 90 days from the date of submission of the original return under Rule 7 of the Rules, 1994. Rule 7B only permits the assessee to revise the mistake or omission in the return filed under Rule 7 within a period of 90 days. If the assessee finds any mistake in the form ST-3 file under Rule 7 of the Rules, 1994, he can revise the same in multiple documents within prescribed period. The intention of the framing of the Rule is to revise return Form ST-3 filed under Rule 7 of the Rules, 1994.

11. In that view of the matter, the stand taken by the respondents that once option is exercised to revise the original return then the assessee cannot file revised return again within prescribed time period under Rule 7B of the Rules, 1994 is not tenable. ACES portal not allowing the petitioner to revise the Form ST-3 for the second time within prescribed period resulting into technical glitches is contrary with the provisions of Rule 7B of Rules, 1994.

12. On one hand, when the ACES Portal did not permit the petitioner to file revised return for the second time due to which the claim of ITC to the tune of Rs. 99,46,810/- was not reflected in the last return in Form ST-3 filed by the petitioner and on the other hand, when the petitioner entered the correct amount of ITC including the amount of Rs. 99,46,810/- in

Form Tran-1 while claiming the ITC under CGST Act, 2017, there is no mechanism whereby such claim can be verified by the system and as such there is difference in amount of ITC in the form of ST-3, in the system and the Form Tran-1 which is filed by the petitioner. Therefore, in such circumstances, differential amount of ITC of Rs. 99,46,810/- cannot be denied to the petitioner on the ground of technical glitches not permitting the petitioner to file second revised return within the prescribed time period, as there is no prohibition as per Rule 7B of Rules, 1994 to file revised return more than one time to revise return filed under Rule 7 of the Rules, 1994 within stipulated period under Rule 7B of the Rules, 1994.

13. In the opinion of the the Court, the respondents have failed to consider the aspect of technical glitches to reject the claim of the petitioner on the ground that the petitioner has no option to revise the return in Form ST-3 once the original return is revised by the petitioner.

14. For the foregoing reasons, the respondents are hereby directed to consider the claim of the petitioner for the amount of ITC of Rs. 99,46,810/- manually under Rule 7B of the Rules, 1994, so as to enable the petitioner to take advantage of the order dated 7-2-2020 to revise the Form Tran-1 to be filed online on or before 31-3-2020. Such exercise shall be completed by the respondents on verification of the claim of the petitioner for the differential amount of the ITC of Rs. 99,46,810/- within a period of two weeks from the date of receipt of copy of this order.

15. The petition accordingly, stands disposed of. Rule is made absolute to the aforesaid extent."

[Emphasis Supplied]

6.11 In view of above discussion, I find that the credit of Rs.1,30,990/- is also admissible to the appellant in terms of Section 140(1) of the CGST Act.

7. Further, an amount of Rs.6,47,086/- was disallowed by the adjudicating authority, on the similar findings that the appellant failed to reflect the service tax paid at Part-I of ST-3 Return Entries 13.1.206, 13.2.3 & 13.3.2.6 and linked entries at Para-H of ST-3. The appellant have claimed this credit pertained to service tax paid under RCM on input services like GTA, Manpower Service, Security Service, Works Contract, Legal Service. All invoices for such services were issued by the service provider prior to 01.07.2017 and payment of service tax under RCM was made after 01.07.2017. They claim that this credit was not reflected in revised ST-3 Returns which is just a procedural lapse, hence, such credit cannot be rejected which otherwise is held admissible. They also claimed that even otherwise if the CENVAT credit is not claimed in TRAN-1, the refund can be claimed under the transitional provisions as per Section 142 of the CGST Act.

7.1 The adjudicating authority has observed that the appellant, in reply to the SCN at Para 3.7, have admitted that they have not filed or submitted the revised ST-3 Return nor did they file revised TRAN-1. They also did not make any suitable entries in the statutory records and directly took the credit in their TRAN-1, which is not admissible. On the contrary at Para 3.7 of the defence reply of the appellant, it is noticed that they never admitted about non-filing of revised ST-3 returns. In fact, they stated that they have filed the revised ST-3 Returns. As regards the entries not reflected in the statutory records, I find this condition is applicable for invoking Section 140(5), which as already discussed shall not apply in the present case. The invoices showing the proof of service tax payment made under RCM was produced by the appellant before the adjudicating authority has not been disputed in the impugned order. So far as the payment of tax is not disputed, I find that the credit of the same cannot be disallowed based on the procedural lapse. Thus, based on the detailed findings given in Para 6.4 to 6.10, above, I find that the credit of Rs.6,47,086/- shall also be eligible to the appellant considering the non-reflection of such credit in the revised ST-3 Returns as a procedural lapse.

8. In view of above discussion and the decision of the judicial forum, I set-aside the demand, interest and penalties confirmed in the impugned Order-in-Original and allow the appeal filed by the appellant.

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

(अखिलेश कुमार) 10 March, 2022
आयुक्त(अपील्स)

Date: 10.03.2022

Attested
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Nirma Ltd, - **Appellant**
Nirma House,
Ashram Road,
Ahmedabad–380009

The Additional Commissioner - **Respondent**
CGST, Ahmedabad North
Ahmedabad

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Deputy Commissioner, CGST, Division-VII, Ahmedabad North
4. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North. (For uploading the OIA)
5. Guard File.