



सत्यमेव जयते

आयुक्तकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी, अहमदाबाद 380015
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
Phone: 079-26305065 Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in



By Regd. Post

DIN NO. 20230264SW000000E573

(क)	फाइल संख्या. / File No.	GAPPL/ADC/GSTP/2160/2022 / 2654-59
(ख)	अपील आदेश संख्या और तिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-151/2022-23 and 31.01.2023
(ग)	पाठित किया गया / Passed By	श्री मिहिर रायका, अपर आयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की तिनांक / Date of issue	01.02.2023
(ङ)	Arising out of Order-In-Original No. CGST/A*bad North/Div-VII/ST/DC/199/2021-22 dated 29.03.2022 passed by The Deputy Commissioner, CGST, Division - VII, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s M & B Engineering Ltd. (GSTIN-24AAACM7930Q122) MB House, 51, Chandrodya Society, Stadium Road, Navjivan, Ahmedabad, Gujarat-380014

(A)	इस आदेश(अपील) से अप्रति कोई व्यक्ति निम्नलिखित तरीके में उपर्युक्त 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.
	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.
(C)	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.
	उक्त अपीलीय प्राधिकारी को अपील दायित्व करने से संबंधित जानकारी, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलकर्ता विभागीय वेबसाइट www.cbic.gov.in पर 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 M & B Engineering Ltd, 'MB House', 51, Chandrodaya Society, Stadium Road, Navjivan, Ahmedabad-380014, Gujarat, (hereinafter referred to as the 'appellant') has filed the present appeal against the Order-In-Original No.CGST/A'bad-North/Div-VII/ST/DC/199/2021-22, dated 29/30.03.2022 (hereinafter referred to as 'the *impugned order*') passed by the Deputy Commissioner, CGST & C.Ex., Division-VII [S.G.Highway-East], Ahmedabad-North. (hereinafter referred to as the '*adjudicating authority*').

2. Briefly stated the facts of the case are that during the course of audit of the records of the appellant it was noticed that M/s M & B Engineering Ltd, had three different registrations in the capacity of Manufacturer, Service Provider & Input Service Distributor [*ISD unit*] in pre-GST regime. The appellant has transferred Cenvat credit of all three units lying in balance as on 30.06.2017 in the Tran-1 filed for the principal unit having GSTN 24AAACM7930Q1Z2 in GST regime.

2.1 It was noticed during the audit that the appellant had availed Transitional Credit under Section 140 of CGST Act 2017 of Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess lying in balance as on 30.06.2017 amounting to Rs.12,93,578/- in contravention of the provisions contained therein. It was also noticed that the appellant has availed transitional credit of Cenvat of Rs.82,09,828/- lying in ISD unit which also appeared not permissible under Section 140 *ibid*. Therefore, a show cause notice was issued for recovery of Rs.95,03,406/- under Section 73 of the CGST Act, 2017. The *adjudicating authority* vide the *impugned order*, has confirmed the demand of Rs.95,03,406/- under Section 73(1) of the Act alongwith interest under Section 73(5) of the Act and ordered to appropriate the total ITC Rs.12,93,578/- reversed by the appellant and also imposed penalty of Rs.9,50,340/- under Section 122(2)(a) of the Act.

3. Being aggrieved, the appellant filed the present appeal wherein they, *inter alia*, contended that;

- a) Amount of Cesses of Rs.12,93,578/- allegedly transitioned wrongly into GST has already been reversed by the appellant through payment in DRD-88 and hence there



cannot be recovery of the same amount twice. No interest should be levied on the payment of cess of Rs.12,93,578/- as the amount has already been reversed.

- b) Conjoint reading of erstwhile Cenvat Credit Rules, 2004 and Sub-Section (1) of Section 140 of the CGST Act as in force on the date of migrating the credit through Form GST TRAN-1, EC, HSEC and KKC credit balance lying in Service tax return filed for the period ending 30th June, 2017, deserved to be migrated into GST regime as eligible ITC to the appellant. Explanation 3 to Section 140 was inserted retrospectively with effect from 01.07.2017 by the CGST (Amendment) Act, 2018 dated 01.02.2019. Thus, at the time of filing Form GST TRAN-1, there was no such explanation, and the appellant was very well eligible to claim the ITC of Cess as on date of filing GST TRAN-1.
- c) ISD Cenvat credit of Rs.82,08,828/- lying in balance with the appellant in the pre-GST era has been rightfully carried forward in the GST regime in terms of the transitional provisions contained under the CGST Act. Sub-Section (7) of Section 140 of the CGST Act, 2017 clearly elucidates the eligibility of appellant to transition undistributed ISD Cenvat credit in the present case and proceeds to impose an obligation on government officials to guarantee compliance thereof. ISD Cenvat credit pertained to services received by the appellant in the pre-GST era and hence, this condition stands satisfied.
- d) With effect from 01.07.2017 the CGST Act was implemented with the objective of avoiding cascading effect of various indirect taxes and reducing their multiplicity. Under GST, ITC is an indefeasible right available to the tax payers. ISD Cenvat credit is nothing but accumulated ITC at a HO which is available for distribution between other units. An ISD mechanism simplified the credit taking process of accumulated ITC at a HO as it achieves the very objective of seamless flow of credit under GST law. The concept of ISD in the GST regime is similar to the provisions contained in the erstwhile service tax regime under the CCR.
- e) By barring the migration of such ITC to the GST regime or by denying such transition into the new taxation era, the impugned order functions against the very objective of implementing a new taxation law and thus, defeats the very purpose for which it has been enacted.



- f) A bare perusal of Rule 117 of CGST Rules, 2017 indicates that the said rule applies where the following conditions are met:
- The registered person should be entitled to take credit of input tax in accordance with Section 140.
 - The amount of ITC carried forward into GST should be reflected in the last return filed prior to the implementation of GST.
 - A declaration in Form GST TRAN-1 is to be electronically submitted on the common portal specifying such amount of ITC to be transitioned.
- g) Sub-section (7) of Section 140 of CGST Act explicitly allows the migration and distribution of ITC pertaining to services received prior to the implementation of GST. Thus, the eligibility criteria stated under point (a) above stands satisfied in the case of appellant. Regarding the requirement provided under point (b), the amount of ISD cenvat credit transitioned into GST pertains to the amount of Cenvat credit availed in the month of June, 2017 and reflected in the ISD return filed for June, 2017. Further, for point (c), the declaration in Form GST-TRAN-1 was duly submitted electronically on 27.12.2017 by the appellant by carrying forward ITC reflecting in the last return.
- h) Nowhere do the rules provide for any restriction or bar on transitioning ISD cenvat credit and hence ISD cenvat credit has been correctly transitioned by the appellant. The Guidance Note No.267/8/2018-CX.8, dated 14.03.2018 provided for two fundamental principles for allowance of transitional credit, both of which are fulfilled by the appellant in the present case. Explicit authority has been provided under Sub-section 7 of Section 140 to migrate and distribute the credit in GST and further, the same credit has not been availed as transitional credit twice by the appellant.
- i) Rule 24 only provides for migration of registered persons from the erstwhile regime to the GST era without delving into the aspect of transition of ITC from the pre-GST era to the GST regime and it does not provide for any restriction and claim of appellant should be allowed.
- j) Post the introduction of GST, the appellant holds a common GSTIN number for both the HO and the manufacturing units located in the state of Gujarat. Under the CGST Act read with the CGST Rules, there is no specific provision which restricts the



transfer of such credit. Under Section 140(1) all categories of registered persons are entitled for transitional credit, except the persons opting to pay tax under composition levy. Thus, by virtue of such inclusion clause it opens an avenue for a plethora of registered dealers, including the appellant, to opt for transition of credit under this Section. Section 140(7) of the Act provides that the credit of an ISD accrued prior to the appointed day, though not transferable to the electronic credit ledger in terms of the provisions, is eligible for distribution on or after the appointed day. Thus, the provisions of Rule 117(1) of the Rules stand inconsistent with the provisions of Section 140(1) of Act stipulating specifically to take credit in the electronic credit ledger. While there may be procedural anomalies or setbacks in reflecting transition of ISD credit, the law has always been very clear that such credit is valid, rightful and legal and is allowed to be migrated from one taxation regime to another.

- k) There is no dispute with respect to the admissibility of the Cenvat credit of the underlying services received in the pre-GST era. Thus, once it is accepted that the Cenvat credit in the present case is admissible, consequently, its admissibility for transition cannot be brought to challenge.
- l) The cenvat credit of the taxes paid under the earlier laws was admissible and there is no dispute regarding the admissibility of the same. Provisions of Section 174(2) of the CGST Act provide that the repeal of the earlier laws shall not affect any right acquired/accrued under such acts. The repeal of the erstwhile CE Act or Finance Act does not affect the right of the assessee under such repeal or amended act. Hence, the right to avail and distribute the Cenvat credit under erstwhile CCR cannot be affected with the implementation of a new law.
- m) Hon'ble Supreme Court has already settled the position under the existing regime that the cenvat credit which is already availed based on the earlier provisions cannot be lapsed due to any amendment in the said provision.
- n) The transitional credit is the rightful credit of appellant which is allowable in line with Section 140(7) of the Act. Thus, as there is no case of unauthorised or unlawful migration of cenvat credit, the charges of levy of interest deserves to be dropped. Once the above claims of the appellant are allowed, it would be seen that the



appellant has correctly transitioned undistributed ISD cenvat credit into GST, the question of imposition of penalty would not arise.

PERSONAL HEARING :-

4. Shri Maulin Gaglani, Chartered Accountant and Shri Mukund Thakkar, authorized representatives, on behalf of the appellant appeared in person for personal hearing on 28.12.2022. They have been given five working days to submit additional information as per their request. In the additional written submission filed on 11th January, 2023 the appellant reiterated the contentions put forth in the appeal memo.

DISCUSSION AND FINDINGS:-

5. I have carefully gone through the facts of the case and the submissions made in the grounds of appeal as well as the additional written submission & during hearing by the appellant. The contentious issues before me is whether the appellant is entitled to take transitional credit of different Cesses viz. Education Cess ; SHEC Cess & Krishi Kalyan Cess [KKC] and the balance of cenvat credit lying as on 30.06.2017 for their Input Service Distributor (ISD) unit. I find that the 'Appellant' had availed the credit of Education Cess ; SHEC Cess & Krishi Kalyan Cess [KKC] of Rs.2,72,261/- , Rs.7,96,689/- & Rs.2,24,628/- [Total of Rs.12,93,578/-] through TRAN-1 as transitional credit for their Service Provider unit, manufacturing unit & ISD unit, respectively. However, the appellant had paid the same subsequently before issue of the SCN. It was also observed that the appellant has availed balance of cenvat credit lying as on 30.06.2017 for their Input Service Distributor (ISD) unit to the tune of Rs.82,09,828/-. This amount has not been paid by them. The appellant has also not paid the applicable interest and penalty on this amount. Accordingly, a SCN dated 22.02.2022 was issued to the appellant in this regard. Thereafter, the adjudicating authority vide impugned order dated 29.03.2022 has confirmed the demand of Rs.95,03,406/- and appropriated the amount of Rs.12,93,578/- paid by them. I find that the adjudicating has confirmed the demand of interest and also imposed penalty of Rs.9,50,340/-. Accordingly, the appellant has preferred the present appeal.



5.1. The transitional arrangement for taking input tax credit of eligible duties to be carried forward in the return relating to the period preceding the appointed day has been made under Section 140 of the CGST Act 2017, relevant portion reads as under:

Section 140. Transitional arrangements for input tax credit.-

140. (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:

Explanation 3 of said Section further provides:-

Explanation 3.—For removal of doubts, it is hereby clarified that the expression "eligible duties and taxes" excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975.

5.2 From the plain reading of the above provisions, it is clear that the legislature has been made clear provisions about taking input tax credit of Cenvat Credit availed in the existing law. The restriction in taking transitional credit is made in respect of the persons paying tax under Section 10 of the CGST Act, 2017. In the present case, the appellant is not paying tax under Section 10 of the CGST Act, 2017 and, therefore, there is no restriction on the appellant in availing transitional credit under Section 140 of the CGST Act, 2017.

5.3 Coming to the denial of transition credit of Education Cess, Higher Education Cess and Krishi Kalyan Cess lying in balance as on 30.06.2017, I find that Explanation-3 of Section 140 of CGST Act, 2017 has clarified that the expression 'eligible dues and taxes' excludes any cess which has not been specified in Explanation-1 or Explanation 2 and any Cess which is collected as additional duty of customs under sub-section (1) of Section 3 of the Customs Tariff Act, 1975. Thus, I hold that the adjudicating authority has correctly denied the transitional credit of Rs.12,93,578/- availed by the appellant pertaining to Education Cess, Higher Education Cess and Krishi Kalyan Cess lying in balance as on 30.06.2017.



5.4 I further find that in the case of Commissioner of CGST & ors. Vs M/s. Sutherland Global Service Pvt. Ltd., vide order dated 16.10.2020 in Writ Appeal No. 53 of 2020, Hon'ble High Court of Madras held that :-

"60. Obviously, the transition of unutilised Input Tax Credit could be allowed only in respect of taxes and duties which were subsumed in the new GST Law. Admittedly, the three types of Cess involved before us, namely Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess were not subsumed in the new GST Laws, either by the Parliament or by the States. Therefore, the question of transitioning them into the GST Regime and giving them credit under against Output GST Liability cannot arise. The plain scheme and object of GST Law cannot be defeated or interjected by allowing such Input Credits in respect of Cess, whether collected as Tax or Duty under the then existing laws and therefore, such set off cannot be allowed."

"62. That the Assessee was not entitled to carry forward and set off of unutilised Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess against the GST Output Liability with reference to Section 140 of the CGST Act, 2017."

In view of the above provisions and case law, I upheld the impugned order confirming the demand & appropriation of Tran-1 credit of EC, SHEC & KKC amounting to Rs.12,93,578/-.

5.5 Regarding the charging of interest on reversal of credits of cesses total of Rs.12,93,578/-, I find that the appellant has already reversed the ineligible ITC credits of cesses Rs.12,93,578/- vide DRC-03; dated 08.10.2020, 08.10.2020 & 25.06.2021 i.e. much before the issue of show cause notice dated 22.02.2022. I further find that the adjudicating authority has also not alleged at any point of time that the said wrongly availed credit of Education Cess, Higher Education Cess and Krishi Kalyan Cess was ever utilized. Therefore, I hold that the appellant is not liable for interest on such reversal.



5.6 Regarding the imposition of penalty is concerned, I find that the appellant has already reversed the ineligible ITC credits of cesses much before the issue of show cause notice. Therefore, I hold that the appellant is not liable for penalty in terms of Section 73(8) of CGST Act, 2017.

5.7 Now coming to the denial of transitional credit of Rs.82,09,828/- lying in balance of in ISD unit as on 30.06.2017, I find that the *adjudicating authority* has denied the credit on the premises that there is separate procedure for passing on ISD credit under Section 20 and hence they are not eligible for taking transitional credit of Cenvat lying in ISD unit. In this regard, I find that Section 20 of the CGST Act, 2017 prescribed the manner of distribution of credit of Input Service Distributor for which, as per the provisions of Section 24 of the CGST Act, 2017, a person has compulsorily required to be registered under the Act. The said provision, in my considered view, applicable only to a person who intended to distribute Input Tax Credit of Central Tax, State Tax or Integrated Tax in GST regime.

5.8 I find that the situation is entirely different in the present case. The appellant has availed transitional credit of Cenvat available with them as per ISD registration under erstwhile Service Tax Rules and Cenvat Credit Rules. As per the provisions of Section 140(1), 140(2) and 140(3) of CGST Act, 2017, a registered person is eligible to take credit of the amount of CENVAT credit of eligible duties carried forward in the return for the month of June, 2017 and the unavailed Cenvat credit on inputs, input services and capital goods used in manufacture of goods, goods lying in stock etc. The appellant, in the instant case, has availed the Cenvat credit of input services used in the manufacture of goods and the same were reflected in the ISD return. As such, in terms of Section 140(1) of the CGST Act, 2017, the appellant was entitled to take credit of CENVAT of eligible duties carried forwarded in the ISD return when there is no dispute about the eligibility of Cenvat credit on the services used and the legality of the documents on which the credit was availed. Therefore, I hold that the appellant has correctly availed transitional credit of Rs.82,09,828/- under Section 140 of CGST Act, 2017 remain undistributed by the ISD unit and the demand to this extend is not sustainable. Since the demand of transitional credit of Rs.82,09,828/- itself is not sustainable, question of charging interest & penalty on this



portion of transitional credit under Section 73(5) & 122(2)(a) of the CGST Act, 2017, respectively, would not arise.

6. In view of the above discussions, I upheld the impugned order confirming the demand of Tran-1 credit of Education Cess, Higher Education Cess and Krishi Kalyan Cess amounting to Rs.12,93,578/- under Section 73 of the CGST Act, 2017 and set aside the demand of Interest on the said credit and penalty imposed under Section 73(5) and 122(2)(a) of the CGST Act, 2017, respectively. However, the demand under Section 73 of the CGST Act, 2017 of credit, remain undistributed by the ISD unit, taken in Tran-1 of Rs.82,09,828/- under Section 140 of CGST Act, 2017 is hereby set aside. The impugned order is modified to the above extent. Hence, the appeal is partially allowed and partially rejected.

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

(Mhbir Rayka)
Additional Commissioner (Appeals)

Date: 31.01.2023

Attested

(Ajay Kumar Agarwal)

Assistant Commissioner [In-situ] (Appeals)
Central Tax, Ahmedabad.



By R.P.A.D.

To,
M/s M & B Engineering Ltd,
"MB House",
51, Chandrodaya Society,
Stadium Road, Navjivan,
Ahmedabad-380014, Gujarat,

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner [Appeals], CGST & C. Ex., Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Deputy Commissioner, CGST & C. Ex, Division-VII [S.G.Highway- East], Ahmedabad-North.
5. The Superintendent [Systems], CGST (Appeals), Ahmedabad.
6. Guard File/ P.A. File.

