आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
Phone: 079-26305065 Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in

सत्यमेव जयते

NATION TAX MARKET

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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2538/2023 /9254 - ST
(ख)	अपील आदेश संख्याऔर दिनांक / Order-In –Appeal and date	AHM-CGST-002-APP-JC-104/2023-24 and 29.11.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	01.12.2023
(ङ)	Arising out of Order-In-Original No. GST-06/D-VI/O&A/814/ERIS/AM/2022-23 dated 30.03.2023 passed by The Assistant Commissioner, CGST, Division-VI, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Eris Lifesciences Limited (GSTIN: 24AABCE7067M1ZD), Shivarth Ambit, Plot No. 142/2, Sindhu Bhavan Marg, Ramdas Road, Bodakdev, Thaltej, Ahmedabad, Gujarat-380054

(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.inको 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.

OFFICE OF THE COMMISSIONER (APPEALS) AHMEDABAD

ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE :

M/s ERIS LIFESCIENCES LIMITED Shivarth Ambit, Ambit, Ramdas Road, Opp Swati Bunglow, Thaltej, Ahmedabad, Ahmedabad, Gujarat, 380059 (GSTIN 24AABCE7067M1ZD) (hereinafter referred to as "Appellant") has filed appeal against Order-In-Original No. GST-06/D-VI/O&A/814/ERIS/AM/2022-23 dated 30-03-2023 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST & C.Ex., Division-VI, Ahmedabad-North Commissionerate (hereinafter referred to as the "adjudicating authority").

2. The facts of this case are that the Appellant are dealing in goods of HSN30045039, 30049039, 30049079, 30045020, 30049072. The Appellant had filed TRAN-1 on 22-12-2017 under Section 140 of the CGST Act, 2017 and has taken transitional credit of Central Taxes in their electronic Credit ledger as under:

Sl.No	Table of TRAN-1	Provision of CGST Act, 2017	Amountclaimed
1	7A of 7(a)	140(3)	18,56,495/-
2	7(b)	140(5)/140(7) (Central Taxes	9,28,195/-
Total			27,84,690/-

Further, they had availed ITC amounting to Rs. 6,28,781/- in their electronic credit ledger by filing TRAN-2 returns of period from July-17 to Dec-17. The said ITC is availed in respect of their claim of declared stocks as inputs available on the appointed day for which taxpaying invoices are not available. Therefore, a total transitional credit of Central Taxes of Rs. 34,13,471/- is taken by the taxpayer in their electronic credit ledger.

Their claim of carry forward of following credit in their ITC ledger appeared to be inadmissible:

Sl.No	Table of TRAN-1	Provision of CGST Act, 2017 and CGST Rules, 2017	Amount claimed
1	7B of 7(a)	140(3) read with Rule 117(4)	6,28,781/-
2	7(b)	140(5)/140(7) (Central Taxes	9,28,195/-
Total			15,56,976/-

3. The Appellant were therefore, issued a Show Cause Notice in FORM GST DRC-01 dated 22-03-2022 issued vide CGST/WS04/TRAN-1/ERIS/2021-22 as to why;

"1) The transitional credit of input tax amounting to Rs. 15,56,976/- (Rupees Fifteen Lakh Fifty Six Thousand Nine Hundred Seventy Six Only) wrongly claimed to carry forward under Section 140 of the CGST Act, 2017 and utilized by them, should not be demanded and recovered from them, under the provisions of Section 73(1) of the CGST Act read with the provisions of Rule 121 of the CGST Rules;

2) Interest should not be charged on credit amount mentioned at Para 12(1) above and recovered from them under the provisions of Section 50(1) of the CGST Act;

3) Penalty should not be imposed on them under Section 73 of the CGST Act, 2017 for wrong availment and utilization of credit amount mentioned at Para 12(1) above and;

4) Penalty should not be imposed on them under the provisions of Section 122(2)(a) of the CGST Act on the grounds discussed herein above."

A corrigendum was issued vide F.No.CGST/WS04/TRAN-1/ERIS/2021-22 dated 01.07.2022 which was amended to the effect that The words "Assistant Commissioner of Central GST, having his office at 5th Floor, GST Bhawan, Nr. Govt. Polytechnic, Ambawadi, Ahmedabad" appearing at Para-12 may be read as "Deputy/Assistant Commissioner, Central GST, Division-VI, Ahmedabad North having his office at 7th Floor, B.D. Patel House, Naranpura, Ahmedabad."

4. The adjudicating authority, vide the impugned order, passed the following order:

(i) I confirm the demand of wrongly availed Cenvat Credit amounting to Rs.15,56,976/- under section 73 of CGST Act, 2017 and Section 73 of the Gujarat GST Act, 2017 read with Rule 121 of the CGST Act, 2017;

(ii) I confirm the demand of interest under the provisions of Section 50(1) of the CGST Act, 2017 read with the Gujarat GST Act, 2017;

(iii) I impose penalty amounting to Rs.155,698/- and order the same to be recovered under sub section 2(a) of Section 122 of the Central GST Act, 2017 read with the Section 73(9)ibid."

5. Being aggrieved with the impugned order, the appellant filed present appeal on the following grounds:

CREDITS PERTAINING TO FORM GST TRAN - 2

- The Appellant would like to highlight that while dis-allowing such ITC of Central Excise portion on the available stock in the SCN, Ld. Assistant Commissioner has wrongly contended that as the Appellant was registered under Gujarat Value Added Tax Act, 2003 (hereinafter referred to as 'the GVAT Act') and was holding Tax Identification No. (TIN No.) 24075500855, should be

construed as the Appellant as registered under the 'existing law' during pre-GST era and hence, the Appellant is not eligible to avail ITC of Transitional Credit to that extend by way of Form GST TRAN-2.

- *In the current facts, as the Appellant was not liable to register under the erstwhile Central Excise Act, 1944 (hereinafter referred to as 'the CE Act'), has rightfully claimed Excise Duty portion on the unsold stock lying on 01 July 2017 as a Transitional Credit. The Appellant would like to humbly submit that, while quoting the above fact, the Ld. Assistant Commissioner has erred in understanding 2 legs of registration under erstwhile Indirect Taxes whereby one registration was required under the Central Excise Act, by the units involved in the prescribed activities of Manufacturing and second under the state VAT (in this case GVAT Act) in relation to all transactions of sales and purchase. Also, the moot discussion here should be in-eligibility of ITC for taxes paid under Central Excise Act to the units registered only under GVAT Act. Which means, even if the Appellant was registered under GVAT Act, ITC pertaining to Central Excise portion paid on purchase invoices were not eligible to the Appellant and hence, the Appellant is rightful owner to that portion of ITC under the transitional provisions of GST. Also, as this being ITC for Central Excise portion, ITC for the same has been availed under Central Goods and Service Tax (hereinafter referred to as 'CGST') and no ITC has been availed under State Goods and Service Tax (hereinafter referred to as 'SGST') which ideally is the portion of GVAT paid on purchases for which ITC was availed in existing law. This contention can be corroborated by referring to the definition of "Eligible duties" as referred to in Section 140 (3) of CGST Act, 2017. As per Explanation 1 to Section 140, eligible duties do not include VAT, but it includes Central Excise duty, Customs Duty and National Calamity Contingent duty*
- *The Appellant would also like to put emphasize on the argument of Ld. Assistant Commissioner wherein it is being mentioned that in accordance with Section 140(5) of the Act, the Appellant is not eligible for ITC in GST Form TRAN - 2 as the documentary evidences for the goods available in stock is not available. The Appellant would like to draw an attention on proviso to Section 140 (3) wherein it is categorically mentioned that, "where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.*

- *The conjoint reading of provisions of Section 140 and Rule 117 makes it clear that the Appellant is eligible to claim ITC for Central Excise portion to the extent*

of 40% of the CGST paid on outward supplies during the period July to December 2017 in relation to stock available on 01 July 2017. Also, such availment is legitimately done using GST Form TRAN - 2 even if such copies or documentary evidence of purchase is not available or not made available. The Ld. Assistant Commissioner in Para 18 on Page 9 of the 010 mentions that Appellant has not submitted documents of such ITC claimed, and thus, ITC shall not be eligible. However, the ITC itself has been availed for such stocks whose duty paying documents were not available. This specific observation has been overlooked by Ld. Assistant Commissioner while passing the impugned order. Thus, Appellant's claim was wrongly rejected on the ground of non-submission of invoices and duty paying documents.

- *Here, Appellant would like to submit details of invoices declared in Form GTR-1 and tax payment made regarding the same in Form GSTR-3B of the period July to December 2017 along with a detailed reconciliation of Transitional Credit availed in GST Form TRAN-2 along with this appeal document as attached at Annexure-G.*

- *The Appellant would like to humbly submit that the Ld. Assistant Commissioner has erred in looking into the legal provisions and applicability in the case of the Appellant and hence, such demand having no base in the eyes of law should be set aside.*

CREDIT PERTAINING TO FORM GST TRAN-1

- *As indicated in the facts, out of the total ITC availed in Form GST TRAN -1, the Appellant has availed ITC amounting to Rs. 9,28,195/- pertaining to Service Tax discharged under Reverse Charge Mechanism (hereinafter referred as "RCM") which is shown under Table 7(b) which is in accordance with the provisions of Section 140 of the Act. The Appellant also submitted a detailed calculation sheet providing line-item wise details of services on which such transitional ITC was availed.*
- *The Appellant would like to draw your attention on the clarification issued under Circular No.207/5/2017 - Service Tax date 28 September 2017, whereby it was provided that, details of the ITC arising as a consequence of payment of Service Tax under RCM post 30 June 2017, shall be indicated in Part I of the Service Tax return Form ST-3 for the period April'17 to June'17. Also, such ITC was required to be disclosed in Part H of the Service Tax return Form ST-3.*
- *The Appellant would like to put emphasize on important clarifications from the quoted circular:*

a. In case Form ST-3 has already been filed without having detailed of ITC on RCM: Details of RCM paid, and ITC thereof is required to be disclosed under revised Form ST-3 which is required to be filed within 45 days from the filling of original ST - 3 returns.

b. ST-3 required to be filed for the period from April 2017 to June 2017 by 31 August 2017: All such ST-3 filed by 31 August, will be deemed as filed on 31 August 2017. Hence, 45 days' time period for revision of ST-3 returns for all registered person under Service Tax will start from 31 August 2017.

c. Once details of ST paid on RCM and ITC thereof is disclosed in Form ST-3, can be taken as Transitional Credit under GST Form TRAN 1 considering allowed Transitional Credit in terms of Section 140 the Act.

- *Appellant discharged Service Tax under RCM on the specified services for the services received during period April to June 2017 post 30 June 2017. Also, the Appellant filed original Service Tax return in Form ST-3 for the said period on 14 August 2017 which was within the prescribed due date for filing of Form ST-3. Copies of Challans for payment of Service Tax along with copy of ST - 3 Form is attached at Annexure -1.*
- *However, on account of technical glitches on online portal, the Appellant was unable to disclose details of Transitional Credit related to Service Tax paid under RCM which was paid post 30 June 2017. As the Appellant was unable to disclose the aforesaid credit in Form ST-3, such Transitional Credit pertaining to Service Tax discharged under RCM was directly disclosed in Table 7(b) to Form GST TRAN - 1 which was further availed and utilized in ECL of the Appellant.*
- .....

Further, the appellant has requested that demand of Rs.15,56,976/- under Section 73 of the Act along with interest under Section 50 and penalty of Rs.1,55,698/- under Section 122, may kindly be set aside.

PERSONAL HEARING:

6. Personal hearing in this case was held on 26.09.2023. Ms. Amrin Alwani, Chartered Accountant appeared in person, on behalf of the appellant as authorized representative. He submitted that :

(i) Credit of Rs.6,28,781/- was availed through TRAN-2 for the goods which were not required to be registered under Excise/Service Tax, therefore no documents can be made available and as per the provisions of Section 140, 40% of Credit based on formula prescribed was availed. In this regard declared calculation also submitted along with Appeal Memo and also to the Ld. Adjudicating Authority, thus credit is admissible to them.

(ii) As regards the credit of Rs.9,28,145/- (Calculation mistake Rs.60,000/-, which is already paid), the said amount was reflected in ST-3 but paid before filing of Return on 14.08.2017 but due to some technical error, they could not mention the said amount of RCM in credit portion, which is available fact.

In view of the above, she requested to allow the appeal.

Discussion & findings:

7.1 I have carefully gone through the facts of the case and the submissions made by the appellant in their grounds of appeal as well as submitted at the time of personal hearing and find that the appellant is mainly contesting with the following points:

(i) ITC of Rs.6,28,781/- availed through TRAN-2 without duty paid documents, is eligible credit under the provisions of Rule 140(3) read with Rule 117(4) of the CGST Act, 2017,

(ii) ITC of Rs.9,28,195/- availed under table 7(b), through TRAN-1 is eligible credit under the provisions of Rule 140(5)/140(7)of the CGST Rules, 2017.

7.2 So the issue to be decided in the present appeal is:

Whether the order passed by the adjudicating authority vide the impugned order confirming the demand of wrongly availed ITC of Rs. 15,56,976/- through TRAN-I/TRAN-2 in contravention of section 140 of the CGST Act, 2017 and Rule 117 of the CGST Rules, 2017 under section 73(1) of CGST/GGST Act, 2017 along with interest under Section 50(1) of the CGST/GGST Act, 2017 read with Rule 121 of the CGST Rules, 2017 and penalty of Rs.1,55,698/- ordered to be recovered under sub-section 2(a) of Section 122 of the CGST Act, 2017 read with Section73(9) of the CGST Act, 2017 is proper or otherwise ?

7.3. At the foremost, I observe that in the instant case the "impugned order" is of dated 30-03-2023 and the present appeal is filed online on 27-06-2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. Therefore, I find that the present appeal is filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

7.4 In the instant case, I observe that the Appellant are dealing in goods of HSN30045039, 30049039, 30049079, 30045020, 30049072 and holding GSTIN 24AABCE7067M1ZD. The appellant was not registered under Central Excise Act, 1944. I observe that the appellant have availed Transitional Credits in TRAN-1 under different columns as stated in foregoing paras, out of which

the ITC claimed under the following columns of TRAN-1 are not allowed to be taken by the adjudicating authority:

(i) Sl.No. 7B of 7(a) of TRAN-1 Where duty paid invoices are not available (Applicable only for person other than manufacturer or service provider) – Credit in terms of Rule 117 (4) : The Appellant claimed ITC of Rs.6,28,781/- under this column but did not provide other supporting documents to support their TRAN-2 Credit claim.

(ii) Column 8 of Sl.No. 7(b) of TRAN-1 - Amount of eligible duties and taxes/VAT/[ET] in respect of inputs or input services under section 140(5) and section 140(7): The Appellant claimed ITC of Rs.9,28,195/- under this column which pertains to service tax paid under reverse charge mechanism and they filed ST-3 Return for the period April-June-2017 on 14.08.2017. However, ST-3 Return was not having any credit balance; therefore, the appellant was found to be not eligible to transfer any credit under this column.

7.5 For admissibility of Transitional Credit of Inputs held in stock on the appointed day of any Taxpayer who was not registered under existing law, where the duty paying documents are not available with the taxpayer, such ITC claim is available as per provisions of Rule 117 (4) of the CGST Rules, 2017, which is as under:

Section 140. Transitional arrangements for input tax credit.-

(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012-Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished [4][goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:-

.....

Provided *that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of*

such credit by way of reduced prices *to the recipient, be allowed to take credit at such rate and in such manner* as may be prescribed.

Rule 117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day.-

4) (a) (i) A registered person who was not registered under the existing law shall, in accordance with the proviso to sub-section (3) of section 140, *be allowed to avail of input tax credit on goods (on which the duty of central excise or, as the case may be, additional duties of customs under sub-section (1) of* section 3 *of the Customs Tariff Act, 1975, is leviable) held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of central excise duty.*

(ii) The input tax credit referred to in sub-clause (i) shall be allowed at the rate of sixty per cent. on such goods which attract central tax at the rate of nine per cent. or more and forty per cent. for other goods of the central tax applicable on supply of such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid:

Provided *that where integrated tax is paid on such goods, the amount of credit shall be allowed at the rate of thirty per cent. and twenty per cent. respectively of the said tax;*

(iii) The scheme shall be available for six tax periods from the appointed date.

(b) The credit of central tax shall be availed subject to satisfying the following conditions, namely:-

(i) such goods were not unconditionally exempt from the whole of the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 or were not nil rated in the said Schedule;

(ii) the document for procurement of such goods is available with the registered person;

[4][(iii) The registered person availing of this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2), submits a statement in FORM GST TRAN-2 *by 31stMarch 2018, or within such period as extended by the Commissioner, on there commendations of the Council, for each of the six tax periods during which the scheme is in operation indicating therein, the details of supplies of such goods effected during the tax period:]*

[5][Provided that the registered persons filing the declaration in FORM GST TRAN-1 *in accordance with sub-rule (1A), may submit the statement in FORM GST* TRAN-2 *by [6][30thApril, 2020]];*

(iv) the amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 *on the common portal; and*

(v) the stock of goods on which the credit is availed is so stored that it can be easily identified by the registered person.

7.6 I observe that the appellant was not registered under the Central Excise Act, the ITC claim of Rs.6,28,781/- under TRAN-1 under Sl.No. 7B of 7(a) of TRAN-1 pertains Where duty paid invoices are not available (Applicable only for person other than manufacturer or service provider) – Credit in terms of Rule 117 (4) which provides that A registered person who was not registered under the existing law shall, in accordance with the proviso to sub-section (3) of section 140, be allowed to avail of input tax credit on goods (on which the duty of central excise or, as the case may be, additional duties of customs under sub-section (1) of section 3 of the Customs Tariff Act,1975, is leviable) held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of central excise duty shall be allowed at the rates prescribed and the conditions laid down as mentioned in the Rule ibid.

7.7 From the above, I find that the ITC under 7B of 7(a) of TRAN-1 where duty paid invoices are not available, is allowed to be taken, if all the above conditions are fulfilled by the Taxpayer. I find that with regard to claim of ITC of Rs.6,28,781/- for which the appellant was not in possession of duty paying documents, the appellant has provided the details of invoices declared in Form GSTR-1 and tax payment regarding the same in Form GSTR-3B of the period July to December-2017 along with detailed reconciliation of Transitional credit availed in Form TRAN-2, the same as per my view can be allowed subject to verification and fulfillment of the conditions as laid down in the Rules/Section ibid, by the proper officer.

7.8 As regards to ITC claim of Rs.9,28,195/- under Column 8 of Sl.No. 7(b) of TRAN-1 - Amount of eligible duties and taxes/VAT/[ET] in respect of inputs or input services under section 140(5) and section 140(7); the claim of the appellant that the they filed original ST-3 Return for the period April-June-2017 on 14.08.2017, they discharged service tax under RCM on the specified services for services received during the period April-June-2017, post 30th June, 2017 for which copies of challans for payment of service tax along with copy of ST-3 Return has been submitted. Further, as per the appellant, on account of technical glitches on online portal, they were unable to disclose details of Transitional Credit related to service Tax paid under RCM which was paid post 3oth June, 2017. Such Transitional Credit was directly disclosed in Table 7(b) to Form GST TRAN-1. The only loophole in the entire process was non-disclosure of such service Tax paid by revising the original ST-3 Return which according to them is a procedural lapse.

7.9 I refer the provisions of Section 140(5) and 140(7) of the CGST Act, 2017 under which the said Transitional credit is available.

Section 140. Transitional arrangements for input tax credit.-

(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 5[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:

(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as 7[credit under this Act, within such time and in such manner as may be prescribed, even if] the invoices relating to such services are received on or after the appointed day.

7.10 From the above provisions of Section 140(5), I find that 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 conditions as laid down thereunder. However, in the present case, I find that the services are received before the appointed day and the payment of which is made under RCM, before filing ST-3 Return for the relevant period i.e. post appointed day. Thus I find that the said ITC is not eligible to be taken. I am of the view that the said ITC was available if the same should have been shown in the ST-3 Returns for the period April-June 2017 which would have been reflected in the credit balance, if not used by the Appellant. The contention of the Appellant that they filed ST-3 Return on 14.08.2023, but due to technical glitch, on online portal, the Appellant was unable to disclose details of Transitional Credit related to the said service Tax paid under RCM which was paid post 30-06-2017. Due to this the Appellant directly disclosed the said credit in Table 7(b) of form GST TRAN-1 which has further been availed and utilized in the Electronic Credit ledger of the Appellant, is not allowable as per the provisions ibid. The Appellant was required to take a course of action to solve the Technical Glitch arisen at the relevant time.

7.11 Further, I refer the relevant Circular No.207/5/2017-Service Tax dated 28.09.2017 under which Certain transitional issues arising with respect to payment of service tax after 30" June 2017 has been clarified. The text of which is reproduced hereunder:

"2.0 Reflection of transitional credit arising out of payment of service tax on reverse charge basis after 30 June 2017 and by 5th/6" July 2017 2.1 I am directed to refer to certain instances of assessees, who had chosen to wait till 5" /6" July 2017 to make the payment of service tax on reverse charge basis, instead of paying the same by 30-6-2017. These cases would be ones where the service was received before 1-7-2017 and payment for the value of the service was also made before 1-7-2017. Since the input tax credit in cases of payment under reverse charge would be available only after payment of service tax, these assessees had doubts as to whether the details of credit should be included in the return in Form ST-3 or in Form GST TRAN-1.*

2.2 The matter has been examined. In such cases, details of credit arising as a consequence of payment of service tax on reverse charge basis after 30 June 2017 by 5/6" July 2017, the details should be indicated in Part I of Form ST-3 in entries, 3.1.2.6, 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 return, the time for filing of which is 45 days from the date of filing of the return."

7.12 From the above, I find that the cases where the service was received before 1-7-2017 and payment for the value of the service was also made before 1-7-2017, Since the input tax credit in cases of payment under reverse charge would be available only after payment of service tax, in such cases, details of credit arising as a consequence of payment of service tax on reverse charge basis after 30 June 2017 by 5/6" July 2017, the details should be indicated in Part I of Form ST-3 in entries, 3.1.2.6, 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 return, the time for filing of which is 45 days from the date of filing of the return. However, I find that the appellant had filed ST-3 Return on 14-08-2017 and not filed revised ST-3 Return, as per the above clarifications for which they have submitted that the same could not be filed due to technical glitches, is not tenable.

7.13 Therefore, I am of the view that since the credit of service Tax paid under RCM post appointed day, is not reflected in the balance of Cenvat Credit Account of the Appellant, the same is not eligible to be taken as per the

provisions of TRAN-1. Hence, the order passed by the adjudicating authority is proper and legal.

7.14 Further with regard to the applicability of interest, on the wrong availament of Tran-1 credit, I refer to the relevant provision of Section 50(3) of the CGST Act, 2017, which is reproduced as under:

Section 50. Interest on delayed payment of tax.-

[(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed].

The Manner of calculating interest on delayed payment of tax as per Notification No.14/2022-Central Tax dated 05-07-2022 The text of Rule 88B inserted vide the said Notification is reproduced hereunder:

"7. In the said rules, with effect from the 1st July, 2017, after rule 88A, the following rule shall be deemed to have been inserted, namely: -

—88B. Manner of calculating interest on delayed payment of tax. -

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.

Explanation. —For the purposes of this sub-rule, —

(1) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

(2) the date of utilisation of such input tax credit shall be taken to be, —

(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or

(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases."

7.15 From the above provisions, it is observed that the Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilized. Therefore, I find that the appellant is required to pay interest as per the above discussion and findings on the wrong availament of Tran-1 credit of Rs.9,28,195/-.

7.16 Further, as regards to imposition of Penalty under Section 73(1) of the CGST Act, 2017 read with Section 122(2)(a) of the CGST Act, 2017 and also read IGST Act, 2017, I refer the same provisions, the text of which is as under:

"Section 122. Penalty for certain offences.-

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

7.17 I find that the appellant has wrongly availed Tran-1 credit of Rs.9,28,195/- in contravention of the above provisions, and also utilized the same. I observe that the provisions of Section 122(2)(a) provides that where the input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any willful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher. I find that as the Appellant in the present case has availed and utilised the credit of Rs.9,28,195/- is liable for penalty under the said provisions.

8. In view of the above, I pass the following order:

(i) Allow the appeal with regard to ITC of Rs.6,28,781/- availed under Section140(3) read with Rule 117(4) through TRAN-2 Credit ,
The appellant is however, directed to furnish the relevant submissions/ documents in support of their claim as per the provisions ibid, to the concerned authority for verification and the adjudicating authority after verification report of the same, shall pass order accordingly.

(ii) Uphold the demand of wrongly availed ITC of Rs.9,28,195/- through TRAN-1 in contravention of provisions of section 140 of the CGST Act, 2017, under section 73(1) of CGST Act / GGST Act 2017, along with interest under Section 50(3) of the CGST/GGST Act, 2017 and penalty of Rs.92,820/- under Section 73(1) read with Section 122(2) (a) of the CGST/GGST Act, 2017.

9. The impugned order is modified to the above extent.

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

10. The appeal filed by the *appellant* stands disposed of in above terms.

29/11/2023

(ADESH KUMAR JAIN)
JOINT COMMISSIONER (APPEALS)
CGST & C.EX., AHMEDABAD.

Date: .11.2023

ATTESTED.

(SUNITA D.NAWANI)
SUPERINTENDENT
CGST & C.EX.(APPEALS),
AHMEDABAD.

By R.P.A.D.

M/s ERIS LIFESCIENCES LIMITED Shivarth Ambit,
Ramdas Road, Opp Swati Bunglow, Thaltej, Ahmedabad,
Ahmedabad, Gujarat, 380059 (GSTIN 24AABCE7067M1ZD)

Copy to:

1. The Principal Chief Commissioner of CGST & C.EX., Ahmedabad Zone.
2. The Commissioner [Appeals], CGST & C. Ex., Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Dy/Asstt. Commissioner, CGST & C. Ex, Division-VI, Ahmedabad-North.
5. The Superintendent [Systems], CGST (Appeals), Ahmedabad.
6. Guard File/ P.A. File.