



सत्यमेव जयते

आयुक्तकाकार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.  
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
Phone: 079-26305065 Fax: 079-26305136  
E-Mail : commrappl1-cexamd@nic.in

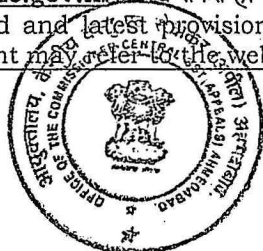


**By Regd. Post**

DIN NO.: 20231264SW000051565B

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2830/2023 / ५३१ - ७७
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-122/2023-24 and 28.12.2023
(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	28.12.2023
(ङ)	Arising out of Order-In-Original No. 02/Dem/2023-24/Sup/AR-III dated 04.08.2023 passed by The Superintendent, CGST, Range-III, Division-IV, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Sheth Polyfilm LLP (GSTIN: 24ACXFS6081L2Z8), 412, Ashwamegh Industrial Estate, Changodar, Sanand, Ahmedabad, Gujarat-382213

(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 <u>twenty five per cent</u> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



**ORDER-IN-APPEAL****Brief facts of the case:**

M/s. Sheth Polyfilm LLP, 412, Ashwamegh Industrial Estate, Changodar, Sanand, Ahmedabad, Gujarat-382213(hereinafter referred to as the 'Appellant') has filed the present appeal against Order-in-Original No. 02/Dem/2023-24/Sup/AR-III dated 04.08.2023 (hereinafter referred to as the 'impugned order') issued by the Superintendent, CGST & C.Ex., AR-III, Division-IV, Ahmedabad North.

**2(i).** Briefly stated the fact of the case is that the appellant is registered under GSTIN No. 24ACXFS6081L2Z8 and engaged in the outward supply of article of plastics and articles there-off, other materials falling under the hearing, etc. falling under HSN 3923. During the course of audit and verification of GSTR-9 for the period July 2017 to March 2018, it appears that ITC of CGST of Rs. 873673/- on account of table 7(b) and ITC of SGST of Rs. 575149/- on account of table 5 of Tran-1 has been taken in Electronic Credit Ledger. In this matter the supporting document i.e., the invoice No. 1 dated 30.06.2017 of supplier having Registration No. ACXFS6081LEM001, as mentioned, in table 7(b), on the basis of which ITC of CGST of Rs. 8,73,673/- had been claimed through 'TRAN-1, has not been furnished/failed to be furnished. Therefore, it appears that the tax payer is liable to reverse/Pay the CGST of Rs.8,73,673/- along with interest and penalty as applicable, under CGST Act, 2017.



**3.** In this regard, Show Cause Notice was issued on 31.01.2023 and further adjudicating authority has issued O-I-O No. 02/Dem/2023-24/Sup/AR-III dated 04.08.2023 to the appellant and confirm the demand on the following grounds:-

- that they have claimed ITC of Rs. 8,73,673/- under CGST head being the closing balance of excise credit as on 30.06.2017;
- that such ITC was required to be claimed under table-5(a). But the said ITC of excise duty had been claimed in table-7(b) of TRAN-1;
- that as per GSTR-9 for the period July,17 to March,18, ITC of CGST of Rs.8,73,673/- on account of table 7(b) and ITC of SGST of Rs. 5,75,149/- on account of table 5 of TRAN-I had been taken in Electronic Credit Ledger. In this matter the supporting document i.e., the invoice No. 1 dated 30.06.2017 of supplier having Registration No. ACXFS6081LEMOO1, as mentioned in table 7(b), on the basis of which ITC of CGST of Rs. 8,73,673/- had been claimed thro' TRAN-1, has not been furnished/failed to be furnished;

- that as per CBIC's Circular No.180/12/2022-GST . dated 9.09.2022 , CBIC has issued Guidelines for filing/ revising TRAN-1/TRAN-2 in terms of order dated 22.07.2022 & 02.09.2022 of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd. Thus, the tax payer had an option to revise the TRAN-1 declaration, yet again. However, the Taxpayer, does not seem to have made any effort to revise their TRAN-1 and hence, it is felt that they had intentionally availed the irregular ITC. Therefore, I hold that wrongly availed and utilized Central Goods and Services Tax (CGST) of Rs. 8,73,673/- is recoverable from them under Section 74( 1) along with interest under Section 50 of the CGST Act, 2017.
- that the taxpayer has mis-stated and suppressed the material fact regarding availment and utilization of inadmissible ITC of CGST. This is an Act in defiance of law by way of suppression, concealment or mis-declaration resulting in wrong availment and utilization of ITC with intention to evade payment of tax.
- That they are liable for recovery of the amount of Rs. 8,73,673/- (CGST Rs. 8,73,673) under Section 74(1) of the CGST Act, 2017, interest at applicable rate under Section 50 of the CGST Act, 2017 on demand and penalty of Rs. 8,73,673/- (CGST Rs. 8,73,673/-) under Section 74(1) read with Section 122(2)(b) of the CGST Act 2017 on demand.

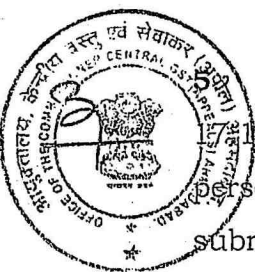
Being aggrieved with the above order, the appellant filed the present appeal on 06.09.2023, on the grounds that:

- The appellant deny all the allegations/ observations raised in the order of recovery of ITC due to disallowance of TRAN-1 ITC and states that the order for demand of tax, interest thereon and penalty are not sustainable on the basis of the submissions made below which are independent and without prejudice to each other.
- the disallowance of ITC merely on the basis of some procedural lacuna;
- that such ITC was required to be claimed under table-5(a). But by mistake the said ITC of excise duty had been claimed in table-7(b) of Tran-1.
- The appellant refer the extract of the Sec-140(1) of CGST Act, 2017 and stated that the appellant is eligible for the credit balance of excise duty lying as on 30.06.2017 to be claimed as CGST. The appellant has rightly availed such ITC.
- The appellant hereby requests to take lenient view in this matter and allow the ITC of Rs.873673/-. The appellant has claimed the ITC under table-7(b) of TRAN-1 on the basis of purchase invoices and the appellant is also having all the necessary documentary evidences for claiming ITC. The appellant is having all such purchase bills in support of their claim for ITC.

- The appellant relies on the following case laws (i) 2019 (25) G.S.T.L. 497 (Ori.) IN THE HIGH COURT OF ORISSA AT CUTTACK K.S. Jhaveri, C.J. and K.R. Mahapatra, J. FIELD MOTOR PVT. LTD. Versus UNION OF INDIA W.P. (C) No. 17282 of 2018, decided on 3-4-2019;
- that the appellant is not liable for tax demand as per submission of supra para 2.1, so appellant is also not liable for interest and penalty also.
- The present order in DRC-O7 has not brought any evidence/ fact which can establish that we have suppressed anything from the department. Hence no case has been made out on the ground of suppression of facts or willful misstatement of facts with the intention to evade the payment of GST. Hence the present case is not the case of fraud, suppression, willful misstatement of facts, etc. Hence penalty cannot be imposed.

They further pray to drop the demand of tax, interest thereon and penalty.

**PERSONAL HEARING:**



Personal Hearings in the matter were offered to the "Appellant" on 10.2023. Shri Vipul Khandhar, C.A., Authorized Representative appeared in person on behalf of the appellant in the present appeal. During P.H. he has submitted that due to some technical issue they tried to file Tran-1 in table 5(a) but could not succeed, so they filed the same in table 7(b) in Tran-1. All documents available with them and requested to all credit. He further submitted additional submission and also relied upon various decisions of Hon'ble High Court as detailed in submissions and requested to allow appeal.

**DISCUSSION AND FINDINGS:-**

6. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case is whether the Input Tax Credit of CGST Rs. 8,73,673/- claimed under table 7(b) of TRAN-1 is admissible or otherwise?

7(i). In the instant case the appellant during the course of audit and verification of GSTR-9 for the period July 2017 to March 2018, has carried forward to the electronic credit ledger, through Tran-1, an amount of ITC of CGST of Rs. 8,73,673/- on account of table 7(b) and ITC of SGST of Rs. 5,75,149/- on account of table 5 of Tran-1 has been taken in Electronic Credit Ledger.

7(ii). Therefore, I find it pertinent to refer Section 140 (1) of the CGST Act, 2017, which is re-produced as under:

**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.

Further I find it pertinent to refer the details of table 5(a) and Table 7(b) of FORM GST TRAN-1, which is re-produced as under:

5. Amount of tax credit carried forward in the return filed under existing laws:

(a) Amount of Cenvat credit carried forward to electronic credit ledger as central tax (Section 140(1), Section 140 (4) (a) and Section 140(9));

7. Details of the inputs held in stock in terms of sections 140(3), 140(4)(b), 140(5) and 140(6):

7B. Where duty paid invoices are not available (Applicable only for person other than manufacturer or service provider) – Credit in terms of Rule 117 (4)

7(ii). Accordingly, the appellant was entitled to carry forward the admissible credit reflected in their return on the appointed date i.e. 30.06.2017 and such Central Tax credit to be carry forward and be shown in table 5(a) of Tran-1 subject to the same credit is reflecting as closing balance of the concerned return of the Central Excise and Service Tax as on 30.06.2017. However, in the instant case, though the credit of Rs.8,73,673/-was reflecting in the E.R.-3 return but the appellant transited the same though TRAN-1 in Table 7(b). Whereas, table 7(b) is to be filled only by those who are not manufacturer or service provider who was unregistered in the old regime-basically to be filled by dealers or

trader to provide information of inputs where duty paid invoices or documents are not available. Such a person also has to fill Tran-2. In the instant case the appellant is a manufacturer and the table 7(b) does not applicable to them.

8(i). Further I find it pertinent to refer circular No.180/12/2022-GST dated 09.09.2022 & 182/14/2022-GST dated 10.11.2022 which is re-produced as under:

CBIC vide Circular No.180/12/2022-GST dated 09-09-2022: The main points pertain to this case are as under:

1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.
2. ....
3. ....
4. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.

In accordance with the directions of Hon'ble Supreme Court, the facility for filing TRAN-1/ TRAN-2 or revising the earlier filed TRAN-1/TRAN-2 on the common portal by an aggrieved registered assessee (hereinafter referred to as the applicant) will be made available by GSTN during the period from 01.10.2022 to 30.11.2022. In order to ensure uniformity in implementation of the directions of Hon'ble Supreme Court, the Board in exercise of powers conferred under section 168(1) of the CGST Act, 2017 hereby clarifies the following:

4. Guidelines for the applicant for filing TRAN-1/TRAN-2 or revising earlier filed TRAN-1/TRAN-2:

4.1 to 4.5 .....

4.6 It is pertinent to mention that the option of filing or revising TRAN-1/TRAN-2 on the common portal during the period from 01.10.2022 to 30.11.2022 is a one-time opportunity for the applicant to either file the said forms, if not filed earlier, or to revise the forms earlier filed. The applicant is required to take utmost care and precaution while filing or revising TRAN-1/TRAN-2 and thoroughly check the details before filing his claim on the common portal.

5. The declaration in FORM GST TRAN-1/TRAN-2 filed/revised by the applicant will be subjected to necessary verification by the concerned tax officers. The applicant may be required to produce the requisite documents/ records/ returns/ invoices in support of their claim of transitional credit before the concerned tax officers for verification of their claim. After the verification of the claim, the jurisdictional tax officer will pass an appropriate order thereon on merits after granting appropriate reasonable opportunity of being heard to

the applicant. The transitional credit allowed as per the order passed by the jurisdictional tax officer will be reflected in the Electronic Credit Ledger of the applicant on the common portal.

CBIC vide Circular No.182/14/2022-GST dated 10-09-2022: The main points pertains to this case are as under:

1.2. Subsequently in Miscellaneous Application No. 1545-1546/2022 in SLP(C) No. 32709- 32710/2018, Hon'ble Supreme Court vide order dated 2nd September, 2022 has inter-alia ordered as follows:

"The time for opening the GST Common Portal is extended for a further period of four weeks from today. It is clarified that all questions of law decided by the respective High Courts concerning Section 140 of the Central Goods and Service Tax Act, 2017 read with the corresponding Rule/Notification or direction are kept open."

## 2. CHECKS FOR VERIFICATION OF ENTRIES IN TRAN-1 TABLE:

As a matter of assistance, following checks are suggested in relation to the entries provided in various tables of TRAN 1. The list of checks is not exhaustive but is indicative only based on provisions of law, the likely error and the inputs received from the field formations.

Checks for Table 5(a):

3.1.1 Check 1: Verify that the credit has been taken against closing balance of CENVAT credit in ER-1/2/3 or ST-3. Credit can be taken only where the last return was filed and credit taken in Table 5(a) should not be more than closing balance of credit in ER-1/2/3 or ST-3 minus the education / secondary education cess / KKC/ SBC.

3.1.2 Check 2: Credit of taxes not covered in the definition of eligible duties in section 140 cannot be availed. Example: Krishi Kalyan Cess, Education Cess, clean energy cess etc. Credit of VAT and PLA balance is not allowed as transitional credit.

3.1.3 Check 3: Check that returns have been filed for last 6 months. An assessee filing TRAN-1 and taking credit in table 5(a) should have -

- a) Filed ER-1 or ER-2 regularly between Jan, 2017 and June, 2017 or
- b) Filed ER-3 for period ending March, 2017 and June, 2017 or
- c) Filed ST-3 for period ending March, 2017 and June, 2017.

This check should be performed liberally where many units have merged into one registration or a single unit has been split into many (Centralized registration cases / LUT units) in GST. Compliance by any of the merging unit which was filing the returns in the pre-GST would entitle the new unit to avail credit in relation to that merging unit.

3.1.2 Check 2: Credit of taxes not covered in the definition of eligible duties in section 140 cannot be availed. Example: Krishi Kalyan Cess, Education Cess, clean energy cess etc. Credit of VAT and PLA balance is not allowed as transitional credit.

3.1.3 Check 3: Check that returns have been filed for last 6 months. An assessee filing TRAN-1 and taking credit in table 5(a) should have –

- d) Filed ER-1 or ER-2 regularly between Jan, 2017 and June, 2017 or
- e) Filed ER-3 for period ending March, 2017 and June, 2017 or
- f) Filed ST-3 for period ending March, 2017 and June, 2017.

This check should be performed liberally where many units have merged into one registration or a single unit has been split into many (Centralized registration cases / LUT units) in GST. Compliance by any of the merging unit which was filing the returns in the pre-GST would entitle the new unit to avail credit in relation to that merging unit.

**8(ii).** As per CBIC vide Circular No.180/12/2022-GST dated 09.09.2022 CBIC has issued Guidelines for filing/revision Tran-1/Tran-2 in terms of order dated 22.07.2022 and 02.09.2022 of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd. Thus, the appellant had an option to revised the Tran-1 declaration, yet again. Further as per rule 117 to rule 120 and 120(A) of CGST Rules, 2017, the appellant had the option to revised the declaration submitted in form GST Tran-1. However, the appellant have not made any effort to revised their Tran-1 and hence, it is felt that they had intentionally availed the irregular ITC. Hence, it is construed that they are liable for payment/reversal of wrongly availed ITC along with applicable interest and penalty. Further, I find that the appellant has referred various case laws, however, I find that none of the case laws completely matched with the facts and circumstances of present case.

**9(i).** Further as per Section 155 of CGST Act, 2017 the burden of proof, in case of eligibility of ITC, availed by the appellant, lies entirely on the appellant. I refer to the relevant extract of Section 155 of the CGST Act, 2017:  
Section 155. Burden of proof.-

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

**9(ii).** Further in the appeal memo appellant has stated that the said ITC was required to be claimed under table 5(a) but by mistake the said ITC of excise duty had been claimed in table 7(b) of Tran-1. As per CBIC vide Circular No.180/12/2022-GST dated 09.09.2022 CBIC has issued Guidelines for



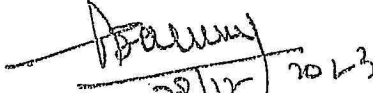
F.No.GAPPL/ADC/GSTP/2830/2023.

filing/revision Tran-1/Tran-2 in terms of order dated 22.07.2022 and 02.09.2022 of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd. the appellant had an option to revised the Tran-1 declaration, yet again. However, the appellant have not made any effort to revised their Tran-1. Hence, it is construed that they have wrongly availed ITC under wrong table and hence, liable for payment/reversal of wrongly availed ITC along with applicable interest and penalty.


10. In view of the foregoing facts & discussion and in terms of Section 140 of the CGST Act, 2017, I do not find any infirmity in the impugned order passed by the adjudicating authority and the impugned O-I-O is upheld being legal and proper.

अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the "Appellant" stands disposed of in above terms.

  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)  
Date: 28.12.2023

Attested

  
(Sandheer Kumar)  
Superintendent (Appeals)  
Central Tax, Ahmedabad

**By R.P.A.D.**

To,

M/s. Sheth Polyfilm LLP,  
412, Ashwamegh Industrial Estate,  
Changodar, Sanand, Ahmedabad,  
Gujarat-382213.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad.
3. The Pr. Commissioner, CGST & C.Ex, Ahmedabad-North Commissionerate.
4. The Dy / Assistant Commissioner, CGST & C.Ex, Division-IV, Ahmedabad-North Commissionerate.
5. The Superintendent, CGST & C.Ex. AR-III, Division-IV, Ahmedabad-North Commissionerate.
6. The Superintendent (Systems), CGST & C.Ex. Appeals, Ahmedabad, for Publication of the OIA on website.
7. Guard File/ P.A. File.

