



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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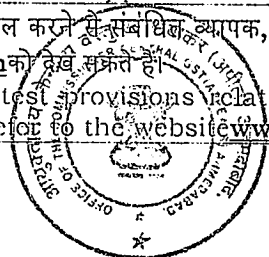


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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/1296/2023 / 1264-71
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-41/2023-24 and 31.07.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	08.08.2023
(ङ)	Arising out of Order-In-Original No. 47/DC/D/VM/22-23 dated 18.01.2023 passed by The Deputy Commissioner, CGST, Division-III, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Mayora India Pvt Ltd. (GSTIN-24AABCI8732P1Z5), SM 9/5, GIDC Phase II, Sanand GIDC, Ahmedabad-382170

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> 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 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 .



Brief facts of the case:

M/s Mayora India Pvt Ltd. (Formerly known as M/s Inbisco India Private Ltd.)(GSTIN-24AABCI8732P1Z5) SM 9/5, GIDC Phase-II, Inbisco India Private Ltd., GIDC Sanand, Sanand, Ahmedabad Gujarat 382170 (hereinafter referred to as the 'Appellant') has filed the present appeal against Order No. 47/DC/D/VM/22-23 dated 18.01.2023 (hereinafter referred to as the 'impugned order') for in-admissible transitional credit issued by the Deputy Commissioner, CGST & C.Ex., Division-III, Ahmedabad North.

2. Briefly stated the fact of the case is that the appellant is registered under GSTIN GSTIN-24AABCI8732P1Z5 and engaged in the business of subsidiary global foods and beverages falling under HSN code 1905, 1902 and 1806 which falls under the purview of Central Goods and Service Tax Act, 2017 and availing the benefit of Input Tax Credits on Inputs, Capital Goods and Input services under the Central Goods & Service Tax Rules, 2017. During the course of TRAN-1 verification it was observed by the proper officer that the appellant had filed TRAN-1 return, wherein they had transited the Cenvat Credit in light of Section 140 of the CGST Act, 2017 read with Rule 117 of the CGST Rules, 2017. The appellant had availed credit amounting to Rs.11,06,718/- under column 7(a) in the TRAN-1. On verification of the Credit availed, the proper officer found that there was no documentary evidence in support of the credit taken by the appellant in TRAN-1. Further CERA Audit had also raised the issue and asked the Department to verify the Transitional Credit so availed, thoroughly. The appellant was requested to provide the documents in support of their claim. However, as the required documents were not provided, the appellant was issued Show Cause Notice dated 09-02-2022 for :

- (a) Input Tax Credit of Rs.11,06,718/- should not be demanded and recovered under proviso to Section 73(1) of the Act,
- (b) Interest at the appropriate rate on the amount mentioned at (a) above should not be charged and recovered from them under Section 73(5) of the Act and
- (c) Penalty on the amount mentioned at Sl.No (a) above should not be charged and recovered under the provisions of Section 122(2)(a) of CGST Act, 2017.

3. The Adjudicating Authority vide Order-in-Original No. 47/DC/D/VM/22-23, dated 24.03.2022 has:

- (a) Confirmed and ordered for recovery of Input Tax Credit of Rs.11,06,718/- under the provisions of Section 73(1) of the CGST Act, 2017,
- (b) Ordered for recovery of interest on the demand confirmed at (a) above, at appropriate rates under Section 73(5) of the CGST Act and
- (c) imposed penalty of Rs.1,10,672/- under the provisions of Section 122(2) (a) of the CGST Act, 2017.

4. Being aggrieved with the impugned order the appellant filed the present appeal on 13.04.2023, on the grounds that;

As per Section 140(3) of the CGST Act, Manufacturer shall be entitled to take Input Tax Credit of Excise duty paid stock which are lying as on 30-06-2017, that such credit will be taken as under;

- (a) Credit will be taken based on invoice evidencing payment of duty of Excise or VAT
- (b) Such invoices are less than one year old
- (c) Declare the stock of duty paid goods within prescribed format.

4.1 Hence, where duty paid invoices or other documents are available for inputs or inputs contained in semi-finished and finished goods with a manufacturer or service provider- Table 7(a) of the Tran-1 will be used to claim Input Tax Credit of such Excise duty or service Tax as Input Tax Credit of CGST and invoices/documents of inputs or inputs contained in semi-finished and finished goods evidencing payment of tax are available.

4.2 That the Company has excise duty paid stock at Gujarat CFA location as on 30-06-2017 for that credit of Rs.11,06,718/- has been availed by them.

4.3 They have submitted copies of invoices evidencing payment of excise duty with the details of stock for which Credit has been claimed. They have further prayed that Department has not considered the evidences provided at the time of SCN, hence requested for natural justice on verification of the documents provided. Also prayed for non levy of Interest and penalty as the credit availed according to them is taken within purview of the provision of the Act.)

Personal Hearing :

5. Personal hearing in the present appeal was held on 26.07.2023. Shri. Ritesh Thakkar, Chartered Accountant, appeared in person on behalf of the appellant in the present appeal. During P.H. they re-iterated the written submission and submitted that TRAN-1 Credit is admissible to them on the goods lying in the stock and thus credit is admissible under Section 140(3) of CGST Act and requested to allow the appeal.

DISCUSSION AND FINDINGS:-

6. I have carefully gone through the facts of the case and the submissions made by the appellant in their grounds of appeal and find that appellant is mainly contesting that regarding Transitional CENVAT Credit of Rs.11,06,718/- availed in TRAN-1 return filed by the appellant, the Department has not considered the evidences provided at the time of SCN and sought natural justice on verification of the documents provided. Also

contesting that the Interest and Penalty on the amount of TRAN-credit availed should not be levied as the Credit taken is within purview of the provision of the Act.

6.1 According to the appellant, as per Section 140(3) of CGST Act TRAN-1 Credit is admissible to them on the goods lying in the stock and thus credit is admissible in respect of the following stock:

Sl. No.	HSN Code	UoM	QTY	Material Description	Excise Rate	Ass.Value	Excise duty (Rs.)
1	1704.90.90	CAR	47	CANDY TAMA12X230X3.5G COMBOPACK RS50OFF	6%	90,804	5,448
2	1704.90.90	CAR	223	KOPIKO CAPPUCINO 48 BAGX50X3.6 GM	6%	374,640	22,478
3	1704.90.90	CAR	311	KOPIKO CAPPUCINO 24X110X3.6 G+5 PCS FREE	6%	600,852	36,051
4	1704.90.90	CAR	113	KOPIKO CAPPU 4TINX575X3.6G+25 PCS FREE	6%	189,840	11,390
5	1704.90.90	CAR	559	KOPIKO CAPPUCINO 4X575X3.6G+50 PCS CAPPU	6%	978,250	58,695
6	1902.20.10	CAR	1269	JOYMEE MASALA 96 X 68G RS 10	6%	791,856	47,511
7	1902.20.10	CAR	298	JOYMEE MASALA 96 X 68G RS 12	6%	223,142	13,389
8	1704.90.90	CAR	875	KOPIKO CAPPUCINO 20JARX115X3.6G +5 FREE	6%	1,470,000	88,200
9	1704.90.90	CAR	356	JUIZY MILK MANGO 20X115X3.8G+10KOPIK O FR	6%	623,000	37,380
10	1806.90.20	CAR	80	CHOKI CASHEW 12X12X4X9G+ (4X12G- CARD)	12.50%	161,280	20,160
11	1806.90.20	CAR	1266	CHOKI CASHEW 24X20X9G+20 G-CARD	12.50%	2,126,880	265,860
12	1902.20.10	CAR	95	JOYMEE MASALA 24 X4X68 G RS-5/-OFF	6%	63,726	3,824
13	1704.90.90	CAR	3500	KOPIKO CAPPU 12X230X3.6G+12CAD+ 160 P/CTN	6%	7,154,000	429,240
14	1905.32.90	CAR	954	CALCHEESE WAFER BISCUIT GB 24X20PCSX13GM	6%	1,118,201	67,092
Total							1,106,719

The appellant has further submitted copies of invoices evidencing payment of duty of Excise.

6.2 So the question to be answered in the present appeal is:

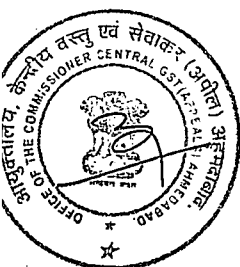
(a) whether the Input Tax Credit of Rs.11,06,718/- taken by the appellant under column 7(a) in the TRAN-1, availed under sub section (3) of Section 140 of the CGST Act, 2017 read with Rule 117 of the CGST Rules, 2017 is admissible or otherwise.

(b) The Credit so availed can be recovered along with interest and penalty or otherwise.

6.3 At the foremost, I observed that in the instant case the "impugned order" is of dated 18.01.2023 and the present appeal is filed on 13.04.2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. I observed that in the instant case the appeal has been filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

6.4 I find that the Appellant is registered under GSTIN-24AABCI8732P1Z5 and engaged in the business of subsidiary global foods and beverages falling under HSN code 1905, 1902 and 1806 which falls under the purview of Central Goods and Service Tax Act, 2017 and availing the benefit of Input Tax Credits on Inputs, Capital Goods and Input services under the Central Goods & Service Tax Rules, 2017. The appellant has availed Input Tax Credit of Rs.11,06,718/- under column 7(a) in the TRAN-1 under sub section (3) of Section 140 of the CGST Act, 2017 read with Rule 117 of the CGST Rules, 2017.

6.5 For this, I refer to the Section 140 of the CGST Act, 2017, which is reproduced as under:



Section 140 of CGST Act, 2017:

" 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: 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.

(2)

(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 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:—

- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
- (iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
- (v) the supplier of services is not eligible for any abatement under this Act: 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.

.....
 (4) 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”.

6.6 Further, I refer to the Rule 117 of the Central GST Rules, 2017, which is reproduced as under:

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

(1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in **FORM GST TRAN-1**, duly signed, on the common portal specifying therein, separately, the amount of input tax credit ¹[of eligible duties

and taxes, as defined in Explanation 2 to section 140, to which he is entitled under the provisions of the said section:

Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days.

Provided further that where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004.

.....”

6.7 In view of the Section 140(3) of the CGST Act 2017 read with Rule 117 of the CGST Rules, 2017, I find that only 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 the benefit of Notification No.26/2012-S.Tax dated 20-06-2012 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 of inputs held in stock and inputs contained in semi-finished or finished (goods held in stock on the appointed day, within time and in such manner as may be prescribed subject to the conditions as laid down in the Section. I find that the appellant is a manufacturer and does not fall under any of the categories as mentioned in Section 140(3), who are eligible to take Credit in column 7(a) of TRAN-1. For a manufacturer, like in the present case, all inputs received must have gone through the Cenvat Chain. However, if the credit was missed out to be taken for inputs received at the fag end of existing law, the same was available to be taken under table 7(b) of TRAN-1, as per Section 140(5) of the CGST Act, 2017.

6.8 I find that the adjudicating authority though found that the Appellant is neither a dealer nor engaged in manufacturing of exempted goods, all inputs received must have gone through Cenvat Chain and though the claim is under section 140(3), there is no documentary evidence to ascertain the conditions mentioned there under, have been complied with while availing the credit in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

6.9 From the letter dated 11-05-2021 issued by the Chartered Accountant, I find that they have informed the proper officer that the appellant have not taken any Cenvat Credit on Raw Material and Semi finished goods at the time of TRAN-1 Credit. However, I am of the view that the appellant could have taken CENVAT credit of eligible duties (including the credit availed under column 7(a) of TRAN-1, if already taken in the Excise Returns) carried forward in the return relating to the period ending as on 30.6.2017 immediately

preceding the appointed day i.e rollout of GST with effect from 1st July 2017, which is specified condition to claim CENVAT credit in TRAN-1.

6.10 I find that copies of Invoices along with relevant documents in respect of inputs contained in semi finished goods or finished goods held in stock for the credit amounting to Rs.11,06,718/- availed under column 7(a) of TRAN-1 have not been furnished. I also find that no certificate of Stock Statement duly certified by the Chartered Accountant or any other document to the effect that the Cenvat Credit so availed was not taken in the existing law through the Central Excise Returns filed for the relevant period have been submitted by the appellant. In absence of any proof, I find that the Input Tax Credit of Rs.11,06,718/- ordered to be recovered vide impugned order, under the provisions of Section 73(1) of the CGST Act, 2017, along with applicable interest under Section 73(5) of the CGST Act, 2017 and penalty of Rs.1,10,672/- under Section 122(2)(a) of the CGST Act, 2017, is just and fair.

6.11 As per provisions of Section 155 of the CGST Act, 2017, the onus to prove admissibility of the Credit availed lies on the Taxpayer, which reads as under:

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.

6.12 The appellant being manufacturer, I find that the Input Tax Credit amounting to Rs.11,06,718/- availed under column 7(a) of TRAN-1 by the appellant, is not maintainable in terms of Section 140(3) of the CGST Act, 2017 read with Rule 117 of the CGST Rules, 2017. Further, without the documentary evidence produced before me in support of the same, I find that the order passed by the adjudicating authority is proper and legal.

“122. Penalty for certain offences.—

(1).....

(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.”

6.13 I also find that the interest on the wrong availment of Input Tax Credit is chargeable to interest under Section 73(5) of the CGST Act.

6.14 I also find that the penalty for the wrong availment/utilisation of ITC is imposable under Section 122(2)(a) of the CGST Act.

7. In view of the foregoing facts & discussion, I do not find any infirmity in the impugned order and the *impugned order* passed by the *adjudicating authority* is legal and proper and as per the provisions of law to the above extent. Accordingly, I reject the present appeal of the "Appellant".

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

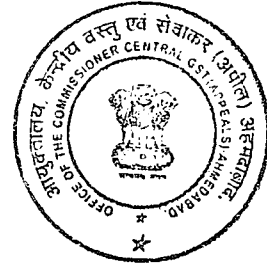
The appeal filed by the "Appellant" stands disposed of in above terms.

Aadesh Kumar Jain
31/07/2023

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

ATTESTED.

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



By R.P.A.D.

To,

M/s Mayora India Pvt Ltd. (Formerly known as M/s Inbisco India Private Ltd.)(GSTIN-24AABCI8732P1Z5)
SM 9/5, GIDC Phase-II, Inbisco India Private Ltd., GIDC Sanand,
Sanand, Ahmedabad Gujarat 382170.

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-III, Ahmedabad-North Commissionerate.
5. The Additional Commissioner, CGST & C.Ex. (System), Ahmedabad-North.
6. The Superintendent, CGST & C.Ex. AR-V, Division-III, Ahmedabad-North Commissionerate.
7. The Superintendent (Systems), CGST & C.Ex. Appeals, Ahmedabad, for publication of the OIA on website.
8. Guard File/ P.A. File.

