



सत्यमेव जयते

आयुक्तकार्यालय  
Office of the Commissioner  
केंद्रीय बीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
बीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.  
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| (क) | फ़ाइल संख्या / File No.   | GAPPL/ADC/GSTP/1848/2023 / १३४६ - ३५   |
| (ख) | अपील आदेश संख्या और दिनांक / Order-in -Appeal and date  | AHM-CGST-002-APP-JC-91/2023-24 and 31.10.2023  |
| (ग) | पारित किया गया / Passed By  | श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील)<br>Shri Adesh Kumar Jain, Joint Commissioner (Appeals)  |
| (घ) | जारी करने की दिनांक / Date of Issue   | 15.11.2023   |
| (ङ) | Arising out of Order-In-Original No. 82/DC/D/VM/22-23 dated 09.02.2023 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 Encure Pharmaceuticals Ltd<br>(GSTIN: 24AAACE4574C1Z1),<br>SM-14, 15, 16/1, GIDC Sanand-II Industrial Estate,<br>Taluka Bol, Sanand, Ahmedabad, Gujarat-382110 |

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| (A)   | इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी /शक्तिधर के समक्ष अपील दाखल कर सकता है।<br>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 -<br>(i) Full amount of Tax, interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and<br>(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 अपील प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलकर्ता विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> पर जा सकते हैं।<br>For elaborate, detailed and up-to-date 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 Emcure Pharmaceuticals Ltd., SM-14, 15, 16/1, GIDC Sanand-II Industrial Estate, Taluka Bol, Sanand, Ahmedabad Gujarat 382110(GSTN No. 24AAACE4574C1Z1) (hereinafter referred to as the 'Appellant' ) has filed the present appeal against Order No.82/DC/D/VM/22-23 dated 09.02.2023 (hereinafter referred to as the 'impugned order') issued by the Deputy Commissioner, CGST & C.Ex., Division-III, Ahmedabad North (hereinafter referred to as the "adjudicating authority").

2. Briefly stated the fact of the case is that the appellant is engaged in the business of manufacture and supply of Medicaments falling under HSN code 3004 which falls under the purview of Central Goods & Service Tax Act, 2017 and availing the benefit of Input Tax Credits on inputs, capital goods and inputs 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 claimed the credit of Rs. 26,01,959/- under Column 7(a) of Tran-1 availed under sub-section (3) of Section 140 of CGST Act, 2017 in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day. From the statement showing the list of invoices showing particulars of each invoice and tax thereon summarizing total of Tax of Rs.26,01,959/- and sample copies of Invoices, it could not be proved that the Inputs and inputs contained in semi finished goods were held in stock on the appointed date. Also the CA certificate in this respect was not sufficient to prove their claim, hence the appellant was issued Show Cause Notice dated 09-02-2022 for :

*"(i) Input Tax Credit of Rs. 26,01,959/- (only relevant amount to the present appeal has been taken) as determined hereinabove should not be demanded and recovered under Proviso to Section 73 (1) of the Act;*

*(ii) Interest at the appropriate rate on the amount mentioned at Sr. No. (i) above should not be charged and recovered from them under Section 73(5) of the Act;*

*(iii) Penalty on the amount mentioned at Sr. No. (i) above should not be charged and recovered under the provisions of Section 122(2) or CGST Act, 2017."*

3. The Adjudicating Authority vide Order-in-Original No. 82/DC/D/VM/22-23, dated 09.02.2022 has:

(i) .....

(ii) I confirm the demand of Rs.26,01,959/- being the ITC wrongly claimed under Section 140(3) of CGST Act,2017 and utilized for their outward supply resulting in to short payment of their outward tax liability;

(iii) I order to recover the said amount of Rs.2601959/- along with interest in terms of section 50(3) of CGST Act,2017 read with Rule 88B of CGST Rules, 2017 inserted with effect from 0 1.07.2017 vide Notification No.14/2022;

(iv) I impose a penalty of Rs. 2,60,196/- under Section 122(2)(a) of CGST Act,2017.

(v) .....

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

- "The Appellant has fulfilled all the conditions of Section 140(3) of the CGST Act for credit of eligible duties as per procedure prescribed in the GST law.
- We are a pharmaceutical company which manufactures goods as well as purchases the finished goods from third party pharmaceutical manufacturers. These goods when transferred / cleared from factory it was against excise invoices having excise duty component. Later these said duty paid goods were transferred from Central warehouse to Gujarat C&FA units (Branch Transfer to De-centralised Warehouse).
- Further, the said finished goods bear unique Batch Number printed on the pack and on the invoices and can be clearly identified at any location.
- It is not a condition in the excise regime to register all the Central Warehouses, Branches, and C&FA unit (De-centralised Warehouse) with central excise authority for the purpose of credit of eligible duties. Hence, in order to have smooth transition in the GST regime and to avoid the double tax payment for the duty suffered goods for such un-registered units, the GST law provided for transition of input tax credit for the tax duty paid stock as on 1st July 2017.
- We have availed correct ITC in accordance with the provision contained in Section 140 (3) of the CGST Act read with Rule 117 of the CGST Rules.
- Further, the Department has also not disputed the eligibility of transition of ITC and the sole point being raised by the audit Department is that the stock transfer notes does not contain the excise invoice number to which the stock pertains. Also, the stock transfer notes does not contain the details of transportation of vehicles by which the goods have moved and the chain of movement of goods has not been established. There is no dispute raised by the authorities regarding the payment of the Excise duty when the goods were ultimately manufactured and supplied.
- Further it has been alleged that the chain of documents for the movement of goods is not established and in the absence of the same, it cannot be said that the goods are actually received. The Appellant would like to respectfully state that this requirement was never asked for during the audit/ scrutiny and no opportunity was provided to the Appellant to submit/ prove about the same.



- *Additionally, there is no such specific requirement under GST regulations that transportation documents should be provided. However, we are attaching sample copies of lorry receipts along with Stock Transfer Document for establishing the movement of goods from Central warehouse to the impugned unit. The document clearly indicates the Excise Duty Component under Column ED.*
  - *It has also been alleged that Inventory position of the location from where it was claimed to be transferred from outside Gujarat as to whether the said stock is reduced from the inventory of those places and added in the inventory of Gujarat's location where the stock is claimed to be received is not proved/established. In this regard, the Appellant would state that we had already provided the certificate from Chartered Accountant confirming the inventory in stock. It is in the normal course of accounting the transaction, once the inventory is moved from one location to another, the same is reduced from the moving location and then added to the receiving location. In addition, with the support of transportation documents, the movement is established and this condition is satisfied.*
  - *To support our claim against all the allegations, we are submitting herewith the relevant supporting documents as below:*
  - *Details of summary of TRAN 1 credit availed along with excise invoice details and sample chain of transaction establishing payment of duty is enclosed as Annexure 4.*
  - *Also, few specimen documents along with lorry receipts indicating transportation of goods to C&FA Gujarat enclosed. Also, the authority will notice that the excise duty component per unit has been indicated on the stock transfer document to that the goods suffered excise duty available as on the date of transition from Pre-GST to Post-GST as Annexure 4.*
  - *We are also attaching the certificate from Chartered Accountant certifying the inventory in stock as Annexure 5.*
- From the perusal of the documents, it can be clearly seen that the Appellant has availed the Tran I credit after fulfilling the prescribed conditions and is having all the documents in hand and the allegation that the Tran credit availed is not proper and correct. Based on this submission the OIO should be set aside in toto on this ground alone.
- *Temporary provisions, introduced for a specific purpose and benefit, cannot be placed on the footing as regular day-to-day provisions. Temporary provisions are meant to resolve an underlying issue that persists or appears to persist before reverting back to the main legislation. By strictly or narrowly interpreting the same, the purpose of the legislation is defeated. Therefore, being a temporary provision for a limited purpose, it is submitted that transitional provisions are to be liberally construed and interpreted, rather than strictly and narrowly, to avoid any unintended consequences and fulfil the objective of the legislation.*
  - *Without prejudice to the above, even in case where the contention of the Department is accepted, even in such instance, the non-mentioning of excise invoices in the stock transfer note, is merely a procedural defect. In this regard, it is submitted that the Courts have time and again held that the substantive benefit cannot be denied merely on account of procedural defects.*
  - *The said duty paid goods are being later stock transferred from Central Warehouse to the impugned units as it is being finished goods having manufacturing date, expiry date, Batch Manufacturing, etc. Hence, it is submitted that the non-mentioning of excise invoices in the stock transfer note is a mere procedural defect which is condonable in the interest of justice.*



- In this regard, it is submitted that the non-mentioning of excise invoices in the stock transfer note, at best, can be treated as procedural requirement only for the purpose of transition ITC. Since our products being medicines in fully packed condition as per Drugs Rules & Regulations, the mentioning of Batch Number, expiry date, mfg. date are mandatory. As the excise duty was not required to be passed on there was no requirement to mention excise invoice number on the documents.
- D.6 The Hon'ble Supreme Court in the matter of *Mangalore Chemicals and Fertilizers Ltd.* [1991 (55) E.L.T. 437 (S.C.)] held that, non-observance of the procedural condition is condonable while that of the substantive condition is not condonable and accordingly, appeal was allowed. The Hon'ble Supreme Court also clarified that a substantive condition would be the one which is based on considerations of policy whereas the procedural condition would merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all the conditions irrespective of the purposes they were intended to serve.
- Hence, it is submitted that the even in case where the stock transfer note does not bear the excise invoice no, the same can be treated as a mere procedural defect, once the tax paid on said goods is easily identifiable. Hence, the substantive right of the Appellant cannot be curtailed merely on account of procedural lapse.
- In view of the submissions made above, the reversal of GST TRANS I credit itself is unsustainable and consequently, the question of payment of interest may not arise. For this, reliance is placed on the following judicial precedents:
  - *Commissioner of C. Ex. & S.T., LTU, Karnataka v. Bill Forge Pvt. Ltd.*, 2012 (279) E.L.T. 209 (Kar.) ■ *In Re: Victor Pushin Cords Pvt. Limited*, 2013 (297) E.L.T. 312 (Comm. Appl.)



It is further submitted that the language of Section 50 of the CGST makes it clear that interest cannot be demanded wherein no tax is payable. Hence, the present demand of interest from the Appellant is liable to be dropped.

The Department has proposed to demand interest under Section 50 (3) of the CGST Act which reads as below:

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

- It is submitted that interest under Section 50 (3) is applicable only in case where the ITC claimed is not matched under the matching provisions. It is submitted that as per Section 42 of the CGST Act read with allied rules, the amount of tax reported by supplier would be matched in the GST portal of the recipient and hence, the ITC shall be allowed to the recipient taxpayer. However, the present case is not covered under Section 42 of the CGST Act and hence, no interest can be demanded under Section 50 (3) in the present case on hand.
- The present OIO has also confirmed the penalty on the Appellant vide invoking Section 73 of the CGST Act on the allegation that the Appellant have contravened various provisions for any reason other than fraud or willful mis-statement of facts or suppression of facts to evade payment of tax. The relevant extract of the said provisions is extracted below:

"73. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice."

- Further, when the tax itself is not payable, the question of imposition of penalty does not arise. Reliance in this regard is placed on the decision of the Hon'ble High Court in the case of Coolade Beverages Ltd. v. CCE, Meerut, [2004 (172) E.L.T. 451 (All.)]. Therefore, no penalty can be imposed under Section 73 of the CGST Act.
- The Department has also alleged that the Appellant is liable to penalty under Section 122 (2) (a) of the CGST Act. Relevant extract of Section 122 (2)(a) of the CGST Act is reproduced below:

"122 (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 often thousand rupees or ten per cent. of the tax due from such person, whichever is higher"

Therefore, the scope of Section 122 (2) (a) is restricted in terms of short payment of taxes on supply of goods or services or wrong utilization/availment of input tax credit only.

In this regard, it is important to note that section 140 of CGST, allows an assessee to take the CENVAT credit of erstwhile law in its 'Electronic Credit Ledger'. It does not allow to convert the CENVAT credit of erstwhile law into Input tax credit under GST law.

- Therefore, it is submitted that what is being transferred through TRAN-1 is the 'amount' of CENVAT credit of erstwhile law into the 'amount' available in
- Electronic Credit ledger under GST regime. Such an amount can be utilized for further payment of GST liability but such amount cannot be colored as 'input tax credit' under CGST Act.
- It is submitted that amount available in Electronic Credit Ledger by way of filing TRAN-1, is not 'input tax credit' but merely an amount available in said ledger.
- Therefore, penalty provisions under section 122 (2) (a) which are applicable on
- irregular utilizing or availing of 'input tax credit' cannot be fastened in any case on 'amount' available in Electronic ledger on alleged irregular routing of CENVAT credit through TRAN-1.
- It is submitted that for the reasons explained in the above submissions, the Appellant is eligible to transition the ITC. Therefore, the allegation of the Department that the Appellant has transitioned ineligible ITC is incorrect.
- Thus, it is submitted that the penalty cannot be imposed upon the Appellant under Section 122 of the CGST Act.

#### Personal Hearing :

5. Personal hearing in the present appeal was held on 10.08.2023. Shri Harsh Adhyaru, Manager, Shri Krishna Kadam, Dy.General Manager, Shri

Vimal Kumar Maheshwari, Sr.Manager appeared in person on behalf of the appellant in the present appeal. During P.H. they submitted that Transitional Credit was rejected solely due to the reason that no transportation documents have been provided, but same is not mandatory or required document as per Section 140(3) of the CGST Act, 2017. They also submitted Additional Submissions during the personal hearing/ They further submitted that the stock can be co-related with batch number being pharmaceutical goods for human consumption. Also CA Certificate has been produced. As sample case, also submitted transportation documents, thus they have complied the provisions of Section 140(3) and the material fact is that the goods were lying in stock, thus eligible for Transitional Credit and requested to allow the appeal.

In the Additional Submissions, they have submitted as under:

1. *"Additional Sample copies of the document establishing the chain of movement of goods by way of Excise Invoice, Stock Transfer Note and L/R copy/Form: 403 under the Gujarat Vat Act for movement of goods from outside Gujarat to Gujarat along with statement of total transitional credit claimed having reference to original excise invoice and goods transfer note (Annexure-1)*

*Also in addition, we also quote the judgement of Gujarat High Court in case of M/s Downtown Auto India Private Limited V/s Union of India (R/SPECIAL CIVIL APPLICATION NO.2409 OF 2019) wherein it was held that if it can be corelated with the document that excise duty has been paid by the registered person, then credit of such duty should be allowed (Copy of judgment attached)*

*Copy of Electronic Credit Ledger. From the attached electronic credit ledger, your good self will appreciate that there is continuous balance available from Jul-17 to till date. Therefore, there is no undue utilization of credit (Annexure-2)*

3. *We also wish to submit copy of the Guidance Note issued for verification of Tran-01 vide D.O.F.No.267/8/208-CX.8 dated 14-03-2018, wherein it is nowhere mentioned that the proof of transportation of goods is required for claiming the transitional credit (Annexure-3).*
4. *Further, we also wish to state that our goods being medicines and drugs for human consumption, are also governed by the Foods and Drug Regulations. Accordingly, we are required to maintain record of every single unit along with reference of Batch Number, Expiry Date, MRP, Manufacturing Date etc. Further, the premises where the goods are stored is also required to be registered with DFA authorities. Thus maintenance of correct inventory records at all the time is paramount important for us.\**

#### **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 additional submissions submitted during the personal hearing and find that appellant is mainly contesting the Transitional Credit of Rs.26,01,959/- availed in TRAN-1 return




filed by them is in accordance with the provision contained in section 140(3) of the CGST Act read with Rule 117 of the CGST Rules, which has been ordered to be demanded by the Department under Section 73(1) of the GST Act 2017, as the eligibility of the same could not be verified/acceptable from the documents produced before the adjudicating authority. 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.

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

whether the demand confirmed of Rs.26,01,959/- along with interest and penalty, being the Input Tax Credit claimed 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 proper or otherwise?

6.3 At the foremost, I observed that in the instant case the "impugned order" is of dated 09.02.2023, the date of communication of order is 20-02-2023 and the present appeal is filed on 19-05-2023. 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.



I observe that the Appellant is registered under GSTN No. ACE4574C1Z1 and engaged in the business of manufacture and supply of Medicaments falling under HSN code 3004 which falls under the purview of Central Goods & Service Tax Act, 2017 and availing the benefit of Input Tax Credits on inputs, capital goods and inputs services under the Central Goods & Service Tax Rules 2017. The appellant has availed Input Tax Credit of Rs.26,01,959/- 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).....

(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.

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

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

Every registered person entitled to take credit of input tax under section 17 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 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 having Centralized warehouse at Pune and New Delhi and decentralized warehouses, out of which one was at Gujarat.

6.8 The appellant's manufacturing units in pre-GST regime were registered with the states of Maharashtra, Gujarat and Jammu and Kashmir, further the Centralized warehouses located at Maharashtra and Delhi and decentralized warehouses located all across different states, of which one was at Gujarat. These Centralized and de-centralized warehouses were not liable for registration as there was no requirement to pass cenvat credit being products in form of Medicines. However, said warehouses were registered under the respective state VAT Laws.

6.9 I observe that, the goods were transferred from their manufacturing units to its centralized warehouse in Pune, Maharashtra and New Delhi, which were registered with respective VAT authorities. Subsequently, the goods were transferred from Centralized Warehouse to its decentralized warehouses located in Gujarat, registered under Gujarat VAT LAWS vide registration No. 24071100184 (Gujarat C&FA Unit).

6.10 I further observe that upon introduction of GST w.e.f. 01.07.2017, all the referred registrations were transitioned into single GST registration for each state. Accordingly, their Gujarat C&FA unit (decentralized warehouse) and manufacturing unit having central excise Registration was transitioned into GST vide No.24AAACE4574C1Z1 for the state of Gujarat.

6.11 From the above facts, the Appellant must have received the stock of goods from their Central Warehouse to the de-centralized warehouse at Gujarat under stock transfer document/invoices/any other such document and the appellant must have received the said goods under the proper transport documents. Therefore the appellant was required to produce the same before the authority for verification of Credit of Rs.26,01,959/- availed 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. Further, there may be possibility that the goods held in stock may have been cleared from the appellant's other centralized warehouses or other decentralized warehouses, instead of transferring the same to Gujarat warehouse. Therefore verification Transitional credit availed in respect of goods held in stock on the appointed day with the

Appellant, with the proper documents/invoices as prescribed under Section 140(3) of the CGST Act, 2017 is utmost necessary condition.

6.12 I observe that the invoices/other documents as required for verification of the appellant's claim of Tran-1, have not been produced before the authority which is one of the conditions for verification of the said transitional credit as per the provisions under Section 140(3) CGST Act, 2017.

6.13 I find that the appellant has provided only the sample copies of documents establishing the chain of movement of goods by way of Excise Invoice, Stock Transfer Note and L/R copy/Form 403 under the Gujarat VAT Act for movement of goods from outside Gujarat to Gujarat along with statement of total transitional credit claimed having reference of original excise invoice and goods transfer Note. To verify the whole credit claimed under TRAN-1, all the invoices/documents under which the credit has been availed are necessary for verification, without which the proper office could not verify the claim.

6.14 Further the full proof of stock transfer i.e. lorry receipts, invoices, etc. are also not made available. The contention of the Appellant that there is no such specific requirement under GST regulations that transportation documents should be provided, however, it is observed that without the proof of the said documents, it would not be possible to correlate the stock of goods lying with the appellant at the unit for which the credit has been claimed. The conditions laid down in (i) to (v) of Rule 140(3) of the CGST Act, 2017 are all required to be fulfilled simultaneously for taking 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. In absence of the full proof regarding the said Tran-1 Credit availed of Rs.26,01,959/-, I am of the view that the same is not available to the Appellant.

6.15 Further, I find that there are separate provisions, for availment of transitional credit through TRAN-1, where the invoices in respect of which, the inputs tax credit has been claimed, are not available with the taxpayer. However, the appellant has not claimed the credit under such provisions.

6.16 Therefore, I find that the total Tran-1 Credit availed would not be possible to be verified from these sample documents, which is one of the important conditions, as laid down in the Section 140(3) of the CGST Act, 2017.

6.17 Further, I also observe that a certificate dated 12.08.2021 issued by Shri Madhavan N. Iyengar partner of M/s R B Sharma & Co. Chartered Accountants



that "the transitional credit amounting to Rs.26,10,959/- has not been claimed earlier by the Gujarat registered GST Location in respect of the stock of duty paid finished goods held in inventory at 30th June, 2017. Since the CFA Trading location, was not registered under the erstwhile Excise Act." This is not a proper document to allow the credit as claimed by the appellant.

6.18 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.*

I find that the appellant has failed to prove the admissibility of the credit as claimed in TRAN-1.

6.19 In view of the above, I am of the view that the order passed by the adjudicating authority confirming the demand of Rs.26,01,959/- being the ITC wrongly claimed under Section 140(3) of CGST Act,2017 and utilized for their outward supply resulting in to short payment of their outward tax liability under Section 73(1) of the CGST Act, 2017 is proper and legal.

Further, I find that the Input Tax Credit Rs.26,01,959/- is ordered to be recovered along with interest in terms of section 50(3) of CGST Act,2017 read with Rule 88B of CGST Rules, 2017 inserted with effect from 01.07.2017 vide Notification No.14/2022; and penalty of Rs. 2,60,196/- under Section 122(2)(a) of CGST Act,2017.

**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 has been prescribed under Rule 88B :

**\*1 | Rule 88B. Manner of calculating interest on delayed payment of tax.-**

*(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the s*



aid return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.

(2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.

(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, where 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.]

1. Inserted vide Notification No. 14/2022-CT dated. 05.07.2022 w.e.f. 01.07.2017.

6.21 It is observed that the input tax credit has been wrongly availed and utilised by the appellant, therefore interest on such input tax credit wrongly availed and utilized, is required to be paid by the appellant as per the above provisions.

6.22 Further, the penalty imposed under Section 122(2)(a) which reads as under:

"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,—

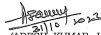
(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher."

6.23 As per the above provisions if the credit has been wrongly availed or utilized, penalty shall be payable under the above provisions. Here in the present case, the appellant has wrongly availed and utilized the Tran-1 credit of Rs.26,01,959/-, hence liable for penalty under the above provision.

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।


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



(ADESH KUMAR JAIN)

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

ATTESTED,

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



By R.P.A.D.

To,  
M/s Emcure Pharmaceuticals Ltd.,  
SM-14, 15, 16/1, GIDC Sanand-II Industrial Estate,  
Taluka Bol, Sanand,  
Ahmedabad Gujarat 382110.  
(GSTN No. 24AAACE4574C1Z1)

**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 Superintendent, CGST & C.Ex. AR-V, Division-III, Ahmedabad-North Commissionerate.
  6. The Superintendent (Systems), CGST & C.Ex. Appeals, Ahmedabad, publication of the OIA on website.
- ✓ Guard File/ P.A. File.

