आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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सत्यमेव जयते

आज़ादी का अमृत महोत्सव

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DIN NO. : **20230564SW000000D729**

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/GSTP/72/2022- APPEAL /1800-1805
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-COM-31/2023-24 and 28.04.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	31.05.2023
(ङ)	Arising out of Order-In-Original No. 29/JC/GB/2021-22 dated 13.12.2021 issued by the Joint Commissioner, CGST & CE, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Baxter Pharmaceuticals India Pvt Ltd [Formerly known as Claris Injectables Ltd] (GSTIN-24AACCC6252B1ZB), Baxter Ahmedabad Plant, Village Chachwardi Vasna, Taluka-Sanand, Ahmedabad

(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 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.

ORDER – IN – APPEAL

The present appeal has been filed by M/s. Baxter Pharmaceuticals India Pvt. Ltd. (formerly known as Claris Injectables Ltd.), Baxter Ahmedabad Plant, Village Chacharwadi Vasna, Taluka-Sanand, Ahmedabad (hereinafter referred to as "the appellant") against Order–in–Original No. 29/JC/GB/2021-22 dated 13.12.2021 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, CGST, Ahmedabad North (hereinafter referred to as the "adjudicating authority"). The appellant are registered in GST under Registration No.24AACCC6252B1ZB. Earlier under service tax regime, they were registered as Input Service Distributor.

2. The office of the Director General of Audit vide letter dated July, 2018, observed that the appellant, as an Input Service Distributor, had closing Input Tax Credit balance of Rs.1,68,30,210/-. On being enquired, the appellant vide letter dated 20.09.2018 stated that the mechanism of transition of the credit from the old regime to the GST regime is through Form GST TRAN-1, which does not bar the transition of ISD credits. Such credit was eligible under the Service Tax laws and merely non-distribution of credit to the manufacturing units in the Service Tax regime and carry forward of such credit in the GST regime is a procedural lapse in as much as in case such distribution would have taken place in the pre-GST era, then such credit would have been incorporated in their returns under Central Excise Laws and allowed to be carried forward in the GST regime. So far as the eligibility of credit is not in dispute, non-distribution of credit would merely be a procedural lapse and on this ground alone the benefit cannot be denied to the appellant especially when the law does not place any restriction on such distribution.

2.1 Department is of the view that Section 140(1) of the CGST Act, 2017, provides that the credit balance in a return filed under the earlier law may be carried forward in the electronic credit ledger of a registered person only and not from GSTR-6. An ISD is not eligible to transit the credit as they do not have an electronic credit ledger for taking and distribution of credit under GST law. As such, the Input Tax Credit availed under GST appears illegal and improper. In terms of the provisions of Section 140 of the CGST Act, 2017, Rule 24 and Rule 86 of the CGST Rules, 2017, the migration of Input Tax Distributors are not allowed under the law and, therefore, the question of carrying forward balance credit in GST era does not arise.

2.2 In view of the above, a Show Cause Notice (SCN) No. GST/15-65/OA/2018 dated 27.11.2020 was issued to the appellant, proposing disallowance of wrongly transferred Input Tax Credit amounting to Rs.1,68,30,210/- (lying in balance as on 01.07.2017), and demanding the said amount alongwith applicable interest under Section 73 of the CGST Act, 2017 & Section 50 respectively; Penalty under Section 122, Section 127 read with Section 73 of the CGST, Act, 2017 was also proposed.

3. The said SCN was adjudicated vide the impugned order, wherein the Input Tax Credit amounting to Rs. 1,68,30,210/- was ordered to be recovered alongwith interest. Penalty of Rs. 1,68,30,210/- was also imposed under Section 73 read with Section 122 of the Act.

Being aggrieved with impugned order passed by the adjudicating authority, the appellant has preferred the present appeal on the grounds which are elaborated below:-

- Section 140(7) of the CGST Act, 2017 clearly elucidates the eligibility of the appellant to transition undistributed ISD Cenvat Credit in GST era. The invoices were received and booked in the erstwhile regime and hence the benefit of availing erstwhile ITC in the GST regime by the appellant depends upon migration of such ITC in the GST era. When law itself provides the transition of ISD credit where the invoices have been received in the post GST era, it would be absurd to hold transition of the same ISD credit where the invoices have been received in the period in which the services have been received in the pre-GST era. Reliance is placed on the FAQ issues with the First Discussion Paper of CGST and the views of the Parliamentary Standing Committee in its 73rd Report on the Constitution (115) Amendment Bill, 2011.

- Sub-Rule (1) of Rule 117 of the CGST Rules mandates submission of a declaration electronically within ninety days (as extended from time to time) of the appointed day in Form GST TRAN-1 in respect of ITC carried forward in the last return prior to the appointed day. The registered person should be entitled to take credit of input tax in accordance with Section 140; The amount of ITC carried forward into GST should be reflected in the last return filed prior to the implementation of GST; A declaration in FORM GST TRAN-1 is to be electronically submitted on the common portal specifying such amount of ITC to be transitioned. The Cenvat credit transitioned pertains to the amount of Cenvat credit availed in the month of June, 2017 and reflected in the ISD return filed for June, 2017 prior to implementation of GST and the TRAN-1 declaration was duly submitted on 27.12.2017 and reflecting the credit of Rs.1,68,30,210/- in their last return.

- The GST-Tran-1 does not restrict the transition of undistributed ISD cenvat credit from the pre-GST era to the GST regime. The Guidance Note No. 267/8/2018-CX.8, dated 14-3-2018 provides for two fundamental principles for allowance of transitional credit, both of which are fulfilled by the Appellant in the present case. It is submitted that explicit legal authority has been provided under sub-section (7) of Section 140 to migrate and distribute the credit in GST and further, the same credit has not been availed as transitional credit twice by the Appellant.

- Rule 24 only provides for migration of registered persons from the erstwhile regime to the GST era (and any exclusions therein) without delving into the aspect of transition of ITC from the pre-GST era to the GST regime. Reliance is placed on the decision of the Mumbai CESTAT in the case of ABM Knowledge Limited vs. Commissioner of Customs, Mumbai [2019 (27) G.S.T.L. 694 (Tri. - Mumbai)] and Pricol Ltd. vs. Commissioner of GST & C. Ex., Coimbatore [2019 (25) G.5.T.L. 215 (Tri. - Chennai).

- The Appellant has migrated from ISD under Service Tax to regular dealer/taxpayer under GST. In other words, the Appellant has not migrated or obtained registration as an ISD under the GST law and hence, all its contentions are from the point of view of a registered unit only. Therefore, as the Appellant is not putting across its submissions as carry forward of ITC by an ISD unit, the observation of the Ld. Joint Commissioner in the impugned Order to such extent is

flawed and should not be given due regard. The Appellant holds a common GSTIN number for both the HO and the manufacturing units located in the State of Gujarat. Under the CGST Act read with the CGST Rules, there is no specific provision which restricts the transfer of such credit. Additionally, at the time of migration and grant of GST Registration certificate, such migration was not disputed by the Departmental Authorities. Therefore, all the assertions made by the impugned Order do not hold good and contain any merit. Accordingly, the Order deserves to be quashed on this ground alone.

- The allegations of fresh ISD registration for migration to GST and non-existence of an electronic ledger for ISDs are procedural or technical requirements and non-fulfillment of the same should not be a ground for denial of the Appellant's lawful credit. It was through oversight the Appellant filled details in Form GST TRAN-1 in Table 5(a) instead of Table (7b). However, at the end of the day the transition has occurred in accordance with Section 140(7) read with Rule 117(1) and hence, such procedural lapses should be condoned and should not be used as a tool for denying the rights of the Appellant. In support of this point, they placed reliance on the decision of the Delhi High Court in the matter of Super India Paper Products & Ors. vs. UOI & Ors. [TS-236- HC(DEL)-2021-GST] wherein the High Court explicitly ruled that, "a genuine mistake should not result in the Petitioner's losing out on their accumulated credit which is protected by Article 300A of the Constitution". Also on the case of Mangalore Chemicals & Fertilizers Ltd [1991 (55) ELT 437 (S.C)] the Hon'ble Supreme Court held that when substantial conditions are fulfilled, procedural lapses can be condoned.

- There is no dispute with respect to the admissibility of the CENVAT credit of the underlying services received in the pre-GST era. Thus, once it is accepted that the CENVAT credit in the present case is admissible, consequently, its admissibility for transition cannot be brought to challenge.

- The Appellant could have distributed the CENVAT credit of the common services before 30 June 2017. However, inadvertently it was missed out and the law provided for transition of such credits. In case the credit was distributed and transitioned to GST through the normal / erstwhile excise registration then the same would not have been disputed. ISD is a mere mechanism to distribute credit. The nature of credit does not change as it continues to be input service credit only of Service Tax. The time of distribution should not determine the eligibility of credit.

- The repeal of the erstwhile Central Excise Act or Finance Act does not affect the right of the assessee under such repeal or amended act. Hence, the right to avail and distribute the CENVAT credit under erstwhile CCR cannot be affected with the implementation of a new law. It is a settled law under the existing regime that the CENVAT credit is a vested right of the assessee. There are various judgments of Hon'ble Apex Court wherein it has pronounced that the payment of tax to the Government is a right created under the law and such right cannot be taken away by the amendment or introduction of new law. Reliance placed on State of

Punjab vs. Mohar Singh AIR (1955) SC (84); Eicher Motors Ltd. Versus Union of India [1999 (106) E.L.T. 3 (SC).

- The transitioned credit is the rightful credit of the Appellant which is allowable in line with Section 140(7) of the Act. As there is no case of unauthorized or unlawful migration of CENVAT credit, the charges of levy of interest deserve to be dropped.

- Merely making an assertion for imposition of penalty is not sufficient. The charges must be concretely established and proved against the Appellant that the Appellant had acted with the intention of availing unfair benefit of transitional credit. As the impugned order fails to adequately explain the same, it should be quashed and set aside on this ground alone. Imposing 100% penalty on the Appellant without any proof of fraud, mala fide intent of misrepresentation are erroneous, flawed and should not be given any weightage and all charges of penalty against the Appellant should be dropped.

5. Personal hearing in the matter was held on 29.03.2023. Ms. Zil Ramani and Shri Amit Ahir, Authorized Representative appeared on behalf of the appellant. Ms. Zil Ramani reiterated the submissions made in the appeal memorandum. She also relied on the judgement of Hon'ble High Court in the case of Unichem Laboratories Ltd. -2022(66) GSTL 295 (Bom).

5.1 Further, the appellant also submitted additional written submission vide letter dated 27.03.2023, wherein they reiterated the grounds of the appeal memorandum and in addition also relied to the decision passed in the case of Maini Precision Products Pvt. Ltd- 2021(55) GSTL 540 (Tri-Bang).

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum, the submissions made at the time of personal hearing as well as in the additional written submissions made vide letter dated 27.03.2023. The issue to be decided in the present case is as to whether the Cenvat credit balance lying with the appellant functioning as ISD under the erstwhile Service Tax law on the appointed day can be allowed to be carried forward to the electronic credit ledger under GST law? The demand pertains to the month of June, 2017.

7. The adjudicating authority has denied the transition of credit on grounds that Rule 24 of the CGST Act, 2017, allows migration of only registered person other than ISD registrants under GST law. Therefore, transfer of Input Tax Credit from erstwhile law to GST regime is unlawful. Further, it was also held that in terms of Section 140 of the CGST Act, 2017, only registered person shall be entitled to carry forward the credit in the electronic credit ledger (not from GSTR-6), the amount of CENVAT credit carried forward in the return, relating to the period of the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed. The appellant, being ISD, cannot be considered as a registered person, hence, the above provisions of Section 140 is not applicable to them. Also, the ISD do not have electronic credit ledgers, hence, they are not eligible for ITC in terms of Section 16 of the CGST Act, for they do not use the inputs in the course of furtherance of their business

for making taxable supplies. Therefore, it was held that the credit lying in the existing law shall automatically lapse as the same is not covered by TRAN-1 and also because the ISD is not allowed to migrate under GST. Hence, the question of taking and carrying forward the balance credit in GST law does not arise.

7.1 The appellant, on the other hand, have contended that the disputed credit pertains to the invoices received and booked in the erstwhile Service Tax regime hence the benefit of availing erstwhile ITC in the GST regime depends upon migration of such ITC in the GST era. The Cenvat credit transitioned pertains to the amount of Cenvat credit availed in the month of June, 2017 and was reflected in their ISD return filed for June, 2017, for the period (prior to implementation of GST) and the TRAN-1 declaration was duly submitted on 27.12.2017 reflecting the credit of Rs. 1,68,30,210/- in their last return. However, through oversight they filled the details of credit in Form GST TRAN-1 in Table 5(a) (*which captures detail of the CENVAT credit carried forward in the return (ER-1/2/3 or ST-3) relating to the period ending with 30-6-2017,)* instead of Table (7b) (*which captures transitional credit taken on such inputs or input services which were received after 1st of July, 2017 but taxes on which were paid under the existing law (Goods/Services in Transit).* ***This table also captures credit distributed by the Input Service Distributor***) which is a mere procedural lapses. As the transition has occurred in accordance with Section 140(7) read with Rule 117(1), such procedural lapses can be condoned and should not be used as a tool for denying the credit.

7.2 Going by the facts of the case and the submissions made by the appellant, it is observed that the appellant were registered as ISD under Service Tax regime as well as under Central Excise Act, 1944. They had separate registration under Central Excise Act with respect to two of its manufacturing units in Gujarat. After the implementation of GST with effect from 1-7-2017, the appellants have taken a single registration *vide* GSTIN 24AACCC6252B1Z8 for the Head Office as well as for the manufacturing units located within the State of Gujarat, in terms of Section 25 of the CGST Act, 2017, which prescribes a single registration within a State. They claim that prior to introduction of GST, they distributed all its ISD Cenvat credit upto the month of May, 2017, however for the month of June, 2017, they were unable to distribute the ISD credit in respect of the services received immediately prior to the onset of GST and the credit availed during the month of June, 2017. The ISD credit was, however, reflected in the last ISD return filed by the appellant on June, 2017. They promptly filed the GST TRAN-1 on 27.12.2017 for a total amount of Rs. 4,92,18094/- out of which Rs. 1,68,30,210/- was reflected as undistributed ISD Cenvat credit migrated in terms of Section 140 of the CGST Act, 2017, but due to confusion, this credit was inadvertently reflected in Table 5(a) instead of Table 7(b) of TRAN-1.

7.3 The core dispute in the instant case is the transfer of credit amounting to Rs. 1,68,30,210/-, which the appellant claim that they inadvertently could not distribute during the pre-GST era, however, reflected the same in the TRAN-1 filed after obtaining the common registration under CGST Act, 2017. It is observed that Section 140 deals with the transitional provision for input tax credit. In order to examine the issue in proper perspective, the relevant Section 140 (1), 140 (2) & 140 (7) of the CGST Act, 2017, which is re-produced below:-

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.

(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day [within such time and] in such manner as may be prescribed :

***Provided** that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.*

***Explanation.** — For the purposes of this sub-section, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.*

(3) to (6) ·····

*(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 [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.*

In terms of sub-section (1) & (2), a registered person shall be entitled to take in their Electronic Credit Ledger, the amount of Cenvat credit of duties carried forward in their return relating to the period ending with the day immediately preceding the appointed day or the credit of un-availed Cenvat credit in respect of capital goods, not carried forward in their return furnished under the existing law for the period ending with the day immediately preceding the appointed day. The definition of '*registered person*' is given in Section 2, clause (94) as "*registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number*". Thus, above sub-section (1) & (2) clearly stipulate that only the registered person is entitled to take the credit in the electronic credit ledger. Further, in terms of sub-section (7) above, the ISD is only eligible to distribute the credit received prior to appointed day 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. The ISD, therefore, can only distribute the credit under the legal provisions of Section 140 (7) of the CGST Act, 2017. Their registrations as registered person is restricted vide Rule 24 of the CGST Act, 2017, which

allows migration of registered persons other than a person deducting tax at source or an Input Service Distribution. Relevant text of Rule 24 is reproduced below;

> ***RULE 24. Migration of persons registered under the existing law.*** *— (1) (a) Every person, other than a person deducting tax at source or an Input Service Distributor, registered under an existing law and having a Permanent Account Number issued under the provisions of the Income-tax Act, 1961 (Act 43 of 1961) shall enrol on the common portal by validating his e-mail address and mobile number, either directly or through a Facilitation Centre notified by the Commissioner.*

7.4 The appellant have vehemently contented that Rule 24 provides for migration of registered person. However, they have not migrated or obtained registration as an ISD under the GST law but as a regular dealer/taxpayer under GST, hence the above provision is not applicable to them. It is observed that in terms of Section 22 (1) of the CGST Act, 2017, every supplier shall be liable to be registered under this Act, other than special category states from where he makes a taxable supply of goods and services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees subject to the proviso provided. Similarly, Section 24 provides that notwithstanding anything contained in sub-section (1) of Section 22, certain categories of persons shall be required to be registered under this Act. This category includes an Input Service Distributor also. So, from the combined reading of Section 22 and Section 24, it is clear that the there is no bar for the ISD to obtain the registration under Section 22 provided they are engaged in supply of goods or services. The appellant have claimed that they have obtained registration as a registered unit. I find that the appellant is registered under GSTIN No. 24AACCC6252B1Z8 and in their registration details, they have shown the nature of business activities as service provider, ISD, recipient of service, officer/sales office, export, supplier of services, import, warehousing /depot, bonded warehouse, EOU/STP/EHTP11, and their core business activity is mentioned as manufacturing. The registration was granted by the department and while granting such registration, the migration of ISD as a registered person was never disputed, I, therefore, find that disputing the same now while denying the credit shall not be sustainable in law.

8. In the instant case, the appellant had received the services prior to appointed day. Therefore, there is no bar in distributing the credit as long as the eligibility of credit has not been challenged by the department. However, the distribution of such credit should have been done prior to their migration under GST regime. The appellant in their last return filed as ISD for June, 2017, at Part-3 of the Return reflected the credit balance of Rs. 1,68,30,210/- for distribution. Subsequently, after obtaining a common registration under GST, they filed TRAN-1 on 27.12.2017 and amongst other credit amount, they also carried forward the said ITC amount available with ISD, in their return. They carried forward the total amount of Rs. 4,92,18,094/- in their TRAN-1, out of which Rs. 1,68,30,210/- pertained to the undistributed ISD CENVAT credit. Instead of distributing the credit to their respective branches/units in the pre-GST era and reflecting such distributed credit under Table7(b) of TRAN-1, they reflected such credit in Table 5(a) of TRAN-1, which is meant to show the details of CENVAT credit carried forward in the ER-1 or ST-3 returns. Non-distribution of credit to respective branches and mis-declaration of credit under wrong head of TRAN-1 cannot be brushed aside as a procedural lapse but shall be considered as an intentional move to transfer the credit in the account of the appellant, which is not admissible to them.

8.1 I find that Rule 7 of the CENVAT credit Rules (CCR), 2004, prescribed the manner of distribution of credit by ISD. The credit of service tax attributable as input service to all the units shall be distributed on pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all the units, which are operational in the current year, during the said relevant period or the credit of service tax attributable as input service to a particular unit shall be distributed only to that unit. Thus, the manner of distribution was prescribed to ensure that only eligible units get the distribution of credit. The appellant have systematically distributed their credit till May, 2017. They have filed their TRAN-1 on 27 December, 2017, so there was sufficient time to transfer the credit. However, it is not forth coming from the records as to why the distribution of the credit which was available as on June 2017 was not distributed till the filing of TRAN-1. The provision of distributing the credit on pro-rata basis is to ensure that only credit attributed to a particular unit is distributed. So, it is clear that the Department can dispute the eligibility or entitlement of such credit only to that unit when the credit is distributed. Unless such credit distribution is done and reflected in the respective ST- 3 Returns filed by the concerned unit, the eligibility of such credit cannot be examined because such distribution is always subjected to audit. I, therefore, find that non-distribution of credit of the appellant as ISD cannot be considered mere procedural lapse because such procedural lapse would resultantly allow transfer of credit to the account of a registrant/unit, which is not actually eligible to utilize such credit. This is contrary to the provisions under the cenvat credit scheme under the Service Tax law.

8.2 Further, it is also not a case where the appellant has faced any technical glitches in filing their returns. Hon'ble Supreme Court in the case of *Filco Trade Centre Pvt. Ltd. [2022 (63) G.S.T.L. 162 (S.C.)]*, assisted the assessees to overcome procedural/technical hurdles by issuing following directions, which is reproduced below:-

> *"Having heard Learned Additional Solicitor General, Learned Counsel appearing for different States and Learned Counsel appearing for different private parties and having perused the record, we are of the view that it is just and proper to issue the following directions in these cases :*
>
> *(1) Goods and Services 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. 1-9-2022 to 31-10-2022.*
>
> *(2) Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).*
>
> *(3) GSTN has to ensure that there are no technical glitch during the said time.*
>
> *(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.*
>
> *(5) Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.*
>
> *(6) If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims.*

8.3 I find that the appellant have failed to avail the above opportunity and directly reflected the credit in TRAN-1 as common registrant instead of distributing the credit to branches. The appellant are not entitled to avail or utilize the credit of tax paid on the common input services received by them on behalf of their branch offices/units as the

said common input services are used or consumed by the branch offices/units, and not by the Head Office. Thus, the contention put forth by the appellant that the TRAN-1 does not restrict the transition of undistributed ISD CENVAT credit from the pre-GST era to the GST regime does not hold water because had it been so, there was no need to allow transition of credit only in the electronic credit ledger of the amount of credit carried forward in the return of the registered person.

8.4 The adjudicating authority has held that the appellant as (ISD) do not have electronic credit ledgers, hence they are not eligible for ITC in terms of Section 16 of the CGST Act for they do not use the inputs in the course of furtherance of their business for making taxable supplies. The credit lying in the existing law shall automatically lapse as the same is not covered by TRAN-1, as the ISD is not allowed to migrate under GST. It is observed that Rule 86 of the CGST, Rules, 2017 provides that each registered person eligible for input tax credit shall maintain an electronic credit register and every claim of input tax credit shall be credited to the said ledger.

> *RULE 86. Electronic Credit Ledger. — (1) The electronic credit ledger shall be maintained in FORM GST PMT-02* for each registered person eligible for input tax credit under the Act on the common portal and every claim of input tax credit under the Act shall be credited to the said ledger.*

8.5 It is observed that the appellant, though has obtained new registration under GST as a regular tax payer, are not eligible of input credit as such credit pertains to various branches, who have received such inputs. The appellant, being ISD, do not use the inputs in the course of furtherance of their business for making taxable supplies. Their role was merely to distribute the credit and that is the reason why they do not have an electronic credit ledger. The proper procedure would have been to distribute the credit to the branches in pro-rata basis. It is also observed that the purpose of opening the common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months, *i.e.*, w.e.f. 1-9-2022 to 31-10-2022, in compliance with the Order of the Hon'ble Supreme Court of India in *Filco Trade* (supra), was to allow the recipient units to file revised declaration in Form GST TRAN-1, either electronically or manually. (where electronically is not possible), for taking the credit already distributed to them by the appellant by issuing invoices. Once, such a revised declaration is filed by the concerned recipient units of appellant, the credit already taken by the said recipient units shall be treated to have been taken validly on the date on which it was originally taken. Hon'ble Supreme Court has only allowed filing of TRAN-1/TRAN-2 or revising the TRAN-1/TRAN-2 already filed by the applicant and has not allowed the applicant to file revised returns under the existing laws. Hence, no additional credit based on revised declaration in Form TRAN-1 shall be claimed by Appellant, as the said filing is purely for regularizing the earlier action of transition and distribution of Cenvat credit by the ISD registration of Appellant. The appellant being (ISD) and subsequently registered under GST is not eligible for ITC under Section 16 as they are not using the inputs in the course of or furtherance of his business for making taxable supplies as ISD. In terms of Section 16 of the CGST, Act, 2017, only registered person are entitled to take credit of input tax charged on any supply of goods or services, or both, which are used or intended to be used in the course or furtherance of business and the said amount shall be credited in the electronic credit ledger of such person. As the appellant is not eligible to utilize the credit, they do not have electronic credit ledgers, hence they are not eligible for ITC in terms of Section

16 of the CGST Act for they do not use the inputs in the course of furtherance of their business for making taxable supplies.

9. The appellant have heavily relied on two citations to justify the transition of ITC by ISD in TRAN-1. In the case ***Maini Precision Products Ltd.-2021(55) GSTL 540 (Tri-Bang)***, the appellant registered under Finance Act, 1994 as service provider and service receiver and input tax distributor, were also availing Cenvat Credit on capital goods, inputs and input services and utilizing the same for payment of Central Excise duty. They have availed irregular Cenvat Credit inasmuch as the appellants, as an ISD, failed to distribute credit on certain common input services. Accordingly, Audit Report No. 1082/2017-18, dated 3-4-2018 was issued to the appellants requiring them to reverse ineligible Cenvat Credit of Rs. 16,40,610/- availed by them in violation of Rule 7 of Cenvat Credit Rules, 2004. Hon'ble Tribunal therein held that *after the implementation of GST with effect from 1-7-2017, the appellants have taken single registration for all the 9 units working in the State of Karnataka in terms of Section 25 of the CGST Act, 2017. The unutilized credit from ER-1 Returns and ST-3 Returns were transferred to Form GST TRAN-1 in terms of Section 140 of the CGST Act, 2017 read with Rule 117 of CGST Rules, 2017 and the same was further taken to Electronic Credit Ledger. The net effect of not distributing the credit to various units and availed by the ISD will be NIL after coming into force of GST because the Department has not disputed its admissibility and eligibility. It has been held that non-distribution of credit is condonable as procedural lapse, especially in situation which is revenue neutral.* This decision, I find, is not squarely applicable to the present case as it dealt with the demand period 2014-2016, when Rule 7 of CCR, 2004 was amended vide Notification No. 13/2016-C.E. (N.T.), dated 1-3-2016 and the phrase "may distribute" was substituted with "shall distribute" with effect from 1-4-2016. Therefore, the appellant therein was not required mandatorily to distribute the service tax paid to its units. However, in the instant case, in terms of amended Rule 7 of the CCR, 2004, the appellant (ISD) was mandated to distribute the credit, which I find was not done. Hence, the ratio of above decision cannot be made applicable to the present case.

9.1 Similarly, the case of ***Unichem Laboratories Ltd.- 2022 (66) GSTL 295 (Bom),*** relied by the appellant is also not applicable to the present case as there the Petitioners attempted distribution of credit transitioned/reporting of the distributed credit by the ISD registration to their units/offices. However, they were not able to distribute/recognize and report the distribution, as there were procedural and functional difficulties in relation to the GST forms and portal. Therefore, Honble High Court in accordance with directions given by Supreme Court in *Filco Trade Centre Pvt. Ltd. [2022 (63) G.S.T.L. 162 (S.C.)],* assisted the assessees to overcome procedural/technical hurdles by issuing directions. Whereas, in the instant case, no such technical glitches were faced by the appellant, hence, I find that the above decision is also distinguishable on facts

10. In light of the above discussion, I find that the appellant, being ISD, by failing to distribute the credit to respective branches at the relevant time had violated the provisions of Rule 7 of the CCR, 2004, resultantly the recipient units could not reflect such credit in their respective last ST-3 Returns filed. It is observed that only the credit which was reflected and carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnish in the existing law, is allowed to be transitioned in terms of Section 140 (1). The credit which is not admissible as input tax

credit is not allowed and entitled to be taken in their electronic credit ledger. Any failure thereof shall deprive them from availing the same in TRAN-1/TRAN-2. It is clear from the Scheme of Section 140 of the GST Act that the transition and carry forward of the Input Tax Credit of the taxes and duties paid under the earlier Indirect Tax Regimes was subject to conditions and specifications given in Section 140 of the Act and unless specifically allowed. In view of the above, it is clear that carry forward of duties/taxes as ITC through TRAN-1 by the appellant is not proper. I, therefore, find that impugned order confirming the demand and recovery of transitional Input Tax Credit amounting to Rs. 1,68,30,210/- under Section 73(1) of the CGST Act, 2017 is sustainable on merits.

11. In terms of Section 50 of the CGST Act, 2017, any person who is liable to pay tax in accordance with the provisions of this Act or Rules, within the prescribed period shall on his own pay interest at the rate prescribed. Levy of interest emanates as a statutory consequence and such liability is a direct consequence of non-payment of tax. Thus, there is no escape from interest liability.

12. The adjudicating authority has also imposed a penalty of Rs. 1,68,30,210/- under Section 73 read with Section 122, on the findings that the appellant has wrongly carried forward/transferred the Input Tax Credit in contravention of Section 20 or the rules made thereunder. I do not agree with the above findings. Section 20 prescribes the manner of distribution of credit of Central Tax as Central Tax or Integrated Tax and Integrated Tax as Integrated tax or Central tax, by ISD by way of issue of a document containing the amount of input tax credit being distributed in such manner as prescribed under Rule 39 of the CGST, Rules, 2017. I find that in the instant case, the appellant (ISD) has not distributed the credit of Central tax or Integrated tax but have failed to distribute the credit of service tax paid on services received during pre-GST era. Thus, reliance on the provision of Section 122 is misplaced. However, I find that in terms of Section 73(9) of the Act, the appellant shall be liable to pay 10% of the amount confirmed, which comes to Rs. 16,83,021/-. I, therefore, uphold the penalty to the extent of Rs. 16,83,021/- only. The remaining amount is set-aside.

13. Accordingly, I uphold the demand of Rs. 1,68,30,210/- alongwith interest. Further, I reduce the penalty to Rs. 16,83,021/-.

14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.

28th April, 2023.

(अखिलेश कुमार)
आयुक्त(अपील्स)

Date: 28.04.2023

Attested

(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Baxter Pharmaceuticals India Pvt. Ltd. - **Appellant**
(Formerly known as Claris Injectables Ltd.),
Baxter Ahmedabad Plant,
Village Chachwardi Vasna,
Taluka-Sanand, Ahmedabad

The Joint Commissioner, - **Respondent**
CGST, Ahmedabad North
Ahmedabad

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Deputy Commissioner, CGST, Division-VI, Ahmedabad North.
4. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North. (For uploading the OIA)
5. Guard File.