

सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५,
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065- टेलीफैक्स 07926305136



DIN-20211164SW000000A-0C

रजिस्टर्ड डाक ए.डी. द्वारा

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फाइल संख्या : File No : GAPPL/COM/STP/585/2020-APPEAL /1197 TO 1202

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अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-64/2021-22

दिनांक Date : 03-11-2021 जारी करने की तारीख Date of Issue : 10-11-2021

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Joint Commissioner (Appeals)

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Arising out of Order in-Original No CGST-VI/Dem-02/Trolkaa/DC/DRS/
2020-21 दिनांक: 24-8-2020 issued by Deputy Commissioner, CGST, Division VI,
Ahmedabad South

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अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Trolkaa Pharmaceuticals Limited
Commerce House-1, Satya Marg, Bodakdev,
Ahmedabad-380054

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-In-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i), above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to Twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय 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

M/s.Troikaa Pharmaceuticals Ltd., Commerce House 1, Satya Marg, Bodakdev, Ahmedabad 380 054 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 13-10-2020 against Order No.CGST VI/Dem 02/Troikaa/DC/DRS/2020-2021 dated 24-8-2020 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, CGST, Division VI, Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant is registered under GSTN No.24AABCT6866H1Z4. The appellant was registered under erstwhile Service Tax Registration No.AABCT6866HSD001. The appellant has filed GST Trans 1 wherein they had carry forwarded cenvat credit of Rs.57,45,323/- as per ER1 and ST3 returns filed for the month of June 2017. On verification, it was found by the Department that credit of Rs.32,81,205/- was accumulated balance of Input Service Distributor (ISD) credit. The appellant was issued a show cause notice No.V/WS/06/Tran 1/Troikaa/2019-2020 dated 15-7-2019 stating that the credit claims as ISD is not admissible under Section 140 (1) of the CGST Act and transitional provisions issued under GST Act and Rules made there under and it was proposed to disallow the said credit. In reply the appellant stated that they were registered under Centralized Registration Rules of Service Tax under number AABCT686866HSD001 and not ISD and also obtained service tax registration as per Rule 4 (2) of Service Tax Rules, 1944 and regularly filed Service Tax return on half yearly basis. The adjudicating authority has categorically not included their responses and given decision based on the data and evidences which was available with him by completely ignoring the real facts of the case and confirmed demand of Rs.32,81,205/- along with interest and also imposed penalty of Rs.25,000/-.

3. Being aggrieved the appellant filed the present appeal on the following grounds :

As per Section 140 (8) of CGST Act, 2017 it was prescribed that if a person has centralized registration in existing Law *'such person shall be allowed to take in his electronic credit ledger, credit of the amount of cenvat credit carried forward in a return, furnished under the existing law in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed.* In view of above, it is very crystal clear that if Centralized Registration having different premises are registered on same PAN then the credit be transferred to them in the proportionate of turnover of the respective premises registered as centralized premise with the service tax department ; that even the GST Act, 2017 allows the supplier to transfer the credit in the desired proportion in any manner as prescribed ; that to have a better transparency, the supplier had transferred the credit in the proportion of the turnover to its various branches at different states by completing abiding and fulfilling the criteria of Section 140 (8) of the Act ; that all the above facts and evidences are completely ignored and the order passed on 24-8-2020 without giving any reference to Section 140 (8) and also without giving any appropriate reasons for not allowing the claim under said Section and raised demand of Rs.32,81,205/- and proposed to levy interest and penalty of Rs.25,000/- ; that the adjudicating authority has erred in not considering written submission and in disallowing the credit carry

forwarded by treating the same as ISD and not under centralized registration and also erred in recovery of interest and imposing penalty of Rs.25,000/-. In view of above, the appellant requested to allow central credit of Rs.32,81,205/- carry forwarded in GST Trans 1 under Section 140 (8) of CGST Act, 2017 ; to delete interest and penalty imposed on them. The appellant has also made pre deposit of Rs.3,28121/- in Form DRC 03.

4. The appellant on 30-4-2021 has given further written submission wherein they contended that their GST registration No.24AABCT6866H1Z4 is Centralized Registration certificate for all the premises across India and not Input Service Distributor. As far as the Centralized Registration is concerned, it was allowed by the Service Tax Department to take single registration for all premises as per Rule 4 (2) of Service Tax Rules, 1944 ; that they had filed service tax return for the period April to June 2017 ; that the total credit claimed in service tax return is Rs.1,10,41,692/- for the period June 2017 ; that as per Section 140 (8) of CGST Act, 2017, if the Centralized Registration having different premises are registered on same PAN then the credit can be transferred to them in the proportionate of turnover of the respective premises registered as centralized premises ; that the credit whether pertaining to centralized registration or ISD, the credit must be legitimately claimed in the ST return and backed with the documentary evidences, then the ITC as per the GST Law is admissible to them ; conceding the above facts, the assessee has filed ST return where it has claimed the total credit amounting to Rs.1,10,41,693/- and its proportionate amount of Rs.32,81,205/- pertains to State of Gujarat is claimed as per above Section ; in view of above it is clear that credit claimed in Tran 1 are as per Section 140 (8) of the Act and to consider the same as ISD or triggering to provision Section 140 (1) of the CGST Act does not arise. In view of above the appellant requested to allow credit amounting to Rs.32,81,205/-.

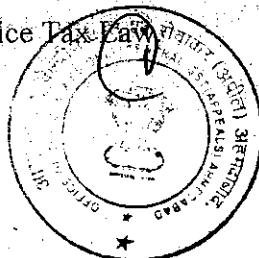
5. Personal hearing was held on 29-10-2021. Shri Karan Shah, Authorized Representative appeared on behalf of the appellant on virtual mode. He stated that he wants to submit some additional details. He was given 3 working days for the same.

6. Accordingly, the appellant given additional submission vide letter dated 1-11-2021, wherein in addition to submissions made in their letter dated 30-4-2021, the appellant further submitted that in another case of the appellant filed by the Department, an Order No.AMH/EXCUS-001-APP-12/2021-2022 dated 30-6-2021 was passed by the Commissioner (Appeals), wherein it was mentioned that *the respondent was having centralized service tax registration No.AABCT0228KST001 upto April 2016 and thereafter from May 2016 having centralized service tax registration NO.AABCT6866HSD 001*. They further submitted that they had filed GST Tran 1 wherein they had carried forward total cenvat credit of Rs.57,45,323/- which was disclosed in Excise and Service Tax return for the period ending 30-6-2017 ; that they had satisfied all the conditions prescribed under Section 140 (8) of the Act, making it eligible to carry forward the credit ; that Section 140 (8) specifically described the manner for transfer of unutilized cenvat credit by a registered person having centralized registration under the earlier law, provisions of Section 140 (1) cannot be invoked ; that the amount of credit of

Rs.32,81,205/- carry forward in Trans 1 is duly correct ; that they had made a bonafide mistake in reflecting the particulars under Table 5 (a) instead of under Table 3 ; that they may be allowed to take credit of Rs.32,81,205/- and levy of interest and penalty may be deleted.

7. I have carefully gone through the facts of the case, grounds of appeal, written submissions and other documents available on record. At the outset, I find that in the impugned order transitional Credit of Rs.32,81,205/- taken by the appellant in Tran 1 was denied on the premise that (i) the appellant is registered as an ISD under registration No.AABCT6866HSD001 in pre GST period and under GSTIN 24AABCT6866H1Z4 in post GST period (ii) that the ISD units registered under GST are not using the inputs in the course or furtherance of their business nor can they use the ITC for the payment of output tax as provisioned under Section 49 (iii) that the ISD units will not have an electronic credit ledger but they are to distribute the input tax as provided under Section 20 of the CGST Act, 2017 and hence an ISD unit does not appear eligible for avallment of ITC under transitional provisions. Counting the same, the appellant contends that they have obtained the said registration as Centralised Service Tax Registration not as an ISD and hence in terms of Section 140 (8) of CGST Act, 2017 they are entitled to avail the credit in Tran 1.

8. I have verified copy of Registration Certificate available on record and find that in the said certificate the nature of registration is mentioned as Centralized Registration for more than one premises, which indicate that the registration obtained by the appellant was for centralized payment of service tax for all their units. On further scrutiny of the Certificate I find that under heading *address of premises to which credit of input services is distributed or intended to be distributed* and under heading *in case of application for ISD furnish address of all the premises to which credit of input services is distributed or intended to be distributed*, the address of their manufacturing units situated in Kadi and Sanand in Gujarat and Dehradun in Uttarkhand are mentioned. Under the heading *in case of application for Centralized Registration*, the address of all premises from where taxable services are provided or intended to be provided was attached. Thus, as per the Certificate, the appellant has obtained Service Tax registration for dual purpose of centralized payment of service tax and also for distribution of credit of input services to their manufacturing units. I further find that as per definition of Input Service Distributor given under Rule 2 of Cenvat Credit Rules, 2004, their role is limited to receipt of invoices for input service credit and distribution of credit to various manufacturing units/output service providers. Therefore, apart from registering for centralized service tax payment the appellant has also registered themselves for receipt and distribution of credit to their manufacturing units, which is a role assigned to ISD. Similarly post GST period, the appellant has obtained GST registration No.24AABCT6866H1Z4 for all their business activities viz. Manufacturing, input service distributor, office/sale office, recipient of goods or services, warehouse/depot, wholesale/retail business and other. Hence, it is not apt to consider that the appellant has obtained only centralized service registration under Service Tax Law.



9. Regarding the contentious issue of transitional credit of Rs.32,81,205/-, first of all I refer to provisions of CGST Act, 2017 relating to subject case which is as under :

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 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 in such manner as may be prescribed:

(B) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

10. As per above statutory provisions, a registered person, including registered person having centralized registration, is allowed to take amount of Cenvat credit carried forward in the return viz ER1 and ST 3 returns relating to the month of June 2017 in their electronic credit ledger for which the registered person is required to file Form GSTR Tran 1 in terms of Rule 117 of CGST Rules, 2017. I have verified the Form GSTR Tran 1 filed by the appellant and find that the appellant has taken the credit of Rs.24,64,118/- against their Registration No.AABCT6866HEM001 and Rs.32,81,205/- under their Registration NO.AABCT6866HSD001 in column NO.5(A) of Form GST Tran 1, as balance cenvat credit carried forward in the said last return. I have verified, ER1 return filed by the appellant for the month of June 2017 and find that closing balance of credit was Rs.24,64,118/- which has been correctly carried forward in Tran 1. On scrutiny of ST3 return filed by the appellant for the period April to June 2017, in the capacity as a centralized service tax registrant, I find that closing balance of cenvat credit for the month of June 2017 was NIL.

11. On further scrutiny I find that in Part 3 of the return, the following details are shown :

Part 3 : Credit details for Input Service Distributor (To be filed only by an Input Service Distributor)

31. Details of Cenvat Credit of Service Tax and Central Excise duty taken and distribution thereof :

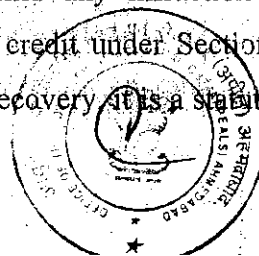
Sl.No.	Details of credit	April	May	June
31.1	Opening balance of Cenvat Credit	13177470	1738958	4540401
31.2	Credit taken (for distribution on input service)	1738958	2801443	6501291
31.3	Credit of Cenvat distributed	13177470	0	0
31.4	Closing balance of Cenvat credit	1738958	4540401	11041692

12. With regard to closing balance of credit of Rs.1,10,41,692/- the appellant in their written submission stated that they had distributed the said credit to various registered premises located in various States on the basis of proportionate turnover having the same PAN as per Section 140 (8) of the Act and accordingly proportionate amount of Rs.32,81,205/- was distributed in respect of units located in Gujarat State. I have scrutinized the details showing distribution of credit given in Annexure C and found that the appellant has distributed service tax credit of Rs.1,10,41,693/- to various units located all over India and credit so distributed to units in Gujarat State was Rs.32,81,205/-, which they had taken through Tran 1.

13. In view of above facts, it is clear that the credit of Rs.32,81,205/- taken in Tran 1 is not the closing balance of credit as on 30-6-2017 availed by the appellant against their centralized registration but the balance of credit available with them for distribution among their units. I also find that Section 140 of the CGST Act, which allows various types of credit for transition in GST period through Tran 1 does not cover credit of input services available for distribution as on 30-6-2017 for transition. I further find that, in support of their eligibility to avail the credit the appellant in their written submissions has consistently imported the provisions of Section 140 (8) of the Act, which allows a centralized service tax registrant to take closing balance of credit in their returns as on June 2017 in Tran 1. However looking into the fact that they had obtained single registration for centralized tax payment and distribution of credit and the subject credit pertains to balance of credit meant for distribution, I find that the provisions of Section 140 (8) is not squarely applicable to the appellant as contended by them. Consequently, I find that the credit of Rs.32,81,205/- taken in their Tran 1 is not the credit eligible for transition and the credit so taken is not in accordance with statutory provisions.

14. The appellant in their written submission dated 1-11-2021 has also relied upon an Order passed by Commissioner (Appeals) in their own case, wherein it was mentioned that their registration is a centralized registration. However as per discussion made in preceding paras since the credit taken by them does not pertain to credit taken in their capacity as centralized service registrant, mere mention of centralized registration in the above Order does not alter the course of the issue.

15. In view of above facts and discussions, I find that the credit of Rs.32,81,205/- taken by the appellant in Tran 1 does not relate to closing balance of credit taken by the appellant as a centralized service registrant but which pertains to balance of credit for distribution among their units. Since, the closing balance of such credit is not allowed under Section 140 for transition, I hold that the appellant has wrongly taken transitional credit of Rs.32,81,205/- in their Tran 1. I further find that unlike in case of regular tax payers, the appellant in their capacity as distributor of credit, is also not required to pay tax, to use inputs, to take input credit or to maintain electronic credit ledger. Therefore, I do not find any infraction in Order passed by the adjudicating authority ordering recovery of said credit under Section 73 of CGST Act, 2017. Since, the credit was disallowed and ordered for recovery it is a statutory requirement to pay the



same along with interest under Section 73 of CGST Act, 2017 read with Section 50 (3) of the CGST Act, 2017.

16. With regard to imposition of penalty I find that the adjudicating authority has imposed general penalty under Section 125 of CGST Act, 2017 which I find is in commensurate with the wrong availment of credit. Therefore, I do not intend to provide any relief on this aspect. Accordingly, I reject the appeal filed by the appellant and upheld the order passed by the adjudicating authority.

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

17. The appeals filed by the appellant stands disposed of in above terms.

(Mihir Rayka)
Joint Commissioner (Appeals)

Date :

Attested

(Sankar Ramani B.P.)
Superintendent
Central Tax (Appeals), Ahmedabad

By RPAD

To,
M/s. Troikaa Pharmaceuticals Ltd.,
Commerce House 1,
Satya Marg, Bodakdev,
Ahmedabad 380 054
Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Commissioner, CGST, Ahmedabad South
- 4) The Deputy Commissioner, CGST, Division VI, Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file