



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, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20230264SW000000A648

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/COM/STD/202/2022 -APPEAL / 8285-90  
ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-236/2022-23**  
दिनांक Date : **14-02-2023** जारी करने की तारीख Date of Issue : **15-02-2023**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

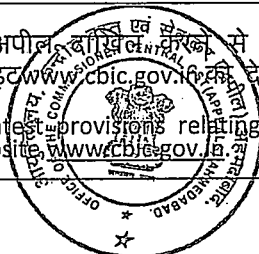
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **WS07/O&A/GST/OIO-01/AC-RAG/2021-22 DT. 11.01.2022** issued by The Assistant Commissioner, CGST, Division-VII, Ahmedabad South

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

| Appellant  | Respondent  |
|--|---|
| The Assistant Commissioner,<br>CGST, Division-VII, Ahmedabad South | M/s. Fakirsons Papchem Pvt. Ltd.,<br>302, Dev Arc Complex, Near Fun Republic,<br>Sarkhej Gandhinagar Highway,<br>Ahmedabad-380015 |

|       |   |
|-------|---|
| (A)   | इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर 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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and<br>(ii) A sum equal to <b>twenty five per cent</b> 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 एवं संकेत से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> पर देख सकते हैं।<br>For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website, <a href="http://www.cbic.gov.in">www.cbic.gov.in</a>   |



**ORDER-IN-APPEAL****Brief Facts of the Case :**

The following appeal has been filed by the Assistant Commissioner, CGST, Division - VII, Ahmedabad South (hereinafter referred as '*appellant*' / '*department*') in terms of Review Order issued under Section 107(2) of the CGST Act, 2017 (hereinafter referred as '*the Act*') by the Reviewing Authority against Order-in-Original dated 11.01.2022 (hereinafter referred as '*impugned order*') passed by the Assistant Commissioner, CGST, Division - VII, Ahmedabad South (hereinafter referred as '*adjudicating authority*') in the case of **M/s. Fakirsons Papchem Pvt. Ltd.**, 302, Dev Arc Complex, Near Fun Republic, Sarkhej Gandhinagar Highway, Ahmedabad - 380015 (hereinafter referred as '*Respondent*').

| Appeal No. & Date                                   | Review Order No. & Date     | Order-in-Original No.                                 |
|---|-----------------------------|---|
| GAPPL/ADC/GSTD/202/2022-<br>APPEAL Dated 05.04.2022 | 69/2021-22 Dated 28.03.2022 | WS07/O&A/GST/OIO-01/AC-<br>RAG/2021-22 Dated 11.01.22 |

**2(i).** Brief facts of the case are that the '*Respondent*' holding GST Registration, is a dealer/importer engaged in receiving & providing various services such as Transport of Goods by Road/Goods Transportation Agency Service under the Finance Act, 1994 and availing facility of credit of duty paid on input services under CENVAT credit Rules, 2004.

**2(ii).** Officers of CERA have conducted scrutiny of records/documents for the period from July 2017 to 2018-19 and had issued LAR No. 123/2019-20 dated 24.01.2020 from F. No. GSTA(HQ)/LAR-123/2019-20. During course of CERA audit it was noticed that the '*Respondent*' has transferred Rs.1296215/- to TRAN 1 under table 5(a) (as per closing balance of ST 3 return of June'17). It was pointed out that '*Respondent*' is not eligible to transfer said credit to TRAN 1; that as per Section 140(3) of the CGST Act, 2017 the '*Respondent*' can transfer credit of stock held. However, the '*Respondent*' has transferred all the amount in ST-3 to TRAN 1.

**2(iii).** Accordingly, a Show Cause Notice dated 26.11.22 was issued to the '*Respondent*'. However, the '*adjudicating authority*' in the '*impugned order*' has held that the '*Respondent*' is entitled to take TRAN 1 credit shown in the closing balance of their ST 3 return for the period ending on 30.06.2017 in terms of provisions of Section 140(1) of the



CGST Act, 2017; that accordingly, dropped the proceedings initiated against the 'Respondent'. During Review of the 'Impugned Order' dated 11.01.2022, the department has observed that the order passed by the adjudicating authority in respect of wrongly availed credit of Rs.12,96,215/- dropped by the adjudicating authority is non speaking order and not legal and proper.

3. In view of above, the appellant/department has filed the present appeal on the following grounds:

- i. The impugned order is not legally tenable & proper. On going through the order it appears that the Jurisdictional Assistant Commissioner (for sake of brevity hereinafter referred to as 'JAC') has erred in allowing credit of Rs.12,96,215/- without recording any finding on the merit of the case. The order is non speaking order and required to be set aside.
- ii. The main allegation in SCN is that as per the provision of Section 140(3) of the CGST Act, 2017, the assessee is not eligible to transfer the CENVAT credit to TRAN 1, the assessee can only transfer credit of stock held. However, the assessee has transferred all the amounts in ST-3 to TRAN 1. This has resulted in irregular transfer of Service Tax Credit of Rs.12,96,215/-.
- iii. The JAC has not given any finding on this allegation in the impugned order. The JAC instead of giving his finding on the allegation that whether the assessee has correctly taken credit as per Section 140(3) of the CGST Act, 2017, has held that as per Section 140(1) of the CGST Act, the assessee is entitled to take TRANS-1 credit shown in the closing balance of their ST-3 return for the period ending as on 30.06.17. As a result, there exists no question of charging interest and imposition of penalty under Section 50(3) and Section 125 of the CGST Act, 2017 respectively.
- iv. The allegation is for contravention of the provisions of Section 140(3) for which no finding has been recorded by the JAC. The JAC has travelled beyond the scope of SCN and allowed the credit under provisions of Section 140(1) of the CGST Act, 2017. The JAC has not recorded any finding whether the assessee has correctly taken credit as per Section 140(3) of the CGST Act, 2017. Therefore, the impugned OIO is bad in law and deserves to be set aside.
- v. The assessee during personal hearing, as recorded in impugned OIO, has submitted that they have already reversed the alleged irregular credit of Rs.12,96,215/- along with interest and penalty and informed



- not to contest the proceedings initiated in the Show Cause Notice and requested to drop the proceedings.
- vi. The JAC has not recorded any finding on the submission made by the assessee and no verification done whether the amount of irregular credit has been paid along with interest and penalty. The JAC instead of verifying and appropriating the amount paid has dropped the demand. The order passed is a non-speaking order and bad in law and required to be set aside.
- vii. As per provisions of Section 140 of the CGST Act, 2017 only seven specified duties as 'Eligible Duties' in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed date i.e. 01.07.2017 will be eligible to be carried forward and adjusted against GST output tax liability. Education Cess and Secondary and Higher Education Cess are absent from the seven categories. Therefore, the aforesaid two types of Cesses, could not be included in the terms of "Eligible Duties and Taxes" or "Eligible Duties" to be carried forward and transitioned under Section 140 of the Act. The JAC in impugned order while dropping the proceedings initiated against M/s. Fakirsons Papchem Pvt. Ltd. in the SCN has allowed the credit of Education Cess and Secondary and Higher Education Cess amounting to Rs.23187/-. The JAC has travelled beyond statute in allowing the credit of Education Cess and Secondary and Higher Education Cess.
- viii. Thus in view of above, OIO dated 11.01.2022 is not legal and proper.
- ix. In view of above grounds the appellant/department has made prayer to set aside the impugned order wherein the adjudicating authority has allowed credit of Rs.12,96,215/- ; to pass any other order(s) as deemed fit in the interest of justice.

#### **Personal Hearing :**

4. Personal Hearing in the matter was held on 24.11.2022 wherein Mr. Dinesh Manghani appeared on behalf of the 'Respondent' as authorized representative. During PH he has submitted the written submission dated 24.12.2022 and stated that they have nothing more to add to their written submissions made till date. The Respondent in their submission dated 24.12.2022 submitted that -

- i. Notice was issued based on credit availed in last ST 3 to Tran 1 and it was asked for reversal of irregular credit in GST which transfer from ST 3 to Trans - 1 of Rs.12,96,215/-.
- ii. In respect of above, kind attention is invited on *Draft Audit Report No. 1335/2018-19 PARA No. 3* by the office of the Commissioner of Central

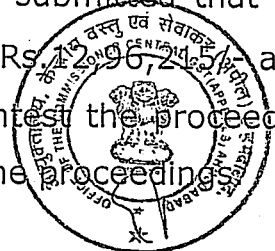


*Tax Audit Commissionerate Dated 25.03.2019 copy of the same is enclosed for verification in which Central Tax audit of the assessee was undertaken from October 2013-14 to June 2017.*

- iii. *That in audit, department has disallowed availed credit on inputs of Rs.19,24,938/- and also levied with interest and penalty for Rs.5,80,432/- and Rs.4,06,787/- respectively above disallowed credit also includes transferred credit from ST 3 to Trans 1 credit of Rs.12,96,215/-.*
- iv. *In response to demand raised by audit the assessee has paid the due taxes with applicable interest and penalty via DRC 03 and challan on 28.02.2019. Copy of DRC 03 along with copy of challan for interest and penalty enclosed for verification.*
- v. *That learned officer erred in order by allowing the credit by order dated 11.01.2022 though assessee has explicitly informed on his letter dated 17.11.2021 that the credit already been disallowed as per annexure 1. At the time of order the point is not considered by learned officer.*
- vi. *That further to state that neither they take wrong credit on the basis of order dated 11.01.2022 nor they will avail the same.*
- vii. *Requested to dismiss the matter as tax along with interest and penalty already been paid.*

**Discussion and Findings :**

5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the 'Respondent' and documents available on record. I find that in the present matter the Respondent had transferred the balance of CENVAT credit of Rs.12,96,215/- in ST 3 Return as on 30.06.2017 under TRAN-1 in GST Regime ; that it was observed by the CERA audit that the Respondent is engaged in receiving & providing of Transport of Goods by Road/Goods Transportation Agency services ; that it was pointed out by them that as per the provisions of Section 140(3) of the CGST Act, 2017 the Respondent is not eligible to transfer the credit under TRAN 1 ; that accordingly, a SCN was issued to the Respondent wherein, demanded the wrongly availed credit of Rs.12,96,215/- under Section 73 of the CGST Act read with Rule 121 of the CGST Rules with interest under Section 50(3) of the CGST Act, 2017 ; that penalty was also proposed under Section 125 of the CGST Act, 2017. Further, I find that the Respondent in response to above SCN had submitted that they have already reversed the alleged irregular credit of Rs.12,96,215/- along with Interest & Penalty and also informed not to contest the proceedings initiated in the SCN, accordingly, requested to drop the proceedings.



6. However, I find that though the *Respondent* had informed that they do not contest the proceedings initiated vide Show Cause Notice, the *Adjudicating Authority* has allowed the credit in question by referring the provisions of Section 140(1) of the CGST Act, 2017 and drop the proceedings initiated in Show Cause Notice dated 26.11.2020 vide *impugned order*. Accordingly, I find that the *department/appellant* has filed the present appeal on the grounds that instead of confirming the demand of wrongly availed credit of Rs.12,96,215/- and without verifying and appropriating the said amount so paid by *Respondent*; the *Adjudicating Authority* has dropped the demand.

7. Further, I find that the *Respondent* in the present appeal proceedings submitted that in response to Final Audit Report No. 1335/2018-19 they have already made payment of Rs.19,24,938/- towards wrongly availed credit with Interest of Rs.5,80,432/- & Penalty of Rs.4,06,787/- vide DRC-03 dated 28.02.2019. The *Respondent* has further informed that the above disallowed credit also includes transferred credit from ST 3 to TRAN-1 credit of Rs.12,96,215/-. The *Respondent* in the present appeal proceedings has further requested to dismiss the matter, as tax along with interest and penalty has already been paid. Accordingly, in view of above, I find that the *impugned order* passed by the adjudicating authority allowing the credit does not sustain and hence deserves to be set aside.

8. In view of above discussions, I find that the *impugned order* is not legal and proper and therefore, require to be set aside. Accordingly, the appeal filed by the '*Department/Appellant*' is allowed and set aside the '*impugned order*'.

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

The Appeal filed by '*Department/Appellant*' stand disposed off in above terms.

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 14.02.2023

Attested  
(Dilip Jadav)  
Superintendent (Appeals)  
Central Tax, Ahmedabad



By R.P.A.D.

To,  
The Assistant / Deputy Commissioner,  
CGST, Division - VII; Ahmedabad South.

Appellant

M/s. Fakirsons Papchem Pvt. Ltd.,  
302, Dev Arc Complex, Near Fun Republic,  
Sarkhej Gandhinagar Highway, Ahmedabad - 380015

Respondent

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-South.
4. The Deputy/Assistant Commissioner, CGST, Division-VII, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. P.A. File
- ✓ 7. Guard File

