



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

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DIN- 20230364SW000000BCC8

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2310/2022 -APPEAL / 277-82

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-CGST-001-APP-ADC- 271./2022-23**

दिनांक Date : **29-03-2023** जारी करने की तारीख Date of Issue : **30-03-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

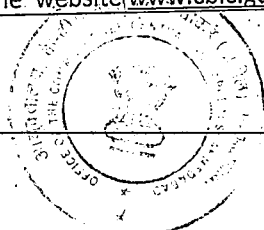
ग Arising out of Order-in-Original No. **CGST-VI/Dem-08/ Bikes Auto/AC/DAP/2022-23**

दिनांक **29.04.2022** , issued by The Assistant Commissioner, CGST, Division-VI, Ahmedabad South

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

M/s. Bikes Auto, Ramkrupa,Nr. Vijay Cross Road, Opp. Gold Coin Flats, Drive In Road, Navrangpura, Ahmedabad, Gujarat-380009

(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 .



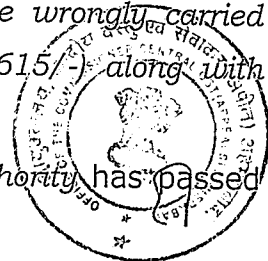
ORDER IN APPEAL**Brief Facts of the Case :-**

This appeal has been filed under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "*the Act*") by **M/s. Bikes Auto**, Ramkrupa, Nr. Vijay Cross Road, Opp. Gold Coin Flats, Drive In Road, Navrangpura, Ahmedabad - 380 009 (hereinafter referred to as "**Appellant**") against the Order-in-Original No. CGST-VI/Dem-08/Bikes Auto/AC/DAP/2022-23 dated 29.04.2022 (hereinafter referred to as "**impugned order**") passed by the Assistant Commissioner, CGST, Division - VI, Ahmedabad South (hereinafter referred to as "**Adjudicating Authority**").

2. Facts of the case, in brief, are that the *appellant* is registered under the Central Goods and Services Tax Act, 2017 vide GST Registration GSTIN No. 24AADFB4743N1ZD. The appellant had filed TRAN-1 on 12.10.2017 and had taken transitional credit of Central Excise/Service Tax amounting to Rs.42,14,572/- (CGST) and Rs.21,61,253/- (SGST) in their electronic credit ledger under Section 140 of the CGST Act, 2017 and SGST Act, 2017. During verification it was observed by the department that -

1. As per ST 3 return for the period April to June 2017, the closing balance of CENVAT credit of Service Tax was Rs.4,398/- only, whereas, the appellant has carried forward amount of Rs.5,843/- in TRAN 1. Thus, they have **wrongly carried forward excess credit of Rs.1,445/-** in TRAN 1 under Table 5(a).
2. In respect of credit carried forward under Entry 7A of Table 7(a) of TRAN 1 amounting to Rs.42,08,729/- all duty paid documents/invoices were verified as per guidance note dated 14.03.2018 issued vide D.O. F. No. 267/8/2018-CX.8 and it was observed that they have **wrongly carried forward credit of Auto Cess amounting to Rs.38,615/-** as ITC in TRAN 1.
3. Thus, the appellant was liable to pay/reverse the wrongly carried forward amount of Rs.40,060/- (Rs.1445 + Rs.38615/-) along with applicable interest and penalty.

Thereafter, in the subject matter, the *Adjudicating Authority* has passed *impugned order* as under -

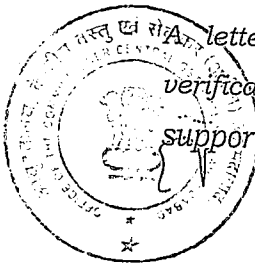


- i. Confirm the demand of Rs.40,060/- out of Rs.63,75,825/- [CGST 4214572 + SGST 2161253] as determined under proviso to Section 73(1) of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017.
- ii. Order to assessee to pay interest at applicable rate under Section 50 of the CGST Act, 2017 on the demand confirmed at (i) above.
- iii. Imposed penalty amounting to Rs.40,060/- under Section 122 (1)(xvii) of the CGST Act, 2017 on the assessee.

3. Being aggrieved with the "impugned order" the 'Appellant' has filed the present appeal on 29.07.2022 on the following grounds -

- They engaged in dealership of Hero MotoCorp.
- During the transition to GST they transferred unutilized credit of Rs.6375825/- to the credit ledger in GST via filing of TRAN-1.
- Initially, Input Tax Credit lying under each head i.e. CENVAT, VAT, including CESS's etc. were allowed to be transitioned to GST without any restriction. However, CBIC introduced CGST (Amendment) Act, 2018 (31 of 2018) and made it applicable w.e.f. 01.02.2019 and thereby inserted Explanation 3 to section 140 of CGST Act, 2017 clarifying the exclusion of any cess not specifically provided, from the expression "eligible duties and taxes" to be carried forward under GST with retrospective effect i.e. w.e.f. 01.07.2017.
- Vide impugned order confirmed the admissibility of whole of credit except Auto Cess amounting to Rs.38,615/- and wrong carry forward of CENVAT Credit Rs.1445/- along with demand to pay interest at applicable rate on same and imposed 100% penalty u/s. 122(1)(xvii) of the CGST Act, 2017 which provides for penalty in case of failure to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made there under or furnishes false information or documents during any proceedings under this Act.
- However, appellant contends that all the requested documents were duly provided for verification and without any falsification to prove the genuine admissibility of said credit and hence contends that no penalty whatsoever be imposed under any provision of the Act, since the admitted tax and interest has already been discharged by them in due time.

A letter dated 03.01.20 was issued by department for TRAN-1 verification. In response to same they submitted on 24.01.20 all supporting documents, same was acknowledged by GST department.



- Intimation dated 03.09.21 (GST DRC 01A) was issued by adjudicating authority citing grounds of non submission of proper documents to verify TRAN-1 credit and requiring the appellant to pay the amount of tax Rs.4214572/- along with applicable interest in full or file submissions, if any by 06.09.21. They further submitted the response against said intimation dated 06.09.21, which was acknowledged by GST department.
- A show cause notice was issued to them on 10.09.21. In response to same they submitted their submissions on 27.09.21. Thereafter, the adjudicating authority has confirmed the demand of Rs.40,060/-. They admitted said demand of Rs.40,060/- and discharged the same along with applicable rate of interest under Section 50 of the CGST Act, 2017 vide form GST DRC 03 on 07.06.22.
- They referred Section 140 of the CGST Act, 2017 and produced extracts of relevant section under which credit is transitioned.
- They referred Section 122 of the CGST Act, 2017 and produced extracts of relevant section.
- First notice was issued as a letter dated 03.01.20, requiring to submit certain documents. In response to same they submitted a response on 24.01.20 along with all documents sought for.
- Thereafter, intimation of tax ascertained in Form GST DRC-01A was issued on 03.09.21 i.e. after approx. 1.6 years (19 months) citing grounds "Taxpayer has not submitted proper document to verify the TRAN-1 credit in spite of several reminders, hence his office is unable to verify the eligibility/genuineness of TRAN-1 credit claimed by the taxpayer". In response to same they submitted their response on 06.09.21.
- Further, SCN issued on dated 10.09.21. They submitted their submissions to SCN on 28.09.21.
- The appellant has not missed out on submission of any information or documents sought. Further, they discharged the admitted tax arising out of the order along with applicable interest through GST DRC 03.
- The order is clearly vocal of the fact that the applicant is in possession of all the information and documents and that the same has been produced before the adjudicating authority for verification based on which, the genuineness of the admissibility and the specific incorrect claim of credit has been derived. Since the penalty is consequential, no penalty, therefore, should be imposed on the applicant for failure to furnish information under Section 122(1)(xvii) of the CGST Act.



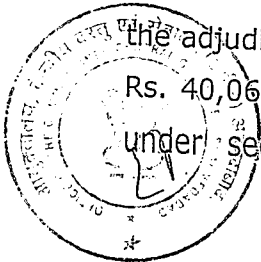
In view of above submissions and grounds of appeal, the *appellant* has made prayer as under :

- That no penalty should be imposed under Section 122 (1)(xvii) of the CGST Act, 2017
- That the applicant shall fully cooperate in cases where there is genuinely a "failure or intentional suppression" and prays that the applicant is not demanded any penalties where there no "failure or intentional suppression" and
- To be fair and not to discourage businessmen for the imposing penalties on unjustified grounds.

4. Personal Hearing in the matter was held on 25.11.2022 wherein Mr. Dipesh Goplani, C.A. was appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has stated that they have nothing more to add to their written submissions till date.

Discussion and Findings :-

5(i). I have carefully gone through the facts of the case, written submissions made by the "Appellant". I find that the *appellant* had claimed transitional credit by filing TRAN-1 on 12.10.2017 for Rs.42,14,572/- (CGST) and Rs.21,61,253/- (SGST) and to verify the admissibility of said transitional credit the appellant was requested to provide documents vide letter F. No. CGST/WS0604/TRAN VERIFICATION/P-1/21/2019-20 dated 03.01.20. Further, GST DRC 01A dated 03.09.21 of tax ascertained being payable under Section 73(5)/74(5) of the CGST Act read with Rule 142 (1A) of the CGST Rules was issued to the appellant. Thereafter, a Show Cause Notice dated 10.09.21 and corrigendum to SCN dated 11.02.22 was issued to appellant, vide which proposed to demand and recover the transitional credit of Rs.42,14,572/- & Rs.21,61,253/- with interest u/s. 50 and penalty u/s. 122(1)(xvii) of the CGST Act, 2017. Further, I find from the impugned order that the appellant vide letter dated 15.03.22 stated that they have submitted all the documents for verification of TRAN 1 and vide letter dated 17.03.22 submitted that they do not want any personal hearing and requested to verify TRAN 1 on the basis of documents submitted by them. I find that after carry out the necessary verification the adjudicating authority vide impugned order confirmed the demand of Rs. 40,060/- out of Rs.63,75,825/- (4214572 + 2161253) with interest under section 50 and imposed penalty of Rs.40,060/- under the



provisions of Section 122(1)(xvii) of the CGST Act, 2017.

5(ii). The appellant in the present appeal has informed that they have admitted the said demand of Rs.40,060/- as confirmed vide impugned order. Accordingly the appellant has paid the said amount of Rs.40,060/- with interest of Rs.39,722/- vide DRC 03 dated 07.06.22 by utilizing cash ledger by making debit entry No. DC240622000019396 dated 07.06.22 and produced the copy of DRC 03 in the present appeal proceedings. I find that the *appellant* in the present appeal only disputing about the imposition of 100% amount of penalty i.e. Rs.40060/-. The appellant has mainly contended that they have submitted all the documents as and when called for and not missed out on submission of any information or documents sought. The appellant has further contended that all the information and documents they possessed were produced before the adjudicating authority for verification and based on which incorrect claim of credit was pointed out, therefore, no penalty should be imposed upon them under Section 122(1)(xvii) of the CGST Act on the grounds of failure to furnish information.

5(iii). Since, the *appellant* is mainly disputing about imposition of 100% penalty vide *impugned order*, I hereby refer the relevant provisions as under :

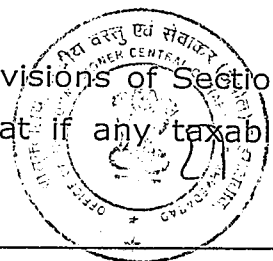
***Section 122. Penalty for certain offences.-**

(1) Where a taxable person who-

(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;

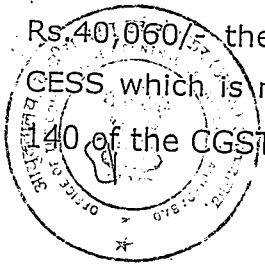
he shall be **liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or **input tax credit availed** of or passed on or distributed irregularly, or the refund claimed fraudulently, **whichever is higher.****

In view of above, according to the aforesaid provisions of Section 120(1) (xvii) of the CGST Act, 2017 I find that if any taxable



person fails in furnishing information or documents called for or furnishes false information/documents then it attracts penalty of Rs.10,000/- or amount equivalent to the input tax credit so availed. In the instant case the adjudicating authority has pointed out that transitional credit of Rs.40,060/- is inadmissible and same is admitted by the appellant also. Accordingly, the adjudicating authority has imposed the equal amount of penalty of Rs.40,060/- on the appellant and which is as per the provisions of Section 122(1)(xvii) of the CGST Act, 2017. However, I find that the appellant has contended in the present appeal proceedings that they have submitted all the documents/information they possessed and based on which the department has confirmed the admissibility of whole transitional credit except Rs.40,060/- (38615+1445) only. Further, as regards to inadmissible credit of Rs.38,615 of Auto Cess the appellant has contended that initially, Input Tax Credit lying under each head i.e. CENVAT, VAT, including CESS's etc. were allowed to be transitioned to GST without any restriction; that however, later on Explanation 3 to section 140 of CGST Act, 2017 was inserted clarifying the exclusion of any Cess not specifically provided, from the expression "eligible duties and taxes" to be carried forward under GST with retrospective effect i.e. w.e.f. 01.07.2017.

5(iv). In view of above, I find that provisions of Section 122(1)(xvii) is very much clear vide which equivalent amount of penalty is imposed on appellant for non submission or failed to furnish information/documents called for. However, I find that out of the confirmation of total inadmissible credit of Rs.40,060/- the transitional credit of Rs.38,615/- is pertains to Auto Cess which is excluded from "*eligible duties and taxes*" as per Section 140 of the CGST Act, 2017. Therefore, for the Input Tax Credit denied on this ground, imposition of penalty equivalent to ITC denied is not justified under the provisions of Section 122(1)(xvii) of the CGST Act, 2017. As, said provision is applicable in the matter of taxable person fails in providing details/documents called for in connection with verification of admissibility of input tax credit or taxable person provides false information. However, in the present matter, it is not the case as out of the total inadmissible credit of Rs.40,060/- the credit of Rs.38,615/- is denied as it pertains to CESS which is not admissible in terms of explanation 3 to Section 140 of the CGST Act, 2017.



6. In view of foregoing facts and discussions, I find that since the 'appellant' neither furnishes false information nor fails in furnishing information or documents called for, the penalty under Section 122(1)(xvii) of the CGST Act, 2017 is not justified in the instant case. Therefore, I hereby set aside the 'impugned order' for being not legal and proper to the extent of imposition of penalty of Rs.40,060/- and accordingly, I allow the appeal of the 'Appellant' to that extent only.

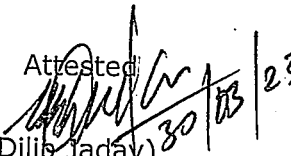
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the *appellant* stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 29 .03.2023

Attested

(Dilip Jaday)
Superintendent (Appeals)
CGST, Ahmedabad



By R.P.A.D.

To,
M/s. Bikes Auto,
Ramkrupa, Nr. Vijay Cross Road,
Opp. Gold Coin Flats, Drive In Road,
Navrangpura, Ahmedabad - 380 009

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 Dy/Asst. Commissioner, CGST, Division-VI, Ahmedabad South.
5. The Superintendent (System), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

