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-20220564SW000000A61C

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1035/2021 -APPEAL / 1530 – 1536

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-28/2022-23**
दिनाँक Date : **24-05-2022** जारी करने की तारीख Date of Issue : **24-05-2022**

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/WS0803/Ref/Demand/01/HV/2020-21 DT. 31.03.2021** issued by Superintendent, CGST, AR III, Division VIII, Ahmedabad South

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

M/s. Avirahi Reality, 412, 4th Floor, Opp Shyamal Row House, Shangrila Arcade, Shyamal Cross Road, Satellite, Ahmedabad-380015

(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 वेबसाइटwww.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.Avirahi Realty, 412, 4th Floor, Opp Shyamal Row House, Shangrila Arcade, Shyamal Cross Road, Satellite, Ahmedabad 380 015 (hereinafter referred to as the appellant) has filed the present appeal on dated 15-6-2021 against OIO No.CGST/WS 0803/Ref/Demand/01/HV/2020-2021 dated 31-3-2021 (hereinafter referred to as the impugned order) passed by the Superintendent, CGST, AR III, Division VIII, Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant was registered with Service Tax Department and holding Service Tax Registration bearing No. AAXFA1899CSD 001. The appellant was registered for providing taxable services viz works contract services with State GST under GST registration NO.24AAXFA1899C2Z5. During EA 2000 Audit conducted by CGST, Audit, Ahmedabad it was observed that the appellant has taken cenvat credit of central excise duty and VAT of Rs.1,82,804/- and Rs.3,79,687/- in Tran 1 in respect of inputs held in stock or contained in work in progress for construction of building/part structure on building construction materials viz. cement, steel, rods, pipes etc. As per Section 140 (3) of CGST Act, 2017, a list of persons/service provider is provided who are entitled/be entitled to take in his electronic credit ledger, credit of eligible duties in respect of inputs held on stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to conditions given thereby. Further as per para 6 of letter File No.381/274/2017 dated 27-2-2018 issued by the Director General, Directorate General of Audit, New Delhi it has been made clear that in case of building construction, the transitional credit of inputs already used in construction and contained in WIP as on 30-6-2017 is not admissible. Further the appellant has not provided the stock statement as on 30-6-2017 of goods in stock. Therefore, it appeared that the appellant has contravened the provisions of Section 140 (3) of CGST Act, 2017 inasmuch as they have wrongly taken credit of central excise duty in respect of inputs held in stock and inputs contained in semifinished or finished goods held in stock on the appointed day in Column 7 (a) and 7 (b) of Tran 1. Therefore, credit of central excise duty and VAT of Rs.5,62,491/- wrongly taken by the appellant is required to be demanded and recovered from the appellant under Section 73 (1) of CGST Act, 2017 along with interest under Section 50 (3) of CGST Act, 2017 and the appellant is also liable for penalty under Section 73 (9) of CGST Act, 2017. Accordingly, the appellant was issued show cause notice was issued to the appellant from File NO.WS0803/FAR 546/2018-2019/ST/2019-2020 dated 30-9-2020, for recovery of cenvat credit of central excise duty of Rs.5,62,491/- under Section 73 (1) of CGST Act, 2017 along with interest under Section 50 (3) of CGST Act, 2017 and for imposing penalty under Section 73 (9) of CGST Act, 2017. During adjudication proceedings, the appellant paid the amount of Rs.5,62,491/- demanded in the show cause notice through DRC 03 dated 30-12-2020 under protest. The adjudicating authority vide impugned order ordered recovery of Rs.5,62,491/- and also ordered to appropriate the amount of Rs.5,62,491/- already paid by the appellant against the demand, ordered recovery of interest of Rs.4,73,047/- and ordered to recovery penalty of Rs.56,249/- @ 10% of cenvat credit.

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

i. They denied all the allegation, averments and contentions raised in the SCN and confirmed in the OIO dated 31-3-2021 as if they all are specifically and individually dealt with and traversed, save and except what has been expressly admitted by them hereinbelow. They also denied that they have contravened any of the provisions of the Act or Rules and that they are liable to any penalty.

ii. That they are registered under GST with SGST Department for all the administrative purposes. Thus, verification of transitional credit should be the outlook of SGST Department. The show cause notice issued by the CGST Department is without jurisdiction. As per GST portal the appellant was assigned to SGST Department. Thus, any action taken by the CGST Department is bad in Law and contrary to the concept of GST being one nation one tax. The impugned order should be set aside as it is totally silent on the above point raised by the appellant. It nowhere talks about the jurisdictional authority of the CGST Department to verify the transitional credit of the assessee who is under the administration of the SGST Department.

iii. The show cause notice and impugned order is asking the appellant to reverse the transitional credit which is also containing the VAT amount and the CGST Department is attempting to challenge the validity of the VAT portion involved in the transitional credit. So far as the assessment of the year 2017-2018 is pending from Gujarat VAT department, it is premature to challenge the VAT portion involved in the transitional credit.

iv. Section 140 (3) of CGST Act, 2017 clearly states that the appellant shall be entitled to take in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock. Thus, the availment of transitional credit in respect of inputs held in stock or inputs part of semifinished goods is eligible. The definition of inputs as per Section 2 (59) of the CGST Act, 2017 means any goods other than capital goods used or intended to be used by the supplier in the course or furtherance of business. Clearly in the present case the inputs (in the form of Cement etc) have been used by them in the course or furtherance of business. It is thus submitted that a narrow interpretation sought to be made to only cover the inputs intended to be sued and not the inputs already used as on 30-6-2017 is not supported by the express definition of the Law or the intent of the same.

v. The ITC can be availed for the inputs as such or they are semifinished in nature. It is to submit that the definition of inputs also includes the goods which have been used as part of work in progress and hence the goods used by the appellant during the course of semifinished construction will remain as inputs per se and thus the transitional credit in respect of them has been correctly claimed.

vi. The intent behind allowing claim of transitional credit under Section 140 (3) is to avoid the cascading effect of the Tax. This is because if the transitional credit in respect of inputs used in the construction of property is not allowed, the same will become part of the cost and accordingly the tax viz. GST shall be again applied on the said Tax when such unit is sold before the completion. Thus, the interpretation sought to cover only the inputs that are not used will thwart the objective behind the said provisions. Therefore, the narrow interpretation as preferred by the show cause notice and confirmed by the impugned order deserves to be rejected and the claim of the transitional credit made by the appellant should be accepted.

vii. The adjudicating authority erred in taking the view that the transitional ITC is not allowable as the builder's work in progress that is semifinished building is not goods which cannot be said to justified as any definition in taxing statute is subject to context. Thus, even under CGST Act, the definitions are subject to context. Referring to decision of Hon'ble Supreme Court in the case of M/s. Printers Mysore Ltd the appellant contended that similar position should apply in relation to the interpretation of Section 140.

viii. The appellant further submitted that while applying interpretation to Section 140 the context is required to be seen. It is a fact that the builders are liable under GST also. As per general understanding, if the constructed portion in stock is sold after 1-7-2017 before occupation certificate or first occupation or BU permission, then such sale is liable to levy of GST in the category of `service'. Thus, the constructed portion can be said to be a floating stock of work in progress so far as GST Act is concerned. Had it been categorized as immovable property then as a building, it would not have been covered under GST Act by virtue of Entry 5 in Schedule III. Thus, even if in standard interpretation such constructed portion is considered to be immovable property for the purpose of the GST Act, it is goods and should remain eligible for ITC.

ix. The transactions of the builders are in the category of works contract and further specified as service under entry 5 (b) of Schedule II to CGST Act, 2017. The definition of works contra under Section 2 (119) of CGST Act, 2017 provides that the transfer of property can be as goods or in some other form. Thus, the nature of transfer of property in construction is as goods or in some other form amounting to goods. Therefore, considering the context and purpose the constructed portion in stock can be considered as goods and not immovable property.

x. It is also a settled principle of Law that the provisions should be interpreted, keeping in mind the purpose of the Act. The GST is based on the principle of Tax on value addition. There is no intention to levy double tax. The transitional provisions are meant to avoid double tax and that is why the ITC is allowed on stock on which tax will be paid in the GST period. If such ITC is not allowed, there will be a heavy unexpected burden on the construction industry. Therefore, there cannot be said to be intention to disallow ITC on the stock which is going to be sold under GST period.

xi. They had rightfully claimed transitional credit even in respect of inputs used and in stock as on 30-6-2017 as the same is duly supported by the express provisions of Law as cited supra as well as the intent behind the said provisions. The impugned order failed to counter the points raised by them.

xii. That the CGST Act, 2017 does not provide machinery for recovery of transitional credit claim by them. As per Section 73 (1) of CGST Act, 2017, the transitional credit cannot be demanded to be recovered vide power provided by Section 73 (1) of the CGST Act, 2017. The impugned order should be set aside as it draws power from the Sections which does not provide for challenging the transitional credit.

xiii. That they have not suppressed the facts with the intention to evade payment of tax. Before the introduction of GST, the Government had advertised via newspapers, press releases, flyers, pamphlets that all the credit in stock, whether as such or semifinished will be available

Further a vigilant eye was kept over the construction industry for antiprofiteering. Thus, the appellant has kept the price of the unit considering the availability of the transitional credit. Had it been the case that prior to the introduction of GST Government had advertised or informed that even though we shall tax the builders via deeming fiction but shall not allow credit of work in progress, the appellant could have charged the buyers accordingly. It is to submit that the imposition of penalties would be justified only when the assessee knew about the tax liability. Even then, he did not pay the tax and deliberately avoided such payment. It is to submit that penalties may not be levied inasmuch as the appellant could not have known at the time filing transitional forms that later on the Government will change their stand.

xiv. That they had paid the amount demanded in the show cause notice Rs.1,82,804/- towards CGST and Rs.3,79,687/- SGST through DRC 03 dated 30-12-2020. The said amount is paid under protest vide DRC 03 dated 30-12-2020. The interest should not be demanded on the reversal made by them as there is no financial benefit of availment of excess ITC to the assessee and therefore no revenue loss to the exchequer. Hence it is against the Rule of Law to demand interest for the period when the assessee had sufficient balance in his ITC ledger. Hence in cases where the excess input credit was erroneously availed but not utilized and was reversed through unutilized credit balance available in the electronic credit ledger in the GST portal, there was no amount payable through electronic cash ledger. Therefore, there is no question of interest at all. The adjudicating authority has erred in the calculation of interest inasmuch as he has considered interest beginning from 30-6-2017, whereas the Tran 1 was filed on 17-10-2017. Thus, the period from 30-6-2017 to 16-10-2017 cannot be considered till the time the transition forms were filed. Further, interest can be levied only when the credit is availed by them and thus for the period upto 16-10-2017 no interest can be levied on the appellant.

xv. In Para 23 of the impugned order, it is mentioned that the credit of central excise duty is wrongly availed. However, at the time of passing an order the central excise as well as VAT portion is considered. There is no finding on the non-eligibility of VAT portion. Without rebutting the claim of the appellant, the learned adjudicating authority has erred in confirming VAT portion of the transitional credit.

4. Personal hearing was held on dated 6-5-2022. Shri Nirav P Shah, authorized representative appeared on behalf of the appellant on virtual mode. He stated that they have nothing more to add to their written submission till date but emphasized on the points i) The SGST portion of the Tran 1 credit cannot be denied by the CGST ii) No interest and penalty should be levied and iii) the asssesee falls in the State jurisdiction and therefore they cannot be adjudicated by Centre as this is not an information-based action.

5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. In this case, the transitional credit of Rs.5,62,491/- availed by the appellant on inputs contained in finished goods held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day was held inadmissible and ordered for recovery. I find that transitional credit availed by the appellant was held inadmissible under

Section 140 (3) of CGST Act, 2017 and on the basis of letter File NO.381/274/2017 dated 27-2-2018 issued by Directorate General of Audit, New Delhi. For better appreciation of facts, I refer to Section 140 (3) of CGST Act, 2017 and letter dated 27-2-2018 of DG (Audit) as under:

Section 140 (3) of CGST Act, 2017 :

A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to]109 the following conditions, namely:—

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;

(iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and (v) the supplier of services is not eligible for any abatement under this Act:

6. Regarding letter dated 27-2-2018 of DG (Audit) I find that said letter was issued in a case of M/s.ABC wherein it was noticed that during audit that the said assessee has taken transitional credit of inputs (bricks, TMT bars and rods, cement etc) held in stock as on 30-6-2017 as well as on inputs contained in their building under development. The DG (Audit), referring to the provisions of Section 140 (3) of CGST Act, 2017 clarified as under;

As per Section 2 (59) of the said Act, `inputs' means any goods other than capital goods used or intended to be used by a supplier in course of furtherance of business. As per Section 2 (52) of the said Act, `Goods' means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. M/s.ABC referred to Section 140 (3) of the CGST Act, 2017 and submitted that they availed the credit of Rs.59.24 lakh in Tran 1 against the inputs contained in their finished goods or semi finished goods (ie their buildings under development) held in stock on the appointed day. The contention of the assessee does not appear to be correct as a building under construction being attached to earth cannot be called `goods' in terms of definition as per Section 2 (52) mentioned above and in terms of various case laws under erstwhile Central Excise Act, 1944. Therefore it is appears that in the case of building construction, the transitional credit of inputs already used in construction and contained in WIP as on 30-6-2017 is not admissible.

7. In view of above, I find that the provisions of Section 140 (3) of CGST Act, 2017 allows transitional credit of inputs contained in semi-finished and finished goods in stock as on appointed day to specified class of persons. However, clarification issued by DG (Audit) categorically rules out transitional credit of inputs already used in construction of building in stock and contained in work in progress as on 30-6-2017 on the ground that such buildings does not fall under the definition of `goods' given under Section 2 (52) of CGST Act, 2017 under which `goods' is defined to mean only movable property.

8. Concurrent reading of Section 140 (3) of CGST Act, 2017, Section 2 (52) of CGST Act, 2017 and clarification issued by DG (Audit) leads that, the term `goods' given under Section 140 (3) of CGST Act, 2017 means every kind of movable property. Therefore, to qualify for availing transitional credit of eligible duties of input contained in semifinished or finished `goods' in terms of Section 140 (3), such goods ought to be movable goods. I find that in this case, transitional credit of Rs.3,79,687/- was availed on inputs already used in such buildings/ structures and contained in under construction buildings/structures (work in progress). Such buildings/structures are undoubtedly immovable goods. Since Section 140 (3) read with Section 2 (52) allows transitional credit only on inputs used finished/semi-finished goods of movable nature, I find that transitional credit of Rs.3,79,687/- availed on inputs used in such buildings/structures is not admissible. Therefore, I do not find any infirmity in the findings of the adjudicating authority disallowing and ordering recovery of transitional credit availed on inputs used in such under-construction buildings/structures in stock as on 30-6-2017. Regarding transitional credit of inputs held in stock as on appointed day. I find that said credit was held inadmissible on the ground that during adjudication proceedings the appellant has not provided any stock statement as on 30-6-2017. During the current proceedings also no such stock statement of inputs in stock was produced and in the absence of the same, I do not intend to interfere with the findings of the adjudicating authority in this regard.

9. The appellant in their grounds of appeal raised jurisdictional issue contending that they are registered under GST with State GST Department and hence verification and adjudication proceedings conducted by Central GST department is without jurisdiction. Similarly, they had also challenged recovery of transitional credit of VAT by CGST authorities. In this regard I refer to Section 6 of CGST Act, 2017 and corresponding Section 6 of Gujarat State Goods and Service Tax Act, 2017 as under:

Section 6 of CGST Act, 2017;

(1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification[3], specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1),—

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised

by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

Section 6 of Gujarat State Goods and Service Act, 21017;

(1) Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under subsection (1),-

(a) where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;

(b) where a proper officer under the Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

10. I also refer to CBIC Letter File No.CBEC-20/10/07/2019-GST dated 22-6-2020 on the issue of empowerment of Officers under Section 6 of CGST Act, 2017 with regard to intelligence based enforcement actions initiated by Central Tax officers against those taxpayers which are assigned to State tax administration. In this regard it was clarified by the Board that *in the light of relevant legal provisions under CGST Act, 2017, it is observed that Section 6 of CGST Act, provides for cross empowerment of State Tax Officers and Central Tax Officers. In terms of sub section (1) of Section 6 of CGS Act, and sub section (1) of Section 6 of the respective State GST Acts respective State Tax officers and Central Tax officers respectively are authorized to be the proper officers for the purpose of the respective Acts and no separate Notification is required for exercising the said powers in this case by the Central Tax Officers under the provisions of State GST Act. It is noteworthy in this context that the registered person in GST are registered under both the CGST Act and the respective SGST/UTGST Act. The confusion seems to be arising from the fact that, the said sub section provides for Notification by the Government if such cross empowered is to be subjected to conditions. It means that Notification would be required only if any conditions are to be imposed. If no Notification is issued to impose any condition, it means that the officers of State and Centre have been appointed as proper officers for all the purpose of the CGST Act and SGST Act. A Notification under Section 6 (1) of the CGST Act would be part of subordinate legislation which instead of empowering the officer under the Act can only be used to impose conditions on the powers given to the officers by the Section. In the absence of any such conditions, the power of cross empowerment under Section 6 (1) of the CGST Act is absolute and not conditional.*

11. In view of Section 6 of CGST Act and Section 6 of Gujarat SGST Act, I find that cross empowerment to initiate proceedings by CGST/SGST officers under CGST/SGST Act is provided.

Therefore, though the appellant is registered under SGST Act, the CGST Officers are also empowered to initiate proceedings against the appellant under CGST Act, 2017. Further it is not brought on record that parallel proceedings on the subject issue was taken by SGST authorities. Therefore, verification of transitional credit availed in respect of Central Excise duty and Vat, issuance of show cause notice and adjudication proceedings initiated by CGST authority is within the framework of Law and does not in any way vitiate the proceedings initiated by CGST authority in this case. Similarly, though the clarification was issued by CBIC relates on intelligence-based actions, it also mandates the view that Section 6 of CGST and SGST Act cross empowers the CGST authorities and SGST authorities to initiate proceedings both under CGST and SGST Act. Hence submission made on jurisdictional aspect is not well reasoned and not sustainable on merit.

12. Regarding submission made by the appellant challenging the proceeding initiated for recovery of transitional credit under Section 73 of CGST Act, 2017, I find that as per Rule 121 of CGST Rules, 2017, it is provided that proceeding for recovery of transitional credit wrongly availed is to be initiated under Section 73 or under Section 74 of CGST Act,2017, as the case may be. I further find that purpose of allowing transitional credit of eligible duties is for utilization of the same for payment of GST on outward supplies at par with Input tax credit. Therefore, recovery of transitional credit under Section 73 or Section 74 of CGST Act, 2017 is in sync with the recovery provisions of wrongly availed ITC in terms of Rule 121 of CGST Rules, 2017.

13. The appellant has also challenged levy and recovery of interest under Section 50 (3) of CGST Act, 2017. I find that as per Section 73 of CGST Act, 2017, *Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.* In view of above, I find that in cases where proceeding for recovery of tax/ITC was initiated under Section 73, levy of interest under Section 50 and imposition of penalty is mandatory and enshrined in the Act. Therefore, I find that recovery of interest and imposition of penalty is also in accordance with statutory provisions. However, the appellant in their grounds of appeal contended that calculation of interest amount of Rs.4,73,047/- is wrong inasmuch as interest can be levied from the date of availing transitional credit ie date on which Tran 1 was filed which is 17-10-2017 and hence period from 30-6-2017 to 16-10-2017 cannot be considered for levy of interest. I find force in the submission made by the appellant. I find from the impugned order that interest was calculated @ 24% for 1279 days from 30-6-2017 to 30-12-2020 ie from the appointed day to date of reversal of transitional credit by the appellant. However, I find that interest in this case will arise from the date of taking transitional credit till date of reversal only as contended by the appellant.

14. In view of above, I hold that the impugned order ordering recovery of transitional credit of Rs.5,62,491/- and ordering appropriation of amount of Rs.5,62,491/- already paid through DRC 03 on dated 30-12-2020 and imposition of penalty of Rs.56,249/- is in accordance with statutory provisions and sustainable on merit. However, with regard to recovery of interest, I upheld the impugned order only to the extent it pertains to recovery of interest from the date of taking transitional credit till the date of payment of transitional credit only. Accordingly, I partially upheld the impugned order and partially allow the appeal.

15. अपील कर्था 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.

24/05/22

(Mihir Rayka)
Additional Commissioner (Appeals)

Date :

Attested

(Sankara Raman B.P.)
Superintendent
Central Tax (Appeals),
Ahmedabad

By RPAD
To,
M/s.Avirahi Realty,
412, 4th Floor, Opp Shyamal Row House,
Shangrila Arcade, Shyamal Cross Road,
Satellite, Ahmedabad 380 015

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 VIII (Vastrapur) Ahmedabad South
5) Superintendent, CGST, AR III, Division VIII, Ahmedabad South.
6) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
7) Guard File
8) PA file