

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- 20231064SW0000333D65

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1698/2023 -APPEAL 17700-05

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-131/2023-24

दिनांक Date : 12.10.2023 जारी करने की तारीख Date of Issue : 26.10.2023

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/WS0604/New Tran-1/Shree pre-Fab/2022-23

Order date 21.02.2023 issued by The Superintendent, CGST, AR-IV, Division-VI,

Ahmedabad South

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

Appellant	Respondent
M/s. Shree Pre-Fab Steels Private Limited, Plot No. 301, Gala Business Centre, Opp. Hotel Classic Gold, Nr. St Xaviers Corner Road, Navrangpura, Ahmedabad-380009 (GSTIN 24AALCS7885F1ZU)	The Superintendent, CGST, AR-IV, Division-VI, Ahmedabad South

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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 एवं सेवाएं 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:**

M/s Shree Pre-Fab Steels Pvt Ltd, Plot No. 310, Gala Business Centre, Opposite Hotel Classic Gold, Near St. Xaviers Corner Road, Navrangpura, Ahmedabad 380 009 (hereinafter referred to as the 'Appellant') has filed the present appeal against Order No. CGST/WS0604/New Trans-1/Shree Pre-Fab/2022-23 dated 21.02.2023 (hereinafter referred to as the 'impugned order') issued by the Superintendent, CGST & C.Ex., AR-IV, Division-VI, Ahmedabad South.

2. Briefly stated the fact of the case is that the appellant is registered under GSTIN No. 24AALCS7885F1ZU and engaged in the manufacturing of structure of Iron or non-alloy falling primarily under the Tariff heading Nos. 73089090. The appellant have claimed Input Tax Credit in TRAN-1 amounting to Rs.5,22,085/- in Table No. 5(a) in Tran-1 by filing New TRAN-1 on 24.11.2022, in view of the guidelines issued by the CBIC for verification of the transitional credit in light of order of the Hon'ble Supreme Court, vide circular No.180/12/2022-GST dated 09.09.2022 & 182/14/2022-GST dated 2022.

3. On verification of the genuineness of the credit claimed in the New TRAN-1 the Superintendent of CGST & C.Ex. AR-IV, Division-VI passed the following order dated 21.02.2023 in respect of the New TRAN-1 claim filed by the Appellant dated 24.11.2022:

" The taxpayer has claimed Rs. 5,22,085/- as Central Tax Credit in table 5(a) of in New Tras-1 but the taxpayer had Nil (Zero) closing balance of CENVAT credit in his ST-3 return for the period immediately preceding the appointment day furnished by him under the existing law. Hence, the ITC claimed amount of Rs. 5,22,085/- filed under table 5(a) of New Tran-1 is found inadmissible to the taxpayer under section 140(1) of CGST Act, 2017".

4. Being aggrieved with the above order, the appellant filed the present appeal on 18.03.2023, on the grounds that:

- *When there was mistake in filing of ST-3 return in terms of not showing the ITC in return; the disallowance of ITC claimed in TRAN-1 merely on that basis is justifiable or not;*

- that the appellant had claimed service tax ITC of Rs.5,22,085/- in Table-5(a) of TRAN-1. However, as per ST-3 return, there is no such balance of ITC;
- that the ITC of Rs.5,22,085/- is of RCM ITC under service tax. The appellant had paid service tax of Rs.5,22,085/- under RCM as per ST-3 return. However, it was some procedural mistake on part of the appellant that the appellant had not shown the said amount of RCM tax as ITC in ST-3 return. As per RCM provision under service tax, the assessee is eligible for the ITC of RCM tax in the subsequent month of the month in which such RCM tax paid. Accordingly, the appellant is rightly eligible for such ITC of RCM tax paid during the period of Apr-Jun-17. However, the same has not been shown in ST-3 return of Apr-Jun-17;
- that the appellant had paid RCM tax of Rs.5,22,085/- which can also be verified from ST-3 return. However, due to some clerical mistake, the said amount of ITC has not been shown in ST-3 return as ITC availment. Merely on the basis that the said amount of ITC not reflecting in ST-3 return, the department has rejected the claim of the appellant stating that such amount of ITC is inadmissible;
- the appellant wants to submit that the appellant is rightly eligible for the ITC claimed for service tax of Rs.522085/- being RCM tax.

In view of the above submissions made, the appellant has requested to allow the service tax ITC of Rs. 5,22,085/-.

PERSONAL HEARING:

5. Personal Hearings in the matter were offered to the "Appellant" on 24.08.2023, 12.09.2023 and on 29.09.2023. However, no one appeared for the Personal Hearing on the Scheduled dates and also not received any communication from appellant to justify his claim of ITC of Rs. 522085/-. The letters informing dates of Personal Hearings were communicated through post provided by them at the time of filing of present appeal.

DISCUSSION AND FINDINGS:-

6. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the appellant has been given the sufficient number of Personal Hearings, before deciding the matter by this appellate authority however, no one responded to the PH letters. Therefore, there is no other option to decide the matter except decide the same as ex-parte. I find that the main issue to be decided in the instant case is whether the Input Tax Credit of Rs.5,22,085/- claimed under table 5(a) of new TRAN-1 is admissible or otherwise ?



7(i). I find that appellant is mainly aggrieved with the denial of Transitional Credit of Rs. 5,22,085/- which he claimed in Table No. 5(a) in Tran-1 by filing New TRAN-1 on 24.11.2022, in view of the guidelines issued by the CBIC for verification of the transitional credit in light of order of the Hon'ble Supreme Court, vide circular No.180/12/2022-GST dated 09.09.2022 & 182/14/2022-GST dated 10.11.2022. The CBIC has opened the AIO portal for filing of TRAN-1 and TRAN-2 as per the procedure laid down in both the Circulars. Thus the facility for filing new TRAN-1/2 or revising the earlier filed TRAN1/2 on the common portal was provided to an appellant.

7(ii). Therefore, I find it pertinent to refer Section 140 (1) of the CGST Act, 2017, circular No.180/12/2022-GST dated 09.09.2022 & 182/14/2022-GST dated 10.11.2022 which is re-produced as under:

Section 140. Transitional arrangements for input tax credit.-

(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit 1[of eligible duties] carried forward in the return relating to the period ending with the day immediately preceding the appointed date furnished by him under the existing law 2[within such time and] in such manner as may be prescribed:

provided that the registered person shall not be allowed to take credit in the following circumstances, namely:-

- (i) where the said amount of credit is not admissible as input tax credit under this Act; or
- (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
- (iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

CBIC vide Circular No.180/12/2022-GST dated 09-09-2022: The main points pertain to this case are as under:

1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.
2.
3.
4. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.

3. In accordance with the directions of Hon'ble Supreme Court, the facility for filing TRAN-1/ TRAN-2 or revising the earlier filed TRAN-1/TRAN-2 on the

common portal by an aggrieved registered assessee (hereinafter referred to as the applicant) will be made available by GSTN during the period from 01.10.2022 to 30.11.2022. In order to ensure uniformity in implementation of the directions of Hon'ble Supreme Court, the Board in exercise of powers conferred under section 168(1) of the CGST Act, 2017 hereby clarifies the following:

4. Guidelines for the applicant for filing TRAN-1/TRAN-2 or revising earlier filed TRAN-1/TRAN-2:

4.1 to 4.5

4.6 It is pertinent to mention that the option of filing or revising TRAN-1/TRAN-2 on the common portal during the period from 01.10.2022 to 30.11.2022 is a one-time opportunity for the applicant to either file the said forms, if not filed earlier, or to revise the forms earlier filed. The applicant is required to take utmost care and precaution while filing or revising TRAN-1/TRAN-2 and thoroughly check the details before filing his claim on the common portal.

5. The declaration in FORM GST TRAN-1/TRAN-2 filed/revised by the applicant will be subjected to necessary verification by the concerned tax officers. The applicant may be required to produce the requisite documents/ records/ returns/ invoices in support of their claim of transitional credit before the concerned tax officers for verification of their claim. After the verification of the claim, the jurisdictional tax officer will pass an appropriate order thereon on merits after granting appropriate reasonable opportunity of being heard to the applicant. The transitional credit allowed as per the order passed by the jurisdictional tax officer will be reflected in the Electronic Credit Ledger of the applicant on the common portal.



CBIC vide Circular No.182/14/2022-GST dated 10-09-2022: The main points pertains to this case are as under:

1.2. Subsequently in Miscellaneous Application No. 1545-1546/2022 in SLP(C) No. 32709- 32710/2018, Hon'ble Supreme Court vide order dated 2nd September, 2022 has inter-alia ordered as follows:

"The time for opening the GST Common Portal is extended for a further period of four weeks from today. It is clarified that all questions of law decided by the respective High Courts concerning Section 140 of the Central Goods and Service Tax Act, 2017 read with the corresponding Rule/ Notification or direction are kept open."

2. CHECKS FOR VERIFICATION OF ENTRIES IN TRAN-1 TABLE:

As a matter of assistance, following checks are suggested in relation to the entries provided in various tables of TRAN 1. The list of checks is not exhaustive but is indicative only based on provisions of law, the likely error and the inputs received from the field formations.

Checks for Table 5(a):

3.1.1 Check 1: Verify that the credit has been taken against closing balance of CENVAT credit in ER-1/2/3 or ST-3, Credit can be taken only where the last return was filed and credit taken in Table 5(a) should not be more than closing balance of credit in ER-1/2/3 or ST-3 minus the education / secondary education cess / KKC/ SBC.

3.1.2 Check 2: Credit of taxes not covered in the definition of eligible duties in section 140 cannot be availed. Example: Krishi Kalyan Cess, Education Cess, clean energy cess etc. Credit of VAT and PLA balance is not allowed as transitional credit.

3.1.3 Check 3: Check that returns have been filed for last 6 months. An assessee filing TRAN-1 and taking credit in table 5(a) should have –

- a) Filed ER-1 or ER-2 regularly between Jan, 2017 and June, 2017 or
- b) Filed ER-3 for period ending March, 2017 and June, 2017 or
- c) Filed ST-3 for period ending March, 2017 and June, 2017.

This check should be performed liberally where many units have merged into one registration or a single unit has been split into many (Centralized registration cases / LUT units) in GST. Compliance by any of the merging unit which was filing the returns in the pre-GST would entitle the new unit to avail credit in relation to that merging unit.



Further I find that after filing the new Tran-1 application on 20.09.2022 in Table 5(a) the appellant has claimed Rs. 5,22,085/- for the credit balance to be carried forward from ST-3 return of his Service Tax registration No. AALCS7885FST001, in view of the guidelines issued by the CBIC for verification of the transitional credit in light of order of the Hon'ble Supreme Court, vide circular No.180/12/2022-GST dated 09.09.2022 & 182/14/2022-GST dated 10.11.2022. However, I find that after verification of the genuineness of the credit claimed in the New Tran-1 by the range Superintendent, it has been found that there is no closing balance of Cenvat Credit available in ST-3 return (Table 1.3.1.4) filed for the period April 2017 to June 2017.

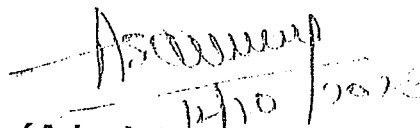
8(ii). As per CBIC vide Circular No.182/14/2022-GST dated 10-09-2022 Checks for Table 5(a) of 3.1.1 Check 1, it has been clearly mentioned that the credit has been taken against closing balance of CENVAT credit in ER-1/2/3 or ST-3. Credit can be taken only where the last return was filed and credit taken in Table 5(a) should not be more than closing balance of credit in ER-1/2/3 or ST-3 minus the education / secondary education cess / KKC/ SBC. However in the instant case I find that the appellant has claimed credit of Rs. 5,22,085/- without having any closing balance of credit in ST-3 return filed for the period April 2017 to June 2017.

8(iii). Further I find that the appellant has been given the sufficient number of Personal Hearings, before deciding the matter by this appellate authority. But the appellant has neither submitted any reply nor attended the hearing to justify his claim of ITC of Rs. 5,22,085/- in table 5(a) of New Tran-1 without having the cenvat credit closing balance in the ST-3 return filed for the period April 2017 to June 2017.


9. In view of the foregoing facts & discussion and in terms of Circular No circular No.180/12/2022-GST dated 09.09.2022 & 182/14/2022-GST dated 10.11.2022, I do not find any infirmity in the impugned order and the *impugned order* passed by the *adjudicating authority* is legal and proper, therefore impugned O-I-O is upheld.

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.


(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 12.10.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.

To,

M/s Shree Pre-Fab Steels Pvt Ltd,
Plot No. 310, Gala Business Centre,
Opposite Hotel Classic Gold,
Near St. Xaviers Corner Road,
Navrangpura, Ahmedabad 380 009

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad.
3. The Pr. Commissioner, CGST & C.Ex, Ahmedabad-South Commissionerate.
4. The Dy / Assistant Commissioner, CGST & C.Ex, Division-VI, Ahmedabad-South Commissionerate.
5. The Superintendent, CGST & C.Ex. AR-IV, Division-VI, Ahmedabad Commissionerate.
6. The Superintendent (Systems), CGST & C.Ex. Appeals, Ahmedabad, Publication of the OIA on website.
7. Guard File/ P.A. File.



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