

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- 20231064SW0000339940

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1699/2023 -APPEAL/2023-13

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-132/2023-24

दिनांक Date : 16.10.2023 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/WS0602/NEW TRAN1/2022-23 DT.

23.02.2023 issued by The Superintendent, CGST, AR-II, Division-VI, Ahmedabad South

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

Appellant	Respondent
M/s Lendingkart Technologies Private Limited, A-602, The First Avenue Road, Behind Keshavbaug Party Plot, Ahmedabad, Gujarat, 380015 (GSTIN: 24AACCL7816J1ZE)	The Superintendent, CGST, AR-II, 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 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 information 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 Lendingkart Technologies Pvt Ltd, A-602, The First Avenue Road, Behind Keshavbaug Party Plot, Ahmedabad, Gujarat 380 015 (hereinafter referred to as the 'Appellant') has filed the present appeal against Order No. CGST/WS0602/New Trans-1/2022-23 dated 23.02.2023 (hereinafter referred to as the 'impugned order') issued by the Superintendent, CGST & C.Ex., AR-II, Division-VI, Ahmedabad South.

2(i). Briefly stated the fact of the case is that the appellant is registered under GSTIN No. 24AACCL7816J1ZE and engaged in supply of taxable goods as provided under the CGST Act, 2017. They were registered with erstwhile Central Excise/Service Tax under Registration No. AACCL7816JSD001 (STC No.) as service provider. They have claimed Input Tax Credit in Trans-1 amounting to Rs. 2,33,29,114/-.

2(ii). Earlier in the same issue the appellant have filled Trans-1 on 28.08.2017 wherein they have taken transitional credit of Central Excise/Service Tax on inputs/services, amounting to Rs. 2,33,29,114/- in their electronic Credit ledger from table 5(a) of Tran 1, in terms of Section 140 of the CGST Act, 2017. Further Show Cause Notice was issued on 26.05.2022 as to why the transitional credit of Rs. 23329114/- taken and carried forward in Tran-1 under Section 140(1) of the CGST Act, 2017 should not be disallowed and recovered under the provisions of Section 74(1) of CGST Act, 2017 read with Rule 121 of the CGST Rules 2017 alongwith interest under Section 50(1) of the CGST Act, 2017 and penalty under Section 74(1) and Section 122(2)(b) of the CGST Act, 2017. However, in the said issue no O-I-O has been issued by the Adjudicating Authority, till date.

2(iii). Further, the appellant vide letter dated 30.11.2022 informed Range Officer that in terms of Section 140 of CGST Act, 2017, they have filed Form TRAN-1 on 28.08.2017, and claimed the transitional credit of CENVAT, carried forward, of Rs. 2,33,29,114/-. However, they came to know that there is credit of Rs. 15,834/-, which is inadmissible credit. Accordingly, in terms of order dated 22.07.2022 & 02.09.2022 of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd, read with Circular No.180/12/2022-GST, dated 09.09.2022, appellant has filed the Revised Form TRAN-1 on 29.11.2022, and claimed the transitional credit of CENVAT of Rs. 2,33,13,280/-.

3. On verification of the genuineness of the credit claimed in the New TRAN-1, the Superintendent of CGST & C.Ex. AR-II, Division-VI passed the following order dated 23.02.2023 in respect of the New TRAN-1 claim filed by the Appellant dated 29.11.2022:

"Disallowed the credit, as SCN dated 26.05.2022 under Section 73/74 of CGST Act, 2017 issued in respect of credit availed through TRAN-1 filed earlier".

4. Being aggrieved with the above order, the appellant filed the present appeal on 22.05.2023, on the grounds that:

- *It is a well settled legal position that an opportunity is required to be given to make personal hearing and submit the reply to SCN. In absence of personal hearing, the order issued may be quashed on the sole ground breach of principle of natural justice (audi alterem partem).*
- *that the findings given are very limited without touching the statutory violation made by the Appellant, for rejection of claim of the appellant in the revised TRAN-1 filed on 29.11.2022, to claim transitional credit of erstwhile Service Tax Law.*
- *that the Ld. Authority has not considered matter independently and denied Tran-1 credit to the appellant. Suppose any appellate or adjudication proceedings are pending, in that case, the officer shall check the grounds for not admitting the transitional credit in the notice or order. The same is not done in the present case. Very abruptly revised TRAN-1 application is denied to the Appellant.*
- *The Government has issued a Circular No. 180/12/2022 dated 9.09.2022 vide which guidelines have been issued for the applicants for filing new TRAN forms or revising the already filed TRAN forms on the common portal. Where the adjudication/appeal proceeding in such cases is pending, the appropriate course would be to pursue the said adjudication/appeal.*
- *In terms of Section 140 of CGST Act, 2017, we have filed Form TRAN-1 on 28.08.2017, and claimed the transitional credit of CENVAT, carried forward, of Rs. 2,33,29,114/-. However, after internal audit, we came to know that there is credit of Rs. 15,834/-, which is inadmissible credit. As alleged in the show cause notice, department has made observation that taxpayer has carried forward the inadmissible credit amounting to Rs. 2,33,29,114/- as transitional credit to Tran-1, by resorting the suppression of facts and the same is recoverable under Section 74(1) of CGST Act, 2017.*



- Appellant has correctly claimed the unadjusted credit balance of CENVAT, duly reflected in Table I 3.1 of Form ST-3, filed for the tax period Apr- 2017 to June-2017, of amount of Rs. 2,33,29,114/-, in Transitional Form (Form Tran-1) under GST Regime, under tax head Central Goods & Service Tax (CGST), which is claimed in the month of August-2017.
- The unadjusted credit balance of CENVAT has been claimed by the Appellant in Tran-1 within the time period as mentioned in Rule 117 (1) of CGST Rules, 2017, the said claimed credit is genuine and duly eligible as per the provisions and facts mentioned above, carried forward from the returns furnished in the erstwhile law of service tax regime.
- Service Tax Audit by the departmental officials has also been concluded for the period till 31st March, 2017. In the said audit, the eligibility of CENVAT credit claimed has not been alleged. Therefore, the credit claimed by the Appellant in the ST-3 returns filed in erstwhile law, is genuine and not inadmissible.
- On the basis of above submission, the demand raised in the impugned notice is liable to be dropped, and impugned notice is liable to be quashed.

In view of the above submissions made, the appellant has requested to set aside the impugned order passed in respect of TRAN-1, dated 23.02.2023, having File No. CGST/WS0602/NEW TRAN-1/2022-23/4236, issued under Section 74(1) of CGST Act, 2017. And allow the service tax ITC of Rs. 5,22,085/-.



PERSONAL HEARING:

5. Virtual hearing in this case was held on 27.09.2023. Smt. Madhu Jain, Advocate, appeared through virtual, on behalf of the appellant as authorised representative. During the virtual hearing they submitted that the Superintendent has passed the order rejecting the claim filed under revised TRAN-1 stating that SCN dated 26.05.2022 under Section 73/74 of CGST Act, 2017 is issued i.r.o. credit availed through Tran-1 filed earlier. She further submitted that the said SCN is still pending, therefore the present O-I-O issued by the Superintendent needs to be set aside. She further reiterated the written submissions and requested to allow appeal.

DISCUSSION AND FINDINGS:-

6. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case is whether the Input Tax Credit of Rs. 2,33,13,280/- claimed under table 5(a) of new TRAN-1 is admissible or otherwise ?

7(i). In the instant case I find that in the same issue the appellant have earlier filed Trans-1 on 28.08.2017 wherein they have taken transitional credit of Central Excise/Service Tax on inputs/services, amounting to Rs. 2,33,29,114/- in their electronic Credit ledger from table 5(a) of Tran 1, in terms of Section 140 of the CGST Act, 2017. Further Show Cause Notice was issued to appellant on 26.05.2022 as to why the transitional credit of Rs. 23329114/- taken and carried forward in Tran-1 under Section 140(1) of the CGST Act, 2017 should not be disallowed and recovered under the provisions of Section 74(1) of CGST Act, 2017 read with Rule 121 of the CGST Rules 2017 alongwith interest under Section 50(1) of the CGST Act, 2017 and penalty under Section 74(1) and Section 122(2)(b) of the CGST Act, 2017. Further I find that against the said Show Cause Notice no O-I-O has been issued by the Adjudicating Authority, till date.

2(iii). Further I find that the appellant vide letter dated 30.11.2022 informed Range Officer that in terms of Section 140 of CGST Act, 2017, they have filed Form TRAN-1 on 28.08.2017, and claimed the transitional credit of CENVAT, carried forward, of Rs. 2,33,29,114/-. However, they came to know that there is credit of Rs. 15,834/-, which is inadmissible credit. Accordingly, in terms of order dated 22.07.2022 & 02.09.2022 of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd, read with Circular No.180/12/2022-GST, dated 09.09.2022, the appellant has filed the Revised Form TRAN-1 on 29.11.2022, and claimed the transitional credit of CENVAT of Rs. 2,33,13,280/-.

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 [of eligible duties] 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 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:

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 pertain 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.



7(iii). Further, on verification of the genuineness of the credit claimed in the New TRAN-1, the Superintendent of CGST & C.Ex. AR-II, Division-VI passed the following order dated 23.02.2023 in respect of the New TRAN-1 claim filed by the Appellant dated 29.11.2022:

"Disallowed the credit, as SCN dated 26.05.2022 under Section 73/74 of CGST Act, 2017 issued in respect of credit availed through TRAN-1 filed earlier".

Being aggrieved with the above order, the appellant filed the present appeal on 22.05.2023.

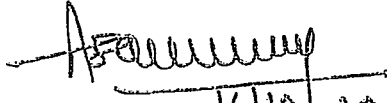
8(i). In the instant case, I find that in the said matter Show Cause Notice issued Vide F. No. CGST/04-03/O&A/Lending/21-22 dated 26.05.2022, in the form GST DRC-01, has already been issued to the appellant answerable to Joint Commissioner, CGST, Ahmedabad South Commissionerate which is

pending for adjudication. Further adjudicating authority vide impugned order has rejected the Tran-1 stating that "SCN dated 26.05.2022 under Section 73/74 of CGST Act, 2017 issued in respect of credit availed through TRAN-1 filed earlier".


9. In view of above, since the issue is still pending with Joint Commissioner, CGST, Ahmedabad South Commissionerate for Adjudication, this Authority refrain itself from any comments on the merits of the case and order to stay the operation of the "impugned order" issued by the Superintendent, till the outcome of the SCN dated 26.05.2022, pending before the Joint Commissioner, CGST, Ahmedabad South Commissionerate.

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: 16.10.2023

Attested


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



By R.P.A.D.

To,

M/s Lendingkart Technologies Pvt Ltd,
A-602, The First Avenue Road,
Behind Keshavbaug Party Plot,
Ahmedabad, Gujarat 380 015.

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-II, Division-VI, Ahmedabad-South Commissionerate.
6. The Superintendent (Systems), CGST & C.Ex. Appeals, Ahmedabad, for Publication of the OIA on website.
7. Guard File/ P.A. File.

