



सत्यमेव जयते

आयुक्तकाफ्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, रावस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/2968/2023 / ६५३१ - ३६
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-001-APP-JC-148/2023-24 and 30.10.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	16.11.2023
(ङ)	Arising out of Order-in-Original No. CGST/WS07/O&A/OIO-02(GST)/AC-KSZ/23-24 dated 26.04.2023 passed by The Assistant Commissioner, CGST, Division-VII, Ahmedabad South Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Bhumi Corporation (GSTIN: 24AAAGFB1937P1ZB), First Floor, FF Super Mall-2, Rajshree Arcade, Nr. Panchirth Tower, Jodhpur Char Rasta, Ahmedabad, Gujarat-380015

(A)	इस आदेश(अपील) से न्यहित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी /शुद्धिकरण के समक्ष अपील दाखल 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 ssid 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)	उक्त अपीलार्थ प्राधिकारी को अपील दाखिल करने में संबंधित व्यापक, विस्तृत और तनीतम शर्तनामों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in पर उपलब्ध जानकारी का उपयोग करके अपील दाखिल कर 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. Bhumi Corporation, First Floor, FF Super Mall-2, Rajshree Arcade, Nr. Panchtirth Tower, Jodhpur Char Rasta, Ahmedabad, Gujarat-380015 (hereinafter referred as 'Appellant') has filed the appeal against Order-in-Original No. CGST/WS07/O&A/OIO-02(GST)/AC-K6Z/2023-24 dated 26.04.2023 (hereinafter referred as 'Impugned Order') passed by the Assistant Commissioner, CGST, Division - VII, Ahmedabad South (hereinafter referred as 'Adjudicating Authority').

2. Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTIN No.24AAGFB1937P1Z8 has filed the present appeal on 17.07.2023. The appellant had filed Tran-1 under Rule 117 of CGST Rules, 2017 on GST common portal on 27.12.2017 forwarding cenvat credit amounting to Rs. 61,76,209/- in Table 7(b) (Column-8) of the Tran-1 and accordingly submitted letter dated 05.08.2020 and 22.01.2021 giving details of the credit availed by them. As per the provisions of Section 140(5) and 140(7) of the CGST Act, 2017 (i) credit shall be availed by the registered person (ii) Point of taxation has arisen before the receipt of inputs or input services since invoices were raised before 1st July, 2017 (iii) Duty and tax in respect of the above inputs or input services has been paid before 1st July, 2017.

3. Thus, the appellant availed credit on subject goods on which duties were paid under the existing Central Excise/Service Tax Laws under the GST law as the goods were received after the appointed day i.e. 01.07.2017 which was already available with the appellant on or before 30.06.2017. Hence the credit of the same could not be carried forward by the appellant in Table 7(b) (Column-8) of the Tran-1 under the governing Section 140(5) and 140(7) of the CGST Act, 2017. Accordingly, show cause notice dated 01.10.2021 was issued to the appellant asking to show cause as to why the inadmissible cenvat credit amounting to Rs. 61,76,209/- carried forward in Table 7(b)(column-08) and availed by the appellant should not be recovered under Section 73(1) of the CGST Act, 2017 along with interest under Section 50 of CGST Act, 2017 and penalty under Section 73(9) of CGST Act 2017.

4. Thereafter, the *adjudicating authority* vide *impugned order* dated 26.04.2023 has disallowed the cenvat credit of Rs. 61,76,209/- under proviso to Section 140(3) of the CGST Act, 2017, and interest as applicable, under Section 50 and imposed penalty of Rs. 6,17,620/- under Section 73(9) of the CGST Act, 2017 on the following reasons:

(i) the notices has made an mistake of wrongly filing Table 7(b) of Tran-1 instead of Table 7(a) of Tran-1 under Section 140(3) of the CGST Act, 2017 but has not filed revised Form Tran-1.

5. Being aggrieved with the impugned order the appellant has filed the present appeal on 17.07.2023 on the following grounds:

- (i) No DRC-01/DRC-01A has been issued to the appellant before issuance of show cause notice; hence the show cause notice is issued illegally;
- (ii) The availment of cenvat credit cannot be disallowed based on the mere fact that ITC has been availed in an incorrect table i.e., in Table 7(b) instead of Table 7(a) under Section 140(3) of the CGST Act, 2017. As per the OIO, the Range Supdt. Vide his letter dated 30.03.2023 has vouched that the invoices were verified and the assessee has paid the excess duty at the rate of 12.50%. Thus, the amount of cenvat credit carried forward in Tran-1 is eligible.
- (iii) The appellant has cited the following case laws in their favour:-
 - (a) Blue Bird Pure Pvt Ltd UOI and Ors
 - (b) Adinath Inds Vs UOI
 - (c) Commr of GST Chennai South Vs Bharat Electronics Ltd.
- (iv) As per CBIC Circular No. 180/12/2022-GST dated 09.09.2022 it has been clarified that where the credit availed by the registered person on the basis of Form GST TRAN-1/TRAN-2 filed earlier, has either wholly or partly been rejected by the proper officer, the appropriate remedy in such cases is to prefer an appeal against the said order or to pursue alternative remedies available as per law. Where the adjudication/appeal proceeding in such cases is pending, the appropriate course would be to pursue the said adjudication/appeal. In such cases, filing a fresh declaration in Form GST Tran-1/Tran-2, pursuant to the special dispensation being provided vide this circular, is not the appropriate course of action.
- (v) As their cases is similar to the one as quoted in the above circular, they were unable to file revised Tran-1;
- (vi) The availment of ITC is fundamental right of Appellant and cannot be denied. The declaration of ITC in Tran-1 in Table 7(b) instead of Table 7(a) is a procedural lapse on the side of the appellant during filing Tran-1. Demands cannot sustain merely on the basis of non-consequential procedural lapse.



- (vii) The liability of interest does not arise in the instant case as it is evident that Section 50(1) and 50(2) of the CGST Act, 2017 covers the liability for payment of interest in case of failure to pay tax on outward supplies. It also covers the liability for payment of interest where a taxpayer has filed the return late.
- (viii) Since neither of the sub-sections of Section 50 of the CGST Act, 2017 are applicable, the interest confirmed by the adjudicating authority under Section 50 of CGST Act, 2017 is not sustainable.
- (ix) The impugned OIO itself evidences that the credit was legitimate and invoices were verified by the Superintendent. The only reason for disallowance was an error in selecting the Table in Tran-1. This proves that there was no intent to defraud revenue. The credit is legitimate and the appellant was eligible for such transitional credit. Thus the element of Mens Rea is not present and hence penalty under Section 73(9) of the CGST Act, 2017 is not imposable on them.
- (x) The appellant has prayed that ;
- (i) the impugned order passed by the adjudicating authority should be set aside and all demands be dropped with consequential relief;
 - (ii) appeal may be allowed with necessary relief as per aforesaid ground to the appellant.



Personal Hearing:-

6. Personal Hearing in the matter was held on 27.10.2023, wherein Mr. Nitesh Jain, C.A. appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has reiterated the written submission and submitted that the issue is very limited to availment of cenvat credit in Tran-1 in Table 7.1(b) instead of Table 7.1(a). Since as per the circular No.180/2022 dated 09.09.2022, the appellant cannot filed the revised Tran-1, as the matter was already under adjudication/appeal process. Accordingly, they have followed the circular and requested that the appeal may be considered.

Discussion and Findings :

7. I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum as well as through additional submission. The date of the impugned order is 26.04.2023 and the appeal has been filed on 17.07.2023. As per Section 107 of the CGST Act, 2017, I find that the appeal has been filed in the normal period i.e., well within the time limit prescribed and accordingly, I proceed further to decide the instant case.

8. I find that the basic issue to be decided is that 'Appellant' had availed the cenvat credit of Rs. 61,75,209/- to their Tran-1 at Table 7.1(b) instead of Table 7.1(a) is admissible or not. A SCN dated 01.10.2021 was issued to the appellant for inadmissible credit of Rs. 61,75,209/- carried forward in Table 7(b) to the Tran-1 under the governing Section 140(5) and 140(7) of the CGST Act, 2017 in this regard. Thereafter, the *adjudicating authority* vide *impugned order* has disallowed the cenvat credit of Rs. 61,76,209/- under proviso to Section 140(3) of the CGST Act, 2017, and levied interest as applicable, under Section 50 and imposed penalty of Rs. 6,17,620/- under Section 73(9) of the CGST Act, 2017 on the following reasons:

(i) *the noticee has made an mistake of wrongly filing Table 7(b) of Tran-1 instead of Table 7(a) of Tran-1 under Section 140(3) of the CGST Act, 2017 but has not filed revised Form Tran-1.*

9. It is apparent from the reply dated 03.02.2022 of the appellant to the SCN dated 01.10.2023 that the language in the GST portal describing Table 7 of Tran-1 is technical and not easy for all registered persons and layman to understand and interpret. The appellant accepts that they have made an inadvertent and honest mistake in selecting the sub table of Table-7. The appellant informs that they were not aware of such an inadvertent mistake till the time they were informed by the authorities or else they would have surely tried to remedy the same. The appellant accepts that they should have been show the transitional credit rightly available in details under Table 7 part (a) instead of Table 7 part (b). Their availment / transfer of cenvat credit falls under Table 7 part (a) i.e. under Section 140(3) of the CGST Act, 2017 as they being registered dealers in the earlier regime and also have duty paid documents/invoices as reviewed by the authorities before issuing the show cause notice.

10. The CBIC has issued a Flyer No.20 dated 01.01.2018 on transitional provisions. The relevant extract of the flyer are as under:

"(C) Credit on duty paid stock: A registered taxable person, other than manufacturer or service provider, may have a duty paid goods in his stock on the appointed day. GST would be payable on all supplies of goods or services made after the appointed day. It is not the intention of the Government to collect tax twice on the same goods. Hence, in such cases, it has been provided that the credit of the duty/tax paid earlier would be admissible as credit. Such credit be taken as under:

- (i) Credit shall be taken on the basis of invoice evidencing payment of duty of excise or VAT;
- (ii) Such invoices should be less than one year old;

(iii) Declare the stock of duty paid goods within the prescribed time on the common portal."

11. The above CBIC Circular in the said flyer has very clearly stated that the Government never intends to collect taxes on the same goods twice subject to conditions. In the instant case, due to the inadvertent mistake of carrying forward the transitional credit to Table 7(b) instead of Table 7(a), which is mere procedural lapse, the appellant cannot be denied their substantial right of the cenvat credit transition. I find that the appellant's difficulty in filling up a correct credit amount in the Tran-1 form is a genuine one which should not be preclude him from having his claim examined by the authorities in accordance with law.

12. Further, I find from the impugned order, the adjudicating authority nowhere disputed the quantum of the cenvat credit i.e. Rs.61,76,209/- availed by the appellant. The jurisdictional Range Supdt. in his letter dated 30.03.2023, has affirmed that the invoices related to the cenvat credit were duly verified and vouched that the appellant has paid the excise duty at the appropriate rate of 12.50%. Thus it appears that the cenvat credit carried forward by the appellant appears to be admissible.

13. The appellant during the personal hearing held, explained that when the portal was open for amendments to be made in the Tran-1/Tran-2 already filed by the tax payers, due to the conditions in the CBIC Circular No. 180/12/2022-GST dated 09.09.2022, they were not in a position to file revised Tran-1. The relevant extract at para 4.7 of the Circular dated 09.09.2022, is as under ;

"4.7. It is clarified that those registered persons, who had successfully filed TRAN-1/TRAN-2 earlier, and who do not require to make any revision in the same, are not required to file/revise TRAN-1/TRAN-2 during this period from 01.10.2022 to 30.11.2022. In this context, it may further be noted that in such cases where the credit availed by the registered person on the basis of FORM GST TRAN-1/TRAN-2 filed earlier, *has either wholly or partly been rejected by the proper officer, the appropriate remedy in such cases is to prefer an appeal against the said order or to pursue alternative remedies available as per law. Where the adjudication/appeal proceeding in such cases is pending, the appropriate course would be to pursue the said adjudication/appeal. In such cases, filing a fresh declaration in FORM GST TRAN-1/TRAN-2, pursuant to the special dispensation being provided vide this circular, is not the appropriate course of action.*"



14. In this case it is observed that the Tran-1 credit has been disallowed on the ground that the appellant has made a mistake by wrongly filing Tran-1 claiming ITC in Table 7(b) of Tran-1 instead of Table 7(a) of Tran-1, under Section 140(3) of the CGST Act, 2017 and the appellant has failed to file revised Tran-1 when the portal was open to revise the Tran-1 [Refer Para 10.11 & 10.12 of O-I-O]. It is clarified by CBIC Circular No.180/12/2022-GST dated 09.09.2022 that in cases where adjudication or appeal is pending, appropriate course will be to pursue such process and filing a fresh declaration in Form GST Tran-1/Tran-2, pursuant to the special dispensation being provided vide this circular, is not appropriate course of action.

15. In view of the above, it is clear that the instant case since had already been under adjudication/appeal process, filing revised TRAN-1 for taking the cenvat credit from Table 7(b) to 7(a) is not available to the appellant as per the aforesaid circular dated 09.09.2022. It is the legitimate right of the appellant to avail the cenvat credit which is due to him which cannot be denied and the appellant deserves an opportunity to correct the inadvertent mistake made by them.

16. In view of the above facts and discussions, and as envisaged in the CBIC Circular No. 180/12/2022-GST dated 09.09.2022, I hereby set aside the impugned order issued by the adjudicating authority and allow to avail ITC in Table 7(a) instead of Table 7(b) with a direction to appellant to submit all irrelevant documents before the adjudicating authority who shall verify as if the Tran-1 is filed under Table 7(a) and allow the amount of credit found admissible after verification of documents and pass order accordingly.

17. 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)
30/10/2023
Joint Commissioner (Appeals)
Date: .10.2023

Attested

(Vijayalaxmi V)
Superintendent (Appeals)

By R.P.A.D.

To,
M/s. Bhumi Corporation,
First Floor, Super Mall-2, Rajshree Arcade,
Nr. Panchtirih Tower, Jodhpur Char Rasta
Ahmedabad 380 015



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/Asstt. Commissioner, CGST, Division-VII, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
- ✓ 6. Guard File.
7. P.A. File

