



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/1334/2023 16278-83
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-001-APP-JC-152/2023-24 and 15.11.2023
(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-VI/DEM-66/DHAMRA LNG/AC/DAP/2022-23 dated 23.09.2023 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 Dhamra Lng Terminal Private Limited (GSTIN: 24AAFCD2856B1Z2), Adani House, Nr. Mithakali Six Road, Navrangpura, Ahmedabad-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

This order arises on account of appeal filed by M/s. Dhamra Lng Terminal Private Limited, Adani House, Near Mithakhali Six Roads, Navrangpura, Ahmedabad-380009 (hereafter referred to as the 'appellant') against the Order-in-Original No. CGST-VI/DEM-66/DHAMRA LNG/AC/DAP/2022-23 dated 23.09.2022 (in short '*impugned order*') passed by the Assistant Commissioner, CGST, Division-VI (Vastrapur), Ahmedabad South (in short '*adjudicating authority*').

2. Brief facts of the case are that the appellant is registered with GST No. 24AAFCD2856B1Z2. They were earlier registered with Service Tax department and holding Service Tax Registration bearing No. AAFCD2856BSD001. During the test check of TRAN-1 records of the appellant, it was observed by CAG vide HM-66 dated 08.03.2021 that the appellant carried forward Cenvat credit balance of Rs.21,89,57,778/- under Table 5A of GST TRAN-1. Further, scrutiny of ST-3 returns for the month from April to June 2017 of the appellant revealed that, the said credit includes credit of Krishi Kalyan Cess (KKC) of Rs.75,50,269/-. It was observed that claiming of credit of Krishi Kalyan Cess (KKC) was irregular in contravention to the transitional provisions of the Act. This resulted in irregular carry forward of Krishi Kalyan Cess amounting to Rs.75,50,269/- in Tran-1. A Show Cause Notice No. V/WSO6/OA/SCN-177/2021-22 dated 15.12.2021 was issued to the appellant stating as to why the credit of Krishi Kalyan Cess wrongly carried forward in FORM GST TRAN-1, totally amounting to Rs.75,50,269/-, which should not be demanded and recovered from them, under the provisions of Rule 121 of the CGST Rules, 2017 read with Section 73 of the CGST Act, 2017 and Interest should not be charged and recovered from them under the provisions of Section 50 of the CGST Act; and Penalty should not be imposed on them under the provisions of Section 73(9) of the CGST Act and an option for personal hearing on 12.07.2022 was provided to the appellant .

3. The appellant in their reply to the SCN dated 15.12.2021, submitted that they had reversed the credit of Rs.2,65,93,384/- with respect to demand arising from another show cause notice dated 20.07.2020 which comprised inter alia the demand by way of credit of KKC to the tune of Rs.9,17,013/-. They requested the adjudicating authority to appropriate the amount of Rs.9,17,013/- against the demand being proposed in SCN dated 15.12.2021.

4. The adjudicating authority in his discussion and findings has discussed that the amount of Rs.9,17,013/- credit reversed in respect of KKC in another SCN dated 20.07.2020, has taken a decision that as the GSTN number mentioned in the DRC-03 pertains to Bhubaneswar Comm'te and the said amount cannot be considered for appropriation in the present demand.

5. Further, the adjudicating authority by relying upon the decision dated 16.10.2020 rendered by the Hon'ble Madras High Court in the case of CGST & Central Excise, Chennai Vs. Sutherland Global Services Private Limited reported as 2020-TIOL-1739-HC-MAD-GST and vide his impugned order confirmed the demand of the excess/wrongly carried forward credit of Krishi Kalyan Cess amounting to Rs. 75,50,269/- from the appellant under section 73 (1) of the CGST Act, 2017 read with Rules 121 of CGST Rules, 2017. Further levied penalty under Section 50 of the Act and imposed penalty under Section 73(9) of the CGST Act, 2017.

6. Being aggrieved with the impugned order, the appellant has filed the present appeals on following grounds:

- The appellant had contended that in their statement of facts that they were not provided with original copy of the OIO, and only on enquiry with the divisional office they were provided with photocopy on 13.12.2022. The appellant specifically vide their letter dated 27.12.2022 and further reminder dated 02.03.2023 requested the adjudicating authority to furnish original copy or certified copy of the OIO but their request was never considered (copy of which has been submitted to this office). Further, it has been alleged that the DIN number over the face of the OIO is found to be incorrect, while they searched for the same in the official website of the CBIC.
- Ld. Respondent grievously erred in law while deciding that the credit of KKC taken by Appellant in TRAN-1 was contrary to the provisions of Section 140(1).
- Ld. Respondent failed to appreciate the provisions of Section 140(1) and also failed to appreciate that the credit of KKC was rightly and legitimately taken by Appellant in TRAN-1.
- Ld. Respondent failed to appreciate that the provisions prevailing on the date of filing of TRAN-1 and availing of credit in Electronic Credit Ledger were relevant and not the provisions amended thereafter. Ld. Respondent failed to appreciate that subsequent amendments made in the provisions of sub-section (1) of section 140 of the Act, though given retrospective effect, must not be read to amend and/ or modify the actions already completed before such amendments. Ld. Respondent failed to appreciate that the credit in dispute was already taken in



TRAN-1 by the Appellant and corresponding amount was duly entered into Electronic Credit Ledger by the GSTN Portal before such amendments taken place. Hence, notwithstanding anything contrary enforced by the retrospective amendments, the credit already taken in TRAN-1 and duly allowed and given effect in the Electronic Credit Ledger by GSTN Portal must not be reversed without any specific authority of law to that effect.

- Ld. Respondent erred in law while referring to and applying the amended provisions of section 140. Ld. Respondent failed to appreciate that the amendments made in section 140 of the Act including the amendment not enforced by the Government till the date of this respectful appeal, do not prohibit, in its literal but holistic interpretation, credit of KKC in TRAN-1.
- Ld. Respondent failed to appreciate that the retrospectively given to the amendments in section 140 was unconstitutional.
- Ld. Respondent failed to appreciate that the retrospectively given to the amendments in section 140 was breach of promissory estoppels.
- Ld. Respondent was not justified in relying upon the decision of Hon'ble Madras High Court in case of CCE v. Sutherland Global Services P Ltd - 2020-TIOL1739-HC-MAD-GST.
- Ld. Respondent was not justified in denying the eligibility of credit in TRAN-1 which was a vested right. Ld. Respondent committed breach of Article 300A inasmuch as the vested benefit in form of credit of KKC has been demanded and ordered to be recovered.
- Ld. Respondent failed to appreciate that the situation was revenue neutral for the reasons that the credit of KKC was otherwise refundable to the Appellant.
- Ld. Respondent was not correct in law while passing the impugned Order on the strength of a Notice issued under section 73 of the Act. Ld. Respondent failed to appreciate that demand and recovery of credit taken in TRAN-1 does not fall within the scope and powers given under section 73 of the Act. Ld. Respondent failed to appreciate that the credit taken in TRAN-1 is not an input tax credit for the purpose of section 73 of the Act.
- Ld. Respondent travelled beyond his jurisdiction in passing the impugned Order based on a Notice issued without jurisdiction. Ld. Respondent failed to appreciate that the credit was taken in TRAN-1 by the branch of the Appellant registered in the State of Odisha vide GSTIN : 21AAFCD2856B1Z8 by virtue of sub-section (8) of section 140 of the Act. Branch registered in the State of Odisha is a distinct person than the Appellant by operation of section 25 of the Act whereas Ld Respondent does not have jurisdiction to the taxpayer registered in the State of Odisha. Therefore, the Notice as well as impugned Order is



beyond jurisdiction of Id. Respondent.

- Ld. Respondent not justified in demanding interest under section 50 of the Act when demand of tax failed to survive.
- Ld. Respondent was not correct in demanding interest under section 50 of the Act without attributing the provisions of sub-section (1) or sub-section (3) of section 50 of the Act. Ld. Respondent ought to have appreciated that the provisions of sub-section (1) and sub-section (3) of section 50 are mutually exclusive and hence no demand of interest can be made generally under section 50 and without attributing either of such provisions.
- Ld. Respondent failed to prove that the amount demanded in the impugned Order was the result of short payment of tax or wrong input tax credit and therefore the demand of interest does not survive.
- Ld. Respondent was not justified in imposing penalty of Rs. 7,55,027/- under subsection (9) of section 73 of the Act.
- Ld. Respondent failed to appreciate that penalty under sub-section (9) is impermissible when the very Notice was not falling within the scope and power of section 73 of the Act for the reasons and grounds stated hereinbefore.
- Ld. Respondent failed to appreciate that the penalty cannot be imposed under subsection (9) of section 73 with respect to credit taken in TRAN-1.
- Ld. Respondent failed to appreciate that credit taken in TRAN-1 at the time of filing of TRAN-1 was falling well within the scope of provisions of sub-section (1) of section 140 prevalent on such date and accordingly the credit taken in TRAN-1 cannot be deemed to be wrongly availed and hence imposition of penalty is illegal.
- Ld. Respondent failed to appreciate that imposition of penalty is not mandatory especially when the statute is amended retrospectively.
- Demand and recovery should not be allowed on the basis of Order, service of which is improper for the reasons and facts explained in the Statement of Facts.
- Demand and recovery should not be allowed on the basis of Order which is incomplete for the reasons and facts explained in the Statement of Facts.
- Demand and recovery should not be allowed on the basis of Order which is defective for the reasons and facts explained in the Statement of Facts.
- Ld. Respondent failed to acknowledge the facts while passing impugned Order that the demand involved in the Notice, to the extent of Rs. 9,17,013/- is already covered by another proceeding initiated by the show cause notice referred and which demand stands reversed by the Appellant by way of Form DRC-03.



7. A hearing in the matter was held on 26.07.2023. Shri Rahul Patel, CA attended the hearing on behalf of the appellant. He reiterated the submissions made in appeal memorandum and stated that they have availed the credit of KKC as eligible credit under Section 140 (1) and also praying for appropriation of Rs. 9,17,013/-. Hence the KKC is eligible credit and requested to allow their appeal.

DISCUSSIONS AND FINDINGS

8. I have carefully gone through the facts of the case, appeal memorandum, submission made at the time of personal hearing. In the instant matter the present appeal is filed by appellant on 10.03.2023 against the Order-in-Original dated 23.09.2022. The appellant had contended in their statement of facts that they were not provided with original copy of the OIO, and only on enquiry with the divisional office they were provided with a photocopy of the OIO on 13.12.2022. It has been mentioned that the appellant specifically vide their letter dated 27.12.2022 and further reminder dated 02.03.2023 requested the adjudicating authority to furnish original copy or certified copy of the OIO but their request was never considered (copy of which has been submitted to this office). Further, it has been alleged that the DIN number over the face of the OIO was found to be incorrect, while they searched for the same in the official website of the CBIC and prayed to accept the appeal.

9. The exact date of dispatch of the impugned order was called for from the Asst. Commnr., CGST Dn.IV, Ahmedabad South Commissionerate through an email. In reply, the copy of the outward register was furnished by the Dn.VI, wherein the date of dispatch of the impugned order is under **outward sr.no.2995 on 06.10.2022**. Thus, the date of communication of order as per the dispatch register of Division-VI is 06.10.2022. The appellant has filed appeal on 10.03.2023, ie. after a lapse of precisely 5 months. As per Section 107 of the CGST Act, 2017 the appeal has been filed beyond the time limit with condonation of 4 months period.

10. The CBIC vide its Notification No.53/2023-Central Tax dated 02.11.2023 has introduced amnesty scheme, whereby it has been directed by the Board to consider all those appeal which are time barred but involves demand and taxation aspect. In view of the same, I hereby proceed further to decide the case.

11. I find that as per the SCN and the impugned order issued, the name of the appellant has been mentioned as M/s. Dhamra LNG Limited, however the appellant in their appeal have mentioned their name as M/s. Dhamra LNG Terminal Private Limited. The details were verified from the

department's official website and it found that the GSTN number of the unit to be same, and hence I proceed further.

12. On carefully going through the submissions of *appellant* I find that the *appellant* is mainly contending that the Section 140(1) refers to 'CENVAT Credit' carried forward in the return and the explanation to Chapter XX 'Transitional Provisions' states that the term 'CENVAT Credit' used in this chapter shall have same meaning as assigned to them in the Central Excise Act, 1944 or the rules made there under (i.e. CENVAT Credit Rules, 2004) ; that in view of said provisions, a registered person shall be eligible to carry forward the credit into the GST regime. The *appellant* has accordingly contended in this appeal that on a co-joint reading of Section 140(1) and aforesaid Explanation, it is evident that any credit which qualifies as eligible CENVAT Credit under the CENVAT Credit Rules, 2004 and shown in the return filed under erstwhile regime, shall be carried forward into the GST regime.

13. I find that the *appellant* has further contended that vide CGST (Amendment) Act, 2018, explanation 3 was inserted with retrospective effect from 01.07.2017 that *inter-alia* clarified that "eligible duties and taxes" will not include Cess, not specified in Explanation 1 and 2 ; that the said amendment has not been notified by the Government and presently, not in operation. Accordingly, they had carried forward the CENVAT credit accumulated on account of KKC through TRAN-1.

14. Since, the *appellant* has contended that the amendment that including Cess in "eligible duties and taxes" has not been notified by the Government, I refer the relevant Explanation 3. The same is reproduced as

Explanation 3.- For removal of doubts, it is hereby clarified that the expression "eligible duties and taxes" excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975).]

The Explanation 3 is inserted w.e.f. 01.07.2017 by s.28 of 'The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018)'. And the Government of India vide Notification No. 02/2019 - Central Tax dated 29.01.2019 appoints the 01.02.2019, as the date on which the provisions of the Central Goods and Services Tax (Amendment) Act, 2018 (31 of 2018), except clause (b) of section 8, section 17, section 18, clause (a) of section 20, sub-clause (i) of clause (b) and sub-clause (i) of clause (c) of section 28, shall come into force. In the present matter the SCN vide which demanded the wrongly availed Transitional Credit is issued on 15.12.2021. Accordingly, I do not find any force in the contention of the *appellant*. In view of foregoing, I am of the considerate view that



in the present matter, as per Section 140 of the CGST Act, 2017 it is very much clear that transitional credit of Krishi Kalyan Cess under TRAN-1 is not admissible.

15. Further, as regards to order for demand & recovery of interest the appellant has contended that since, there was no dispute on eligibility of credit at the time of availment and the only dispute was for transferring the credit, hence, levy of interest is incorrect. However, I find that according to the Section 73 (1) of the CGST Act, 2017 under Section 50 of the CGST Act, 2017 the registered person is liable to pay interest on such input tax credit wrongly carried forward. Accordingly, the adjudicating authority has held that the noticee has carry forward transitional credit and therefore ordered for recovery of interest under Section 50 of the CGST Act, 2017. Accordingly, I do not find any force in the contentions of the appellant in this regard.

16. Further, as regards to imposition of penalty of Rs. 7,55,027/- I find that the appellant has contended that penalty under Section 73(9) of the CGST Act is not imposable in the matter of wrong availment of input tax credit. Whereas, in the present case they had carried forward CENVAT credit lying in balance as on 30.06.2017 in electronic credit ledger pursuant to rollout of GST on 01.07.2017 which is permissible as per Section 140(1) of the CGST Act. Accordingly, the appellant has contended that there was no such deliberate and *bona-fide* intention to avail excess input tax credit and therefore, charging interest and penalty in the instant case is not tenable. Accordingly, I hereby refer the relevant provisions.



Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.-

(1) 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.

(9) **The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.**

In the present matter, as discussed in foregoing paras I find that the appellant had wrongly carried forward ITC of Krishi Kalyan Cess amounting to Rs.75,50,269/-. The appellant not only carried forward ITC of KKC but also utilized it for paying their duties. Therefore, the penalty imposed by the Adjudicating Authority under Section 73(9) of the GGST Act, 2017 is proper and maintainable.

17. The appellant has contended that they have already reversed the credit to the tune of Rs.9,17,013/- involved in the total of credit of KKC of Rs.75,50,269/-; that they had reversed the credit of Rs.2,65,93,384/- with respect to the demand arising from earlier SCN dated 20.0.2020 which includes credit of KKC to the tune of Rs.9,17,013/-. However, on scrutiny of the DRC-03 submitted by the appellant it is observed that as per the GST No. mentioned in the DRC-03, it pertains to Bhubaneshwar Commissionerate and the same cannot be appropriated. Accordingly, the adjudicating authority decision of not to consider the same is found to be legal and proper.

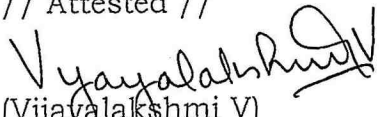
18. In view of the above discussions, I do not find any infirmity in the Order-in-Original being legal and proper, thus upheld.

19. 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: .11.2023

// Attested //


(Vijayalakshmi V)
Superintendent (Appeals)
By R.P.A.D.



To

M/s. Dharma LNG Terminal Private Ltd.
Adani House, Near Mithakhali Six Roads
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/Asstt. Commissioner, CGST, Division-VI, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File



