



सत्यमेव जयते

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

07926305065-

टेलिफैक्स 07926305136



DIN- 20230564SW000000E9DA

रजिस्टर्ड डाक ए.डी. द्वारा

क

फाइल संख्या : File No : GAPPL/ADC/GSTD/385/2022 -APPEAL /1593 - १४

ख

अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-16/2023-24**

दिनांक Date : **16-05-2023** जारी करने की तारीख Date of Issue : **17-05-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग

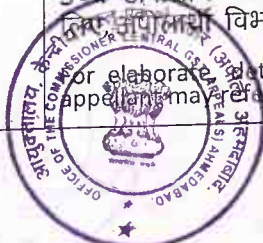
Arising out of Order-in-Original No. **CGST-VI/Dem-28/Rajendra Vododaria/AC/DAP/21-22** दिनांक **23.03.2022** issued by The Assistant Commissioner, CGST, Division-VI, Ahmedabad South

घ

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

Appellant	Respondent
The Assistant Commissioner, CGST, Division-VI, Ahmedabad South	M/s. Rajendra Mahendrakumar Vododaria, A-614, 6th Atma House Opp. Old RBI, Near Times of India, Ashram Road, 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 अपीलकर्ता को विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate 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 :**

The Assistant Commissioner, CGST, Division VI, Ahmedabad South (hereinafter referred to as the '*Appellant/Department*') in terms of Review Order No. 44/2022-23 dated 17.10.2022 issued under Section 107 of the CGST Act, 2017, has filed the appeal against Order-in-Original No. CGST-VI/Dem-28/Rajendra Vadodaria/AC/DAP/21-22 dated 23.03.2022 (hereinafter referred to as the '*Impugned Order*') passed by the Assistant Commissioner, CGST, Division VI, Ahmedabad South (hereinafter referred to as the '*Adjudicating Authority*') in the matter of **M/s. Rajendra Mahendrakumar Vadodaria**, A-614, 6th Atma House, Opp. Old RBI, Near Times of India, Ashram Road, Ahmedabad - 380 009 (hereinafter referred to as the '*Respondent*').

2(i). Briefly stated the facts of the case is that the *Respondent* registered under GSTN No.24ABOPV2534RIZU had filed TRAN-1 on 21.11.17 and claimed transitional credit of Central Excise/Service Tax amounting to Rs.1,23,31,211/- (CGST) and Rs.40,51,456/- (SGST) in their electronic credit ledger in light of provisions of Section 140 of the CGST Act, 2017. In this regard, a Show Cause Notice No. CGST/WS0605/TRAN-1/Rajendra Mahendrakumar/21-22 dated 10.09.21 was issued to the *Respondent* and asked to show cause as to why said transitional credit wrongly carried forward and utilized should not be demanded and recovered from them under the provisions of Section 73(1) of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017; along with interest under Section 50 of the CGST Act, 2017 and Penalty under Section 122(1)(xvii) of the CGST Act, 2017 should not be imposed upon them.

2(ii). Further, after having gone through the SCN and the relevant documents/invoices produced by the *Respondent* during adjudication process, the *adjudicating authority* has observed that the *Respondent* has carried forward the transitional credit of C. Ex./S. Tax as CGST in Table 7(a) of TRAN-1 and transitional credit of VAT as SGST in Table 5(c) of TRAN-1. The Table 7(a) of TRAN-1 pertains to credit claim by registered person under Section 140(3) of the CGST Act, 2017 of credit of eligible duties in respect of inputs held in stock.

2(iii). The *Adjudicating Authority* has observed that the *Respondent* was registered as Central Excise Dealer as well as holding Service Tax Registration and also registered with Gujarat VAT. Further, the adjudicating authority has held that Respondent is in possession of all the invoices/duty



paying documents in respect of credit and have fulfilled all the conditions of Section 140(3)m 140(4)(b), 140(6) and 140(7) of the CGST Act, 2017 and also fulfilled the condition specified under Section 140(1) of the Gujarat SGST Act, 2017.

2(iv). In view of above, the adjudicating authority has allowed the transitional credit of CGST amount of Rs.1,23,31,211/- as well as SGST amount of Rs.40,51,456/- and accordingly dropped the proceedings initiated against the Respondent through SCN dated 10.09.21 vide *impugned order* dated 23.03.2022.

3. During Review of the said '*Impugned Order*' dated 23.03.2022 the department has observed that the '*Impugned Order*' is not legal and proper and accordingly, filed the present appeal on the following grounds :

- *The adjudicating authority has erred in dropping the demand of transitional credit of CGST amount of Rs.1,23,31,211/- as he is not the 'Proper Officer' to decide such cases, hence Order-in-Original required to be set aside.*
- *Section 74 of the CGST Act, 2017 which specify the Proper Officer for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized.*
- *Further, the Central Board of Excise and Customs, GST Policy Wing, New Delhi has issued Circular No. 31/05/2018-GST dated 09.02.2018 regarding Proper Officer under Section 73 and 74 of the CGST Act, 2017 and under the IGST Act, 2017 prescribing monetary limits for different levels of officers of Central Tax.*
- *In view of above Circular, it is clear that the Deputy Commissioner or Assistant Commissioner of Central Tax can pass orders in respect of input tax credit of Central Tax involving above Rs.10 Lakhs and not exceeding Rupees 1 Crore. Where amount of input tax credit of Central Tax is more than Rs. 1 Crore, Additional or Joint Commissioner of Central Tax is the Proper Officer for issue of SCN and passing order under Section 73 and 74 of the CGST Act, 2017.*
- *However, without considering the monetary limit prescribed by the Board, the adjudicating authority has passed the impugned order, wherein amount of input tax credit of central tax involved was more than Rs. 1 Crore i.e. Rs.1,23,31,211/-, thereby adjudicating authority has exceeded his power for passing the subject order, which is not legal and proper and is required to be set aside.*

In view of above, the appellant/department has made prayer as under:

- i. To ~~set aside~~ *set aside* the impugned order.
- ii. To ~~pass any other~~ *pass any other* order(s) as deemed fit in the interest of justice.



4. Personal Hearing in the matter was held on 23.12.2022, wherein Mr. Jaysukh R. Antala was appeared on behalf of the *Respondent* as authorized representative. During PH he has submitted the written submissions dated 23.12.2022. The *Respondent* has stated in their submissions dated 23.12.2022 that -

- They had filed TRAN-1 on 21.11.17 and had taken transitional credit.
- As and when asked by department for details/documents, they have submitted all the documents in support of TRAN-1.
- Thereafter, their TRAN-1 was verified on the basis of invoices and other documents submitted by them and impugned order was passed vide which the proceedings initiated against them vide SCN dated 10.09.21 was dropped by the adjudicating authority.
- It is not correct that they have not submitted required documents for verification of TRAN-1. They had submitted the required documents for number of times.
- Taking decision on the matter is the internal process of the department and due to that assessee should not be suffered in any way.
- Section 74 is not applicable, as the present matter is of transitional credit, which available to them.
- Furthermore, they would like to say that competent officer can also verify again the TRAN-1 and supporting documents submitted.

Discussion and Findings :

5(i). I have carefully gone through the facts of the case, grounds of appeal, submissions made by the *Respondent* and documents available on record. I find that the present appeal is filed to set aside the *impugned order* on the ground that the disputed amount of Input Tax Credit involved in present matter was more than Rs.1 Crore and as per the monetary limit prescribed by the Board vide Circular No. 31/05/2018-GST dated 09.02.2018 the *adjudicating authority* was not the proper officer to decide the matter.

5(ii). The issue involved in present matter is that the *Respondent* has claimed transitional credit of Rs.1,23,31,211/- as CGST and Rs.40,51,456/- as SGST in their electronic credit ledger in light of provisions of Section 140 of the CGST Act, 2017. I find that the availment of said Input Tax Credit was disputed by the department and accordingly a SCN dated 10.09.21 was issued to the *Respondent*. Thereafter, the Assistant Commissioner, Division VI, Ahmedabad South has carried out the adjudication process in respect of aforesaid SCN and after examining the documents produced by the *Respondent*, he has held that *Respondent* is in possession of all the invoices/duty paying documents in respect



of credit availed and has fulfilled the conditions of Section 140 of the CGST Act, 2017 & the Gujarat SGST Act, 2017. The *adjudicating authority* has accordingly vide *impugned order* allowed the transitional credit of CGST amount of Rs.1,23,31,211/- as well as SGST amount of Rs.40,51,456/- and consequently dropped the proceedings initiated vide SCN dated 10.09.21 against the *Respondent*.

5(iii). The *department/appellant* has challenged the *impugned order* under present appeal proceedings mainly on the ground that though the *Adjudicating Authority* i.e. AC, Division-VI, Ahmedabad South was not the competent authority to decide the issue involving amount of ITC of more than Rs.1 Crore, has decided the matter. I find that in support of their argument the *appellant/department* has referred the Circular No. 31/05/2018-GST dated 09.02.2018 issued by the CBEC, New Delhi. I have gone through the said Circular and noticed that the Deputy or Assistant Commissioner of Central Tax is the proper officer in relation to issue of SCN and Orders under Section 73 & 74 of the CGST Act, 2017 and Section 20 of the IGST Act, 2017 for Input Tax Credit of Central Tax wrongly availed or utilized up to the monetary limit of Above Rs.10 Lakhs and not exceeding Rs. 1 Crore. However, I find that in the present matter thought the disputed ITC of Central Tax involved is more than Rs.1 Crore, the AC, Div. VI, Ahmedabad South has adjudicated the SCN.

6. In view of above, I am of the view that in the present matter the *adjudicating authority* is not the proper officer to decide the issue of ITC of Central Tax involving Rs.1 Crore and above in light of CBEC's Circular No. 31/05/2018-GST dated 09.02.2018. However, in the instant case the ITC of Central Tax involved is Rs.1,23,31,211/- and the Assistant Commissioner has decided the matter, therefore, I am of the view that *impugned order* is not proper and thus require to be set aside as order issued by the authority who is not competent to decide such matter. Further, I find that the *Respondent* has contended in the present matter that they have submitted all the documents in support of TRAN-1 filed by them and after verifying the same the *impugned order* was passed vide which the proceedings initiated against them vide SCN dated 10.09.21 was dropped by the *adjudicating authority*. However, I am of the considerate view that the *impugned order* passed by the authority, who is not competent to decide such matter, hence *impugned order* is not proper. Looking to the monetary limit prescribed by the Board vide Circular 31/05/2018-GST dated 09.02.18 I am of the considerate view that the Additional or Joint Commissioner of Central Tax is the competent authority to adjudicate the present



SCN in question. The Respondent should also produce all the relevant documents before the Additional/Joint Commissioner in respect of transitional credit claimed by them vide TRAN-1.

7. In view of above discussions, I find that the *impugned order* is not legal and proper and therefore, require to be set aside. Accordingly, the appeal filed by the 'Department' is allowed and set aside the '*impugned order*'.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The Appeal filed by 'Department' stand disposed off in above terms.

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 16.05.2023



Attested

(Dilip Jaday)

Superintendent (Appeals)

By R.P.A.D.

To,

The Assistant / Deputy Commissioner,
CGST, Division - VI, Ahmedabad South.

Appellant

M/s. Rajendra Mahendrakumar Vadodaria,
A-614, 6th Atma House, Opp. Old RBI,
Near Times of India, Ashram Road,
Ahmedabad - 380 009

Respondent

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 & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File