



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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20230564SW000061136D

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/352/2022 -APPEAL /1581 - 88

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-17/2023-24**  
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. **WS07/O&A/OIO-02(GST)/AC-RAG/2021-22** dated **09.02.2022** issued by The Assistant Commissioner, CGST, Division-VII, Ahmedabad South

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

Appellant	Respondent
The Assistant Commissioner, CGST, Division-VII, Ahmedabad South	M/s. Bharat Insecticides Limited (M/s. Bharat Certis Agriscience Limited), 8 <sup>th</sup> Floor, 810, Span Trade Centre, Ashram Road, Paldi, Ahmedabad, Gujarat-382007

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



**ORDER IN APPEAL****Brief Facts of the Case :**

The Assistant Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the '**Appellant/Department**') in terms of Review Order No. 35/2022-23 dated 01.08.2022 issued under Section 107 of the CGST Act, 2017, has filed the present appeal against Order-in-Original No. WS07/O&A//oio-02(GST)/AC-RAG/2021-22 dated 09.02.2022 (hereinafter referred to as the '**Impugned Order**') passed by the Assistant Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the '**Adjudicating Authority**') in the matter of **M/s. Bharat Insecticides Limited**, (presently known as Bharat Certis Agriscience Limited) 8<sup>th</sup> Floor, 810, Span Trade Centre, Ashram Road, Paldi, Ahmedabad - 382 007 (hereinafter referred to as the '**Respondent**').

**2(i).** Briefly stated the facts of the case is that the *Respondent* registered under GSTN No.24AAACB1111C1ZT had claimed Input Tax Credit (ITC) of Rs.11,98,286/- by filing a TRAN-1. The Range Superintendent has noticed that the Respondent has availed said ITC on the documents which are not proper as per Rule 9 of the CENVAT Credit Rules, 2004 (herein after referred to as '*CCR,2004*'). Therefore, a Show Cause Notice dated 02.01.2020 was issued to the Respondent and asked to show cause as to why -

- i. *The amount of ITC of Rs.11,98,286/- wrongly taken in their Electronic Credit Ledger while filing Tran-1 return on 20.12.2017 should not be demanded and recovered from them under Section 73(1) of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017;*
- ii. *Interest at applicable rate under Section 50(3) of the CGST Act, 2017 should not be demanded and recovered from them on the wrongly taken ITC of Rs.11,98,286/-;*
- iii. *Penalty should not be imposed upon them under Section 125 of the CGST Act, 2017.*

The Respondent had submitted before adjudicating authority that they are manufacturer and have depots but was not registered in Central Excise regime prior to GST regime as their main clients were not registered under Central Excise regime, therefore, they were thus not eligible to claim CENVAT on their inputs and that practice was prevalent up to 30.06.17. Further, with effect from 01.07.2017, the dealers through whom they are doing their business were brought under GST regime; therefore, they were required to be registered with GST. The goods received by them under Branch Transfer invoices were supported by invoices issued by manufacturers at the time of removal of goods and in all these cases appropriate Central Excise Duty was



paid and all invoices were issued under Rule 9 of the Cenvat Credit Rules, 2004. Prior to 01.07.17 they use to receive goods from their Mother Depot at Ludhiana under Branch Transfer invoice; they were not passing on CENVAT credit as their buyers never insisted for Cenvatable Invoices. However, the Respondent has taken credit under TRAN-1 on the stock held by them as on 01.07.2017 and the stock was further used for making taxable supplies.

**2(ii).** The Adjudicating Authority has referred Rule 9 of the CCR, 2004 and found that invoices issued by manufacturers are valid documents for taking CENVAT credit but there is some procedural lapse as the invoices are issued to same taxpayer but showing different address. The Respondent had referred following case laws and contended that CENVAT credit cannot be denied on procedural lapses.

- i. *Manipal Advertising Services Pvt. Ltd. Vs. CCE, Mangalore [2010 (19) S.T.R. 506 (Tri. Bang)]*
- ii. *mPortal India Wireless Solutions P. Ltd. Vs. C.S.T., Bangalore [2012 (27) S.T.R. 134 (Kar.)]*
- iii. *M/s. Allspheres Entertainment Pvt. Ltd. Vs. CCE, Meerut [2015 (8) TMI 953 (CESTAT DELHI)]*

The adjudicating authority has found that majority of judgments cited by the Respondent are squarely applicable to the present case and therefore, held that the Respondent has correctly carried forward the ITC of Rs.11,98,286 in their TRAN-1. The adjudicating authority has accordingly dropped the proceedings initiated against the Respondent vide SCN No. WS07/SCN-08/O&A/Bharat/2019-20 dated 02.01.2020.

**3.** During Review of the 'Impugned Order' dated 09.02.2022 the department has observed that the *impugned order* is non-speaking and not legal & proper on the following grounds :

- *Adjudicating Authority has erred in allowing credit of Rs.11,98,286/- without recording any findings on the merit of the case. Just agreed to the submissions made by Respondent.*
- *The main allegation in SCN was that the Respondent is having manufacturing unit at Kathua (Jammu & Kashmir) and Bahardurgarh (Hariyana); that said manufacturing units have cleared duty paid goods under cover of Central Excise invoices in favour of their depots located at Ludhiana, Bahurgarh & Karnel. The said depots of company were not registered as a Central Excise dealer. The said Depots in turn transferred the excisable goods to depots located at Ahmedabad, also to other depots located at various places at Akola, Indore, Raipur, Jaipur etc. under cover of stock Transfer Invoices. Said depots also sent goods under cover of Stock*

Transfer Invoices to Ahmedabad depot. On the basis of such stock Transfer Invoices issued by depots at Ludhiana, Bhardugarh, Karnel, Akola, Indore, Raipur, Jaipur, the Respondent at Ahmedabad have taken ITC of Rs.11,98,286/- in electronic credit ledger at the time filing TRAN-1 return. Such invoices were not related to Central Tax but they were simple stock transfer invoices form company's one depot to another, hence such invoices cannot be termed as "Prescribed Documents" evidencing payment of duty. Accordingly, ITC of Rs.11,98,286/- were not admissible under provisions of Section 140(3) of the CGST Act, 2017.

- From plain reading of Section 140(3) of the CGST Act, 2017, it is crystal clear that a registered person, who was not liable to be registered under existing law, shall be entitled to take in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on appointed day subject to condition that said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs. Thus, to avail credit the Respondent should be having possession of invoice or other prescribed documents evidencing payment of duty.
- In the instant case the Respondent has availed credit on the basis of stock transfer invoice which is not prescribed duty paying document as per Rule 9 of the CCR, 2004 (under existing law).
- Thus, Adjudicating Authority has wrongly allowed credit to the Respondent in violation of Section 140(3) of the CGST Act, 2017 without recording any findings on the merit of the case. Therefore, impugned OIO is bad in law and deserves to be set aside.
- In the instant case, depots located at Akola, Bahadurgarh, Ludhiana, Karnel, Indore, Raipur, Jaipur were neither registered as a first stage dealer nor as a second stage dealer at relevant time and therefore, stock transfer invoices issued by such depots in favour of depot at Ahmedabad, cannot be termed as Cenvatable Invoice for the purpose availing Cenvat Credit under Rule 9 of the CCR, 2004 i.e. prescribed documents/invoices evidencing payment of duty admissible under provisions of Section 140 (3) of the CGST Act, 2017. Thus, the adjudicating authority has wrongly allowed credit to the Respondent on the basis of stock transfer invoice which is not proper and prescribed duty paying document. Therefore, the impugned OIO is bad in law and deserves to be set aside.
- None of the case laws relied upon by the Adjudicating Authority in allowing credit to the Respondent, deals with the present issue of transitional credit. Hence, case laws relied upon by the Adjudicating Authority is not applicable in the fact and circumstances of the present case.



- *The Adjudicating Authority has not recorded any findings on the allegation described at para 5.3 of the SCN. Thus, the impugned OIO is totally non speaking, not proper and bad in law and deserves to be set aside.*

In view of above, the *appellant/department* has made prayer for set aside the *impugned order* wherein the *adjudicating authority* has allowed the credit of Rs.11,98,286/- ; to pass any other order(s) as deemed fit in the interest of justice.

4. Personal Hearing in the matter was held on 09.02.2023, wherein Mr. Mukul Sharda, was appeared on behalf of the *Respondent* as authorized representative. During PH he has stated that they want to submit additional information, which was approved and 07 working days period was granted for the same. Accordingly, the *Respondent* has submitted their reply/submissions dated 03.03.2023 as under -

- *The company procured the manufactured duty paid goods from the manufacturing facility of the company located in Kathua, Jammu Kashmir and Bahadurgarh, Haryana. Further, company also procured the material by way of stock transfer from other depots of the Company located in Ludhiana, Karnal, Akola, Indore, Raipur, Jaipur etc. These depots procured the material from manufacturing plants and the stock transferred the same to Gujarat location.*
- *Further, such other depots did not claim any excise credit in lieu of such transferred stock to other depot.*
- *The company received the stock transferred goods from the manufacturing facility under cover of Excise Invoice issued under Rule 11 of the then prevailing Central Excise Rules in erstwhile regime. The Excise Invoice demonstrated the excise duty levied on the goods stock transferred to the company.*
- *After introduction of GST on 01.07.2017, they filed TRAN-1 on 20.12.17 and availed Transitional Credit of Rs.52,74,964/- in respect of goods held in stock as on implementation date, based on Excise Invoices issued by the manufacturing plants demonstrating the excise component involved and on the basis of stock transfer note, read with corresponding excise invoice available at the transferor depot viz. Ludhiana, Karnal, Akola, Indore, Raipur, Jaipur etc.*
- *Thereafter, they received letter dated 29.11.18 from Range Superintendent for verification of TRAN-1 Credit and asked to produce various details/documents for verification of transitional credit availed in TRAN-1. In due compliance to letter, they submitted their reply vide letter dated 24.12.18 with all requisite details as was asked.*

- They were further asked to produce additional details to substantiate the TRAN-1 credit claimed. Accordingly, they complied to the department's request by submitting additional documents on 11.04.19.
- After verification of documents, the Ld. Assistant Commissioner raised an objection on ITC availed of goods which were procured by the company from other depots of the Company by way of stock transfers. And issued SCN dated 02.01.2020 to reverse the ITC amounting to Rs.11,98,286/- availed on the basis of stock transfer notes as per the provision of Section 140(3)(iii) of the CGST Act, 2017 along with payment of interest.
- In response to above notice they submitted their reply and attended the personal hearings, the matter was eventually granted in favour of company by way of impugned order.
- Pursuant to above, the department has filed the present appeal.
- Hon'ble Gujarat High Court in the case of *Downtown Auto Pvt. Ltd. Vs. UOI* [2020 (43) G.S.T.L. 609 (Guj)] held that –
  - o "even though the petitioners are not having CTD the respondent-authorities can very well verify the payment of Excise Duty on the cars purchased by the petitioners from the dealers and on spare parts on the basis of documents submitted by the petitioners".
- In view of above, requested to drop proceedings as conduct of company as in the present case it is bona-fide contention of the company and there is no incorrect availment of transitional credit under GST Law. Hence, imposition of penalty along with interest is not sustainable.

### **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 main issue involved in the present appeal is that during pre GST era the main supplier of Respondent were not registered with Central Excise and therefore they were not eligible to claim Cenvat credit on inputs. However, after introduction of GST regime w.e.f. 01.07.2017 the dealers through whom they were doing their business were brought under GST regime, accordingly, they also required to get registered with GST. Prior to 01.07.17 they were receiving goods from their mother depot under Branch Transfer invoices. Since, their buyers were not insisted for Cenvatable Invoices, there was no such requirement of passing on CENVAT credit. However, after rollout of GST, the stock held by them as on 01.07.2017 are likely to be further used for making taxable supplies, accordingly, the Respondent has claimed the Input Tax Credit in respect of inputs held in stock, contained in semi-finished

or finished goods held in stock by filing TRAN-1 on 20.12.17 for ITC of Rs.52,74,964/- in terms of Section 140(3) of the CGST Act, 2017.

**5(ii).** In response to the Input Tax Credit claimed under TRAN-1, the department has issued SCN to the Respondent, wherein alleged that the ITC of Rs.11,98,286/- is claimed on the basis of stock transfer invoices issued by depots at Ludhiana, Bhardugarh, Karnel, Akola, Indore, Raipur, Jaipur ; such invoices were not related to Central Tax but were simple stock transfer invoices from company's one depot to another, hence, such invoices cannot be termed as prescribed documents evidencing payment of duty under existing law i.e. under Rule 9 of the CCR, 2004. Further, I find that the adjudicating authority has referred the Rule 9 of the CCR, 2004 and held that *'the invoices issued by manufacturers are valid documents for taking CENVAT credit but there is some procedure lapse as the invoices are issued to the same taxpayer but showing different address.'* The adjudicating authority has also held that the majority of judgments cited by Respondent are squarely applicable in the instant case and therefore, he agree with Respondent and hold that they have correctly carried forward the ITC of Rs.11,98,286/- in their TRAN-1.

**5(iii).** The Department/Appellant in the present appeal mainly contended that the adjudicating authority without recording any findings on the merit of the case, has allowed the credit of Rs.11,98,286/- by just agreeing with the submissions of Respondent. Further, none of the case laws cited by Respondent which relying upon by the adjudicating authority in allowing credit is deals with the present issue of transitional credit. The *department/appellant* has also contended that as per Section 140(3) of the CGST Act, 2017 *'a registered person who was not liable to be registered under existing law, shall be entitled to take in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on appointed day subject to condition that said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs.'* Therefore, according to said provisions, to avail credit the Respondent should be having possession of invoice or other prescribed documents evidencing payment of duty. In the instant case the Respondent has availed credit on the basis of stock transfer invoice which is not prescribed duty paying document as per Rule 9 of the CCR, 2004.

**5(iv).** In view of above, I find that the department is not disputing about the receipt of inputs or about lying of the same in stock or about containing the same in semi finished or finished goods, which subsequently to be use for taxable supplies. The department is mainly disputing about the availment of credit on the basis of stock transfer invoices/notes and

contending that same are not prescribed duty paying documents as per Rule 9 of the CCR, 2004 for availing CENVAT credit. Since, the Respondent was not registered under existing law and after rollout of GST they got registered under GST regime as discussed above, I find that they eligible for ITC under Section 140 (3) of the CGST Act, 2017. The same is reproduced as under :

**Section 140. Transitional arrangements for input tax credit.-**

(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012-Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished <sup>4</sup>[goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:-

- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
- (iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
- (v) the supplier of services is not eligible for any abatement under this Act:

**Provided** that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

**5(v).** On going through the above provisions, I find that the Respondent is entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the condition that he is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs.

In view of above provision, I find that to claim credit one has to possess invoice or other prescribed documents evidencing payment of duty under existing law. Here in the present matter, payment of duty under existing law is at all not in dispute. However, the only dispute is that the stock transfer invoices/notes based on which credit availed by Respondent are not proper documents for availing credit according to the Department/Appellant in terms of Rule 9 of CCR, 2004. Whereas, I find that the Respondent has contended in the present appeal that they received the stock transferred goods from their





manufacturing facility at Kathua & Bahadurgargh under cover of Excise Invoices issued under Rule 11 of the erstwhile Central Excise Rules and the said Excise Invoice demonstrated the excise duty levied on the goods stock transferred.

6. In view of foregoing discussions, I find that in absence of any such allegation that Respondent has availed credit without receiving the inputs, without payment of duty under existing law, without having stock of goods on appointed day, without documents etc. it is not proper to deny credit merely on the ground that the documents on the basis of which credit availed is not proper. Further, I find that during verification of TRAN-1 the jurisdictional officers had examined the documents produced by the Respondent and no such discrepancies were pointed out.

7. In view of the above discussions, I do not find any force in the contentions of the 'Appellant/Department'. Therefore, I do not find any reason to interfere with the decision taken by the "Adjudicating Authority" vide "Impugned Order". Accordingly, I hereby reject the appeal filed by the 'Appellant/Department'.

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 Jadav)  
Superintendent (Appeals)

By R.P.A.D.

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

M/s. Bharat Insecticides Limited,  
(presently known as Bharat Certis Agriscience Limited)  
8<sup>th</sup> Floor, 810, Span Trade Centre, Ashram Road,  
Paldi, Ahmedabad - 382 007

Appellant

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-VII, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File. / P.A. File

