



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

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टेलफैक्स 07926305136



DIN- 20231264SW000000BE22

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1694/2023 -APPEAL 19180 - 86

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 170 /2023-24

दिनांक Date : 29.11.2023 जारी करने की तारीख Date of Issue : 06.12.2023

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. WS0805/Kumar/Tran-1/Verification/2022-23 DT.

27.02.2023 issued by The Superintendent, CGST & CX, AR-V, Div-VIII, Ahmedabad South

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

Appellant	Respondent
M/s. Kumar Distributors, Godown No.8, Motibapa Estate, Sarkhej Dholka Road, Ahmedabad-382210	The Superintendent , CGST & CX,AR-V, Div-VIII, 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) 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**Brief facts of the case:**

M/S. Kumar Distributors, Godown No. 8, Motibapa Estate, Sarkhej Dholka Road, Ahmedabad 382210 (hereinafter referred to as the 'Appellant') has filed the present appeal against Order issued vide F. No. WS0805/Kumar/Tran-1/Verification/2022-23 dated 27.02.2023 (hereinafter referred to as the 'impugned order') issued by the Superintendent, CGST & C.Ex., AR-V, Division-VIII, Ahmedabad South.

2(i). Briefly stated the fact of the case is that the appellant is registered under GSTIN No. 24AAKFK6058L1ZX and engaged in supply of taxable goods as provided under the CGST Act 2017. They were registered with erstwhile State Tax Department under VAT IST No. 24073606581 as a trader of taxable goods. They have claimed input tax credit in Tran-1 amounting to Rs. 16,64,922/-.

2(ii). The Asst. Commr. of State Tax, Ahmedabad vide letter REF-FO3/UNIT-5/TRAN/2022-23/O.W. dated 27.02.2023 has informed that the appellant has filed Tran-1 in which credit of stock has been claimed as per provision of transitional credit. Verification of stock statement carried out. Credit amounting to Rs. 16,64,922/- is claimed. Taxpayer has not filed Tran-2, in Tran, 1 there is no amount claimed by taxpayer. Hence same is rejected.

3. On verification of the genuineness of the credit claimed the Superintendent of CGST & C.Ex. AR-V, Division-VIII passed the following order dated 27.02.2023 in respect of the TRAN-1 claim filed by the Appellant:

"Taxpayer has not filed Tran-2 and in Tran 1 there is no amount claimed by taxpayer".

4. Being aggrieved with the above order, the appellant filed the present appeal on 18.05.2023, on the grounds that:

- that the appellant was not able to file the form GST Tran-2 within the date specified on account of the technical difficulties; they had to physically lodge their claim of transition credit on GST Tran-2 respectively with their Jurisdictional Officer;
- The learned Superintendent without giving any opportunity of hearing to the appellant dealer, officer reached to the conclusion that the appellant

had neither tried for saving/submitting or filing the form GST TRAN-2 as per the GST System Logs;

- The appellant relies upon the judgement of Hon'ble Gujarat High Court in the matter of Siddharth Enterprises through partner Mahesh Liladhar Tibdewal versus the nodal officer SCA No. 5758 to 5762 of 2019;
- The entitlement of credit of eligible duties on the purchases made in the pre-GST regime as per the then existing Cenvat Credit rules is a vested right and therefore, it cannot be taken away by virtue of rule 117 of the CGST Rules, 2017, with retrospective effect for failure to file the form GST tran-1 within the due date, i.e. 27.12.2017;

PERSONAL HEARING:

5. Personal Hearings in the matter were offered to the "Appellant" on 24.08.2023, 12.09.2023, 29.09.2023 18.10.2023 and 26.10.2023, wherein Mr. Suryakant Patel, Advocate appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has reiterated the additional submission. The main issue has been stressed upon is that they could not upload JSON file due to some technical glitch. No finding on merit of the case has been given by the adjudicating authority. In view of above he has requested to allow appeal.

DISCUSSION AND FINDINGS:-

I have gone through the facts of the case, written and additional submissions made by the 'appellant'. The main issue to be decided in the instant case is whether the Input Tax Credit of Rs. 16,64,922/- claimed under TRAN-1 is admissible or otherwise?

7. It is observed that the appellant is mainly aggrieved with the denial of Transitional Credit of Rs.16,64,922/-. In the instant case The Asst.Commr. of State Tax, Ahmedabad vide letter REF-STO3/UNIT-5/TRAN/2022- 23/O.W. dated 27.02.2023 has informed that "the appellant has filed Tran-1 in which credit of stock has been claimed as per provision of transitional credit. Verification of stock statement carried out. Credit amounting to Rs.16,64,922/- is claimed. Taxpayer has not filed Tran-2, in Tran 1 there is no amount claimed by taxpayer. Hence same is rejected". Further on verification of the genuineness of the credit claimed the Superintendent of CGST & C.Ex. AR-V, Division-VIII passed the following order dated 27.02.2023 in respect of the TRAN-1 claim

filed by the Appellant stating that the appellant has not filed Tran-2 and in Tran1 there is no amount claimed by taxpayer.

8. In this regard the appellant contended that they were not able to file the form GST Tran-2 within the date specified on account of the technical difficulties and they had to physically lodge their claim of transition credit on GST Tran-2 respectively with their Jurisdictional Officer. Further, the appellant the appellant relies upon the judgment of Hon'ble Gujarat High Court in the matter of Siddharth Enterprises through partner Mahesh Liladhar Tibdewal versus the nodal officer SCA No. 5758 to 5762 of 2019.

9(i). In view of the above and on account of the technical difficulties, the CBIC had issued guidelines for verification of the transitional credit in light of order of the Hon'ble Supreme Court, vide circular No.180/12/2022-GST dated 09.09.2022. The CBIC has opened the AIO portal for filing of TRAN-1 and TRAN-2 as per the procedure laid down in both the Circulars. Thus the facility for filing new TRAN-1/2 or revising the earlier filed TRAN1/2 on the common portal was provided to an appellant.

9(ii). Here, it pertinent to refer Section 140 (1) of the CGST Act, 2017, circular No.180/12/2022-GST dated 09.09.2022 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 [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:

4. 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.

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.

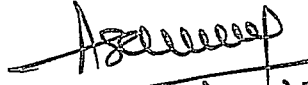
9(iii). As per the guidelines issued by the CBIC for verification of the transitional credit in light of order of the Hon'ble Supreme Court, vide circular No.180/12/2022-GST dated 09.09.2022 the appellant had an opportunity to file TRAN-1 and TRAN-2 as the common portal was opened for filing concerned 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. However, the appellant failed to

availed this opportunity by not filing TRAN-1 and TRAN-2 between 01.09.2022 to 31.10.2022.


10. In view of the foregoing facts & discussion and in terms of Circular No.180/12/2022-GST dated 09.09.2022, I do not find any infirmity in the impugned order passed by the *adjudicating authority*, therefore impugned O-I-O upheld.

अपीलकर्ताद्वारा दर्ज की गई अपील कानिपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the "Appellant" stands disposed of in above terms.


29/11/2023
(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 29.11.2023

Attested


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



By R.P.A.D.

To,

M/s Kumar Distributors,
Godown No. 8, Motibapa Estate,
Sarkhej Dholka Road,
Ahmedabad 382210.

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

