



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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/3165/2023 -APPEAL

11812-12

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-22/2023-24**
दिनांक Date : **30-05-2023** जारी करने की तारीख Date of Issue : **30-05-2023**

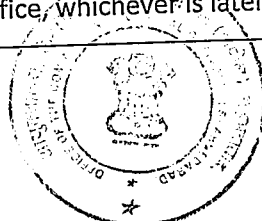
श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **CGST-VI/Dem-48/Concept Bike/ AC/DAP/2022-23**
DT. 18.07.2022 issued by The Assistant Commissioner, CGST, Division-VI,
Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent :
M/s. Concept Motor Bike Company Pvt Ltd., New York Complex,
Opp. Ranjit Petroleum, Bodakdev, Ahmedabad-380054

(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.



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

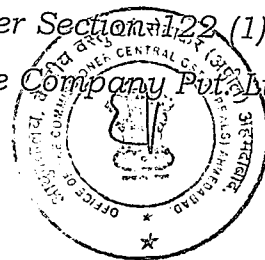
M/s. Concept Motor Bike Company Pvt. Ltd., New York Complex, Opp. Ranjit Petroleum, Bodakdev, Ahmedabad - 380054 (hereinafter referred as 'Appellant') has filed the appeal against Order-in-Original No. CGST-VI/Dem-48/Concept Bike/AC/DAP/2022-23 dated 18.07.2022 (hereinafter referred as 'Impugned Order') passed by the Assistant Commissioner, CGST, Division - VI, Ahmedabad South (hereinafter referred as 'Adjudicating Authority').

2(i). Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTIN No.24AAECC4296P1Z5 has filed the present appeal on 16.11.2022; as per appeal memorandum the order appealed against was communicated to appellant as on 31.08.2022. The 'Appellant' had filed TRAN-1 and claimed transitional credit amounting to Rs.31,17,368/-. In response to said TRAN-1, a SCN in Form DRC-01 dated 10.09.2021 was issued to the appellant stating as to why -

- *The Transitional Credit of Input Tax amounting to Rs.31,17,368/- wrongly carried forward and utilized by them, should not be demanded and recovered from them, under the provisions of Section 73(1) of the CGST Act read with the provisions of Rule 121 of the CGST Rules ;*
- *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 122(1)(xvii) of the CGST Act.*

Thereafter, the appellant has submitted reply to SCN along with copies of Tax Invoices on 03.11.2021. Accordingly, the Adjudicating Authority has passed the impugned order as under :

- i. *Confirm the demand of Rs.37,312/- out of Rs.31,17,368/ from M/s. Concept Motor Bike Company Pvt. Ltd. as determined under proviso to Section 73 (1) of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017.*
- ii. *Order the assessee to pay interest at applicable rate under Section 50 of the CGST Act, 2017 on the demand confirmed at (i) above.*
- iii. *Impose penalty amounting to Rs.37,312/- under Section 122 (1) (xvii) of the CGST Act, 2017 on M/s. Concept Motor Bike Company Pvt. Ltd.*

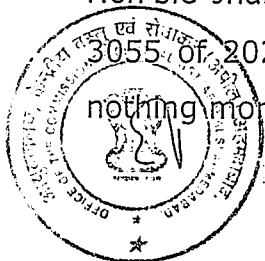


The adjudicating authority has rejected the claim of Rs.486/- of Krishi Kalyan Cess and Rs.36,826/- due to non-availability of duty paying documents (Total Rs.37,312/-). The appellant in the present appeal memorandum has informed that for mental peace, without admitting the liability they have paid Rs.486/- with interest of Rs.439/- and Rs.36,826/- vide DRC-03 dated 08.11.2022.

2(ii). Being aggrieved with the *impugned order* the *appellant* has filed the present appeal on following grounds –

- *As per para 21 of impugned order demand is confirmed under proviso to Section 73 (1) of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017. There is no existence of proviso to Section 73(1), so, the impugned OIO is required to be quashed down.*
- *Section 73 is applicable in case where Input Tax Credit wrongly availed or utilized. In the given case credit is availed as transitional credit. In view of Section 2(63) read with 2(62), transitional credit is not an Input Tax Credit. Since, it is not an Input Tax Credit, recovery of same invoking Section 73 is not permissible. Hence, demand of Rs.36,826/- is not in accordance with the provisions of the prevailing law.*
- *To invoke penalty provisions, guilty mind i.e. Means-rea is necessary. Referred case of Hindustan Steel Limited Vs. State of Orissa. In case of State of M.P. Vs. Bharat Heavy Electricals (1997 (7) SCC 1), it has been contended that even if this Court held that it appears to give the expression that the imposition of penalty is mandatory, yet there was a scope for exercise of discretion.*
- *Thus, penalty u/s. 122(1)(xvii) cannot be imposed just because the Taxable person cannot furnish the invoices relating to the Transitional ITC taken amounting to Rs.36,826/-. Further, as far as penalty of Rs.486/- is concerned the same cannot be imposed under above provision as documentary evidences in this regards is available and also produced before the authority.*

3. Personal Hearing in the matter was held on 04.01.2023 wherein Mr. Bishan R. Shah, CA appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has submitted copy of order of Hon'ble Jharkhand High Court in case of Usha Martin Ltd. (W.P. (T) No. 3055 of 2022) dated 10.11.2022. He has further stated that they have nothing more to add to it.



Discussion and Findings :

4(i). 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. I find that the '*Appellant*' had availed the transitional credit of Total Rs.31,17,368/- by filing TRAN-1. A Show Cause Notice in Form DRC-01 was issued to the *appellant* in this regard. Thereafter, the *adjudicating authority* vide *impugned order* has allowed the transitional credit of Rs.30,80,356/- and rejected transitional credit of Rs.37,312/-. Out of said rejected credit, transitional credit of Rs.36,826/- is rejected on the ground that appellant is not in possession of invoices/duty paying documents in respect of said credit carried forward under TRAN-1 is in contravention of Section 140(3) of the CGST Act; and credit of Rs.486/- is rejected on the ground that transitional credit of Krishi Kalyan Cess is not admissible in terms of Section 140 of the CGST Act, 2017. Further, I find that the adjudicating authority has ordered for interest at applicable rate under Section 50 of the CGST Act, 2017 on aforesaid amount of rejected credit and also imposed penalty of Rs.37,312/- on the appellant under Section 122(1)(xvii) of the CGST Act, 2017.

4(ii). On carefully going through the submissions of *appellant* I find that the *appellant* is mainly contending that Section 73 is applicable in cases where Input Tax Credit wrongly availed or utilized, whereas, present matter is related to Transitional Credit and in view of Section 2(63) read with 2(62) the transitional credit is not an Input Tax Credit. The appellant has further contended that since, it is not an Input Tax Credit, recovery of same invoking Section 73 is not proper and therefore, demand of Rs.36,826/- is not in accordance with the provisions. Further, as regards to imposition of penalty the appellant has contended that for invoking penalty provisions, guilty mind i.e. Means-rea is necessary.

5. In view of above facts, I refer to provisions of CGST Act, 2017 relating to subject case which is as under :

140 (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 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 in such manner as may be prescribed:



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.

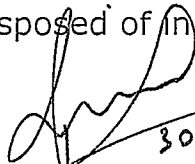
On going through the above provisions, I find to claim credit the registered person have to possess invoice or other prescribed documents evidencing payment of duty under existing law. However, in the present matter the appellant has been failed to produced duty paying documents before the adjudicating authority in respect of availing transitional credit of Rs.36,826/-. Further, the appellant has also not produced any duty paying documents in respect said transitional credit in the present appeal proceedings also.

7. Therefore, I do not find any infraction in *impugned order* passed by the *adjudicating authority* ordering recovery of said credit under Section 73 of the CGST Act, 2017. Since, the credit was disallowed and ordered for recovery, it is a statutory requirement to pay the same along with interest under Section 73 of the CGST Act, 2017 read with Section 50 of the CGST Act, 2017. As regards to imposition of penalty I find that appellant has claimed the credit without having prescribed duty paying documents therefore, the *adjudicating authority* has imposed penalty under Section 122(1)(xvii) of the CGST Act, 2017 which I find is in commensurate with the wrong availment of credit. Therefore, I do not intend to provide any relief on this aspect.

8. In view of the above discussions, I do not find any force in the contentions of the *Appellant*. Accordingly, I find that the *impugned order* passed by the *Adjudicating Authority* is correct and as per the provisions of GST law. Therefore, I do not find any reasons to interfere with the decision taken by the *Adjudicating Authority* vide "*impugned order*" and accordingly, I reject the appeal filed by the *Appellant*.

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

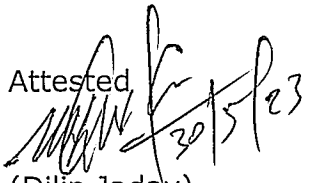
The appeal filed by the appellant stands disposed of in above terms.


30/05/23
(Mihir Rayka)

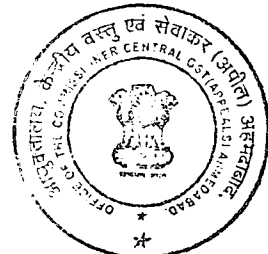
Additional Commissioner (Appeals)

Date: 30.05.2023

Attested


30/5/23
(Dilip Jadav)

Superintendent (Appeals)



By R.P.A.D.

To,
M/s. Concept Motor Bike Company Pvt. Ltd.,
New York Complex, Opp. Ranjit Petroleum,
Bodakdev, Ahmedabad - 380054

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

