



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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DIN- 20240264SW000000DB37

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/45/2024 -APPEAL / 1980-85

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 227 /2023-24

दिनांक Date : **22.02.2024** जारी करने की तारीख Date of Issue : 27.02.2024

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. MP/GST/01/BBG/Superintendent/AR-IV/23-24 dated 11.07.2023 issued by The Superintendent, CGST, Ahmedabad.

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

Appellant	Respondent
M/s Synergy (India) Marketing Private Limited, Survey no.16, Vatva Gamdi Road, Chosar, Ahmedabad, Gujarat-382435	The Superintendent, CGST Range-IV, Div-IV, 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 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 <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> .

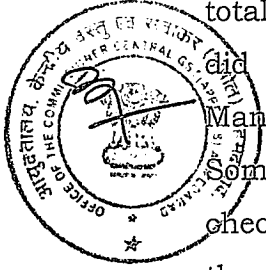
Under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.

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

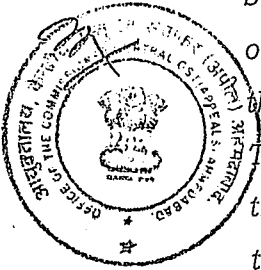
M/s. Synergy (India) Marketing Private Limited, Survey No. 16, Vatva Gamdi Road, Chosar, Ahmedabad, Gujarat-382435 (hereinafter referred as 'Appellant') has filed the appeal against Order-in-Original No. MP/GST/01/BBG/Superintendent/AR-IV/23-24 dated 11.07.2023 (hereinafter referred as 'Impugned Order') passed by the Superintendent, CGST, Range-IV, Division - IV, Ahmedabad South (hereinafter referred as 'Adjudicating Authority').

2. Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTIN No.24AAFCS2320D1Z0 has filed the present appeal on 11.10.2023. During the course of audit and while verifying appellant Sales Invoices (In respect of which they had availed ITC in Tran-2 totaling Rs.7,32,975/-) pertaining to clearances of stock against which they did not possess purchase invoices, they had not reduced the prices as mandated in the proviso to sub-section (3) to Section 140, CGST, 2017. Some invoices against which ITC's have been availed through "Tran-2" were checked randomly and it was found that the recipients were not benefited of the reduced prices equivalent to the ITC's availed. Hence it appeared that no policy was in place in appellant company, with regard to reduction of prices in respect of Tran-2 invoices. Hence it is forthcoming that they had not reduced the prices in respect of any of the invoices against which they had availed credit through Tran 2. Hence the Input Tax Credit totalling Rs.7,32,975/- availed through Tran-2 appeared inadmissible and are liable to be recovered under Section 74(1) of the CGST Act 2017 alongwith interest under Section 50 of the CGST Act, 2017 and penalty under Section 74(1) of the CGST Act 2017.

3. Therefore a Show Cause Notice No. 64/2022-23 bearing F.No. VI/1(b)- 62/C-II/AP-13/Audit/2021-22 dated 01.07.2022 was issued. Accordingly, the Adjudicating Authority has passed the impugned order and confirms the demand alongwith interest and penalty on the following grounds:



- That while verifying the sales invoices issued by the noticee towards clearance of such stock, It is found by the audit that the noticee had not reduced the prices as mandated in the proviso to the Section 140(3) of the CGST Act, 2017;
- that the noticee has provided price comparison of the TRAN-2 stock, cleared in GST regime, with that of identical goods, cleared in pre-GST regime;
- that price comparison of two kind of stocks is not correct as sale prices of TRAN-2 stock which is cleared in GST Tax regime is being compared with sale prices of goods cleared in pre-GST regime. Such erroneous comparison would not serve the purpose as it would be giving misleading information. Since the noticee has not provided any tax invoices raised in GST regime and same being pertaining to sale of goods other than TRAN-2 stock, therefore, it cannot to ascertained on the basis of their submissions as to whether they have passed on the benefit of claimed ITC by way of reduced prices to their customers or otherwise;



the noticee has availed / claimed transitional credit 'TRAN-2' of Central Taxes which is claimed in table 7B of 7(a) of the TRAN-1 return filed by them. Whereas TRAN-2 claim of State taxes is filed under table 7(d) of the TRAN-1 return. Therefore, registration in erstwhile existing law enacted by the State Government would not make a registered person ineligible from claiming transitional 'TRAN-2' credit of Central Taxes;

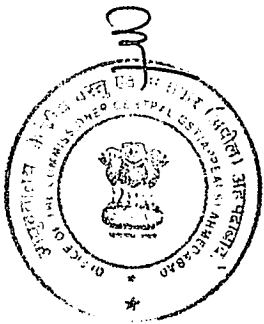
- the noticee has wrongly availed the ITC Credit in TRAN-2. Had the audit not been conducted, the said credit would have gone undetected. Such an act on the part of the noticee becomes part of wilful misstatement or suppression of facts to evade tax. As such the noticee is liable to pay Penalty along with interest at the applicable rate.

4. Being aggrieved with the impugned order the appellant has filed the present appeal on following grounds –

- The Ld. Adjudicating Authority (A.A) has erred in law and fact in disallowing credit taken in TRAN-2 of Rs.7,32,975/-;
- The Ld. Adjudicating Authority has erred in law in not considering the sale value of Goods cleared in TRAN-2 post GST with sale of the same Goods in pre-GST and thereby vitiated the very object of proviso to section 140(3) of the CGST Act,2017;
- The Ld. Adjudicating Authority has also erred in law and in facts in ignoring the MRP declaration post GST given to the stockists by the appellant submitted during the assessment proceedings clearly

evidencing the facts that NEW MRP post GST is for lesser amount as compared to Old MRP pre-GST with respect to Goods cleared with TRAN-2 credit;

- The Ld. Adjudicating Authority has erred in law in not allowing TRAN-2 credit of Rs.7,32,975/- even though affirming the appellant's contention that registration in erstwhile existing law enacted by the State government would not make a registered person being appellant ineligible from claiming transitional "TRAN2" credit of Central Taxes;
  - The Appellant has filed details of Input in TRAN-2 for which it was not in possession of an invoice or any other documents evidencing payment of duty in respect of such Input;
  - the appellant has correctly compared the pre-GT basic value of the Goods under TRAN-2 with post GST basic value of Goods cleared during July-2017 to December-2017 since the reduction in basic value (Taxable value) between pre-GST invoice and Post GST itself shows that the benefit of availed credit is passed on to the customers;
- the Jurisdictional officer/Audit department have noticed the TRAN-2 details/Invoices only from the aforesaid statutory documents and therefore there cannot be any suppression of facts in the matter;
- The Honourable Tribunal, in the case of C.C.E., & C., AURANGABAD, VERSUS, WOCKHARDT LTD., reported in [2009- TIOL-1308-CESTAT-MUM] has held that Penalty, is not imposable, where, there is no Finding of mensrea;
- If, a Party bonafidely believes in a legal position and if, there is a scope for such belief and doubt, penal provisions will not apply, as held by the Honourable Apex Court, in case of PADMINI PRODUCTS, VERSUS, C.C.E., reported in [1989 (43) E.L.T. 195 (S.c.)] and GOPAL ZARDA UDYOG, VERSUS, C.C.E., reported in [2005 (188) E.L.T. 251 (S.C.)];
  - In view of the foregoing, it is submitted that Penalty is not imposable as demand itself is not enforceable;
  - For the reasons submitted above, the question of charge of Interest, under Section SO of the CGST Act, 2017, also does not arise;



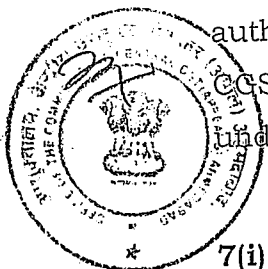
#### **Personal Hearing:**

5. Personal Hearing in the matter was fixed/held on 10.01.2024 and 24.01.2024 wherein Mr. Mohan Raikwar appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has submitted that they were registered in VAT and not under Service Tax or Central Excise, therefore they are eligible to file Tran-2 and avail ITC as per Section 140(3) in case of IGST @ 60% of IGST applicable at the time of sale of goods or 30% &

30% in case of intra-state sale with that benefit of reduced tax rates shall be passed on to consumers. Accordingly, they have taken credit and comparison chart also submitted. He further reiterated the written submissions. He further submitted that provision of Section 74 are not attracted at all as there is no suppression of facts of means-rea, as all documents submitted to department and credit was availed as per law. In view of above requested to allow appeal.

**Discussion and Findings :**

6. 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 during personal hearing. I find that the 'Appellant' had availed the transitional credit of Total Rs.7,32,975/- by filing TRAN-2. A Show Cause Notice was issued to the appellant in this regard. Thereafter, the *adjudicating authority* vide *impugned order* has disallowed the transitional credit of Rs. 7,32,975/- under Section 74(1) of the CGST Act, 2017 and accordingly confirm the Show Cause Notice. Further, that the adjudicating authority has ordered for interest at applicable rate under Section 50 of the CGST Act, 2017 and also imposed penalty of Rs. 7,32,975/- on the appellant under Section 74(1) of the CGST Act, 2017.



7(i). On carefully going through the submissions of *appellant* it is observed that the *appellant* is mainly contending that the Adjudicating Authority has erred in law in not considering the sale value of Goods cleared in TRAN-2 post GST with sale of the same Goods in pre-GST and thereby vitiated the very object of proviso to section 140(3) of the CGST Act, 2017. The Adjudicating Authority has also erred in law and in facts in ignoring the MRP declaration post GST given to the stockists by the appellant submitted during the assessment proceedings clearly evidencing the facts that NEW MRP post GST is for lesser amount as compared to Old MRP pre-GST with respect to Goods cleared with TRAN-2 credit.

7(ii). In view of above facts, I refer to relevant provisions of Section 140(3) of the CGST Act, 2017 and Rule 117 (4)(a) of the CGST Rules 2017 relating to subject case which is as under:

**Provisions of Section 140(3) of the CGST Act, 2017:**

*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.

Rule 117 (4)(a) of the CGST Rules 2017:

Rule 117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day.-

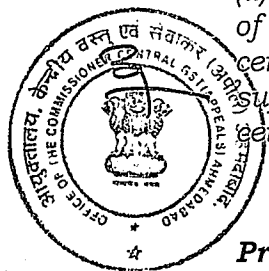
(4) (a) (i) A registered person who was not registered under the existing law shall, in accordance with the proviso to sub-section (3) of section 140, be allowed to avail of input tax credit on goods (on which the duty of central excise or, as the case may be, additional duties of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975, is leviable) held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of central excise duty.

(ii) The input tax credit referred to in sub-clause (i) shall be allowed at the rate of sixty per cent. on such goods which attract central tax at the rate of nine per cent. or more and forty per cent. for other goods of the central tax applicable on supply of such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid:

**Provided** that where integrated tax is paid on such goods, the amount of credit shall be allowed at the rate of thirty per cent. and twenty per cent. respectively of the said tax;

(iii) The scheme shall be available for six tax periods from the appointed date.

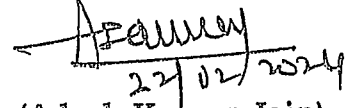
**7(iii).** As per above statutory provisions, the appellant had to reduced the prices as mandated in the proviso to the Section 140(3) of the CGST Act 2017 if they availed the credit pertaining to clearance of stock against which they did not possess purchase invoice. Further it is observed that the Adjudicating Authority has erred in, of not considered the sale value of Goods cleared in TRAN-2 post GST with sale of the same Goods in pre-GST. Further the Adjudicating Authority has also ignored the MRP declaration post GST given to the stockists by the appellant submitted during the assessment proceedings. In view of the above it is observed that the appellant has correctly compared the pre-GT basic value of the Goods under TRAN-2 with post GST basic value of Goods cleared during July-2017 to December-2017 since the reduction in basic value (Taxable value) between pre-GST invoice and Post GST itself shows that the benefit of availed credit is passed on to the customers.



8. 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 'appellant' is allowed.

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: 22.02.2024

Attested

  
(Sandheer Kumar)  
Superintendent (Appeals)



By R.P.A.D.

To,

M/s. Synergy (India) Marketing Private Limited,  
Survey No. 16, Vatva Gamdi Road, Chosar,  
Ahmedabad, Gujarat-382435

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 (RRA), CGST, Ahmedabad South.
5. The Dy./Asstt. Commissioner, CGST, Division-IV, Ahmedabad South.
6. The Superintendent, CGST, Range-IV, Division-IV, Ahmedabad South.
7. The Superintendent (Systems), CGST Appeals, Ahmedabad.
8. Guard File.
9. P.A. File.

