



सत्यमेव जयते

आयुक्तकायालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/2925/2023 / 2486
(ख)	अपील आदेश संख्या और दिनांक / Order-In - Appeal and date	AHM-CGST-001-APP-JC-234/2023-24 and 04.03.2024
(ग)	पारित किया गया / Passed By	श्री. आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	05.03.2024
(ङ)	Arising out of Order-In-Original No. CGST/WS0605/New Tran-1/2022-23 dated: 24.02.2023 passed by The Superintendent, CGST & CX, Range-V, Division VI, Ahmedabad South.	
	Name of the Appellant	Name of the Respondent
(च)	M/s Nippon India Mutual Fund, 4th Floor, Megha House, Mithakhali, Ellis Bridge, Law Garden Road, Ahmedabad - 380006	The Superintendent, CGST & CX, Range-V, Division VI, 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. Nippon India Mutual Fund, 4th Floor, Megha House, Mithakhali, Elis Bridge, Law Garden Road, Ahmedabad-380006 (hereinafter referred to as the 'Appellant') has filed the present appeal against Order No. CGST/WS0605/New Trans-1/2022-23 dated 24.02.2023 (date of communication is 25.04.2023) (hereinafter referred to as the 'impugned order') issued by the Superintendent, CGST & C.Ex., AR-V, Division-VI, Ahmedabad South, whereby the adjudicating authority has disallowed the carry forward of closing balance of Input tax credit of VAT of Rs. 2,48,04,383/- in Form GST TRAN-1 filed in pursuance of CBIC Circular No. 180/12/2022 dated 09.09.2022.

2(i). Briefly stated the fact of the case is that the appellant is registered under the provisions of the Gujarat Goods and Service Tax Act, 2017 (GGST Act) holding GSTIN No. 24AAATR0090B1Z4 and engaged in supply of taxable goods as provided under the CGST Act, 2017. They were registered with erstwhile Central Excise/Service Tax/State Tax department under Registration No. AAATR0090BST001 (Service tax) as service provider. The Appellant had launched Gold Exchange Trade Fund scheme under the name Nippon India Gold BeES (Formerly known as Reliance Gold Exchange Traded Fund) as per SEBI guidelines, under which the Appellant undertook sale and purchase of gold, and therefore, the Appellant obtained Registration no. 24073405732 under the Gujarat Value Added Tax Act, 2003 (herein after referred to as "VAT Act") on 28.02.2011. The Appellant availed Input tax credit on purchases of gold as per the provisions of the VAT Act and utilized the same to discharge output liability on the sale of gold. They have claimed Input Tax Credit in Trans-1 amounting to Rs. 2,48,04,383/-.

2(ii). The VAT Assessing Authority vide notice for assessment in Form 302 and 6B initiated assessment proceedings for the period 01.04.2017 to 30.06.2017 under the VAT Act and Central Sales Tax Act, 1956 ('CST Act'). The Appellant provided the relevant document to the Assessing Authority by email dated 25.12.2021. On conclusion of assessment proceedings, an Assessment Order dated 03.02.2022 was issued disallowing the entire Input tax credit brought forward by the Appellant from the previous assessment year in its return for the period 01.04.2017 to 30.06.2017.

2(iii). Further, the appellant have filed Form TRAN-1 on 23.11.2022 in terms of order of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd, and claimed the transitional credit of CENVAT, carried

forward, of Rs. 2,48,04,383/-. On verification of the genuineness of the credit claimed in the TRAN-1, the Superintendent of CGST & C.Ex. AR-V, Division-VI passed the following order dated 24.02.2023 in respect of the TRAN-1 claim filed by the Appellant dated 23.11.2022:

"As per the state GST report it was informed that according to the VAT assessment order for the year 2017-18 dated 03.02.2022, the taxpayer has been allowed Rs. 0 as forward to next period."

4. Being aggrieved with the above order, the appellant filed the present appeal on 22.05.2023, on the grounds that:

- *The appellant is eligible to transition/carry forward closing balance of input tax credit of VAT in term of the provision under Section 140(1) of the CGST Act;*
- *The Appellant submits that once it is undisputed that the assessee has closing balance of Input tax credit of VAT in the last VAT return, subject to fulfillment of other conditions the Authorities have no jurisdiction whatsoever to disallow the transition of closing balance of credit as per the VAT return. The Respondent has erred and failed to appreciate that if Input tax credit availed under VAT is found inadmissible, the same would be a subject matter under VAT Act for which separate proceedings would be initiated by the VAT Authorities. The Respondent has no jurisdiction whatsoever in determining the admissibility of VAT Input tax credit under the VAT Act. Therefore, the entire basis of disallowance of transition of closing balance of VAT Input tax credit is illegal and in excess of the jurisdiction of the Respondent;*
- *the Respondent has disallowed the transitional credit of VAT carried forward by the Appellant on the sole premise that the VAT Assessment Order dated 03.02.2022 issued under VAT Act has denied the Input tax credit brought forward by the Appellant in its VAT returns filed for the period 01.04.2017 to 30.06.2017. In this regard, the Appellant submits that Section 140 restricts the transition of credit when the credit to be carried forward is not admissible under the GGST Act. However, Section 140(1) does not require the admissibility of closing balance of VAT credit under the erstwhile VAT Act for the transition of such credit to the GST regime. The Appellant submits that the Respondent cannot arbitrarily introduce a new condition which is otherwise not embodied in Section 140(1) of the GGST Act;*
- *the Appellant has appropriately carried forward the credit of VAT in the return filed for the period 01.04.2017 to 30.06.2017. Further, as stated above, the transitional credit is admissible under Section 16 of the GGST*



Act inasmuch as the credit pertains to purchase of gold for further sale in the course of Appellant's business, and the transitional credit is not restricted by the provisions of Section 17 of the GGST Act. Accordingly, the Appellant has correctly transitioned the credit of VAT in its electronic credit ledger in terms of Section 140(1).

- The Respondent transcended jurisdiction under Section 140 to assume power to adjudicate upon the eligibility of the credit availed in the erstwhile regime to disallow transition of carried forward credit of VAT on the ground that the said credit has been disallowed in Assessment Order dated 03.02.2022. In this regard, reliance is placed on the judgement of the Hon'ble High Court of Jharkhand in the case of Usha Martin vs. Addi. Commr and others [2022 (11) TMI 1266 - Jharkhand High Court] wherein it was held that the question of admissibility of transitional credit in the erstwhile law is beyond the jurisdiction of the proper officer verifying Form TRAN-1 under the provisions of the Central Goods and Services Tax Act, 2017;
- that the Appellant has filed an appeal on 02.03.2022 against the VAT Assessment Order dated 03.02.2022 on the basis of which the Respondent has denied transition of the Input tax credit of VAT carried forward by the Appellant in its VAT returns. It is important to note that the aforementioned appeal is still pending for disposal before the First Appellate Authority under the VAT Act. In the verification report in Form TRAN-1 filed by the Appellant on 23.11.2022, only states that the VAT Assessment Order dated 03.02.2022 denies input tax credit availed during the period 01.04.2017 to 30.06.2017 but fails to state that an appeal filed against the said order is pending for disposal. The Respondent disallowed the transition of carried forward credit of VAT on the ground that the said credit is denied in the VAT Assessment Order dated 03.02.2022 but ignores the fact that the issue of eligibility of credit is sub-judice before the First Appellate Authority;
- the Appellant has been subjected to double jeopardy inasmuch as the VAT Assessment Order dated 03.02.2022 denies the Input tax credit as per the VAT returns filed for the period 01.04.2017 to 30.06.2017 on one hand and on the other hand, the Impugned Order denies the transitional credit of closing balance of VAT Input tax credit claimed by the Appellant in Form TRAN-1. Accordingly, the Appellant has been subjected to parallel proceedings to the extent of the same amount of credit - one under the VAT Act vide the VAT Assessment Order dated 03.02.2022 and the other under the GGST Act vide the Impugned Order. The Respondent has erred and failed to appreciate that once;



- As per Para 5.3.7 of Circular No. 182/14/2022-GST dated 10.11.2022, after receipt of verification report by the counterpart officer, the jurisdictional officer shall issue notice to the applicant within 7 days of receipt of verification report, if he thinks the transitional credit is inadmissible. The applicant shall file a reply and shall be accorded an opportunity of personal hearing. On consideration of comments of counterpart officer on explanation provided by the applicant, jurisdictional officer shall pass a reasoned order in terms of Para 5.3.8 of the Circular No. 182/14/2022-GT dated 10.11.2022;
- The Appellant submits that it is settled principle of law laid down by the Hon'ble Supreme Court in the case of Paper Products Ltd. vs. Commissioner Of Central Excise [1999 (8) TMI 70 - Supreme Court] that the departmental circulars are binding in nature on the revenue authorities. In the instant case, the Appellant neither given a notice pursuant to issuance of verification report nor was given an opportunity of personal hearing in terms of Para 5.3. 7 of the aforementioned circular. The Respondent flagrantly ignored the procedure laid down in Circular No. 182/ 14/2022-GST dated 10.11.2022 for verifying transitional credit and passed the Impugned Order issued without a notice pursuant to issuance of verification report and an opportunity of personal hearing in contradiction to guidelines set out in Circular No. 182/14/2022- GST dated 10.11.2022;
- that the principle of natural justice are cornerstones in delivering justice and violation of these principles renders the whole proceedings void-ab-initio. The Hon'ble Supreme Court in the case of Umanath Pandey v. State of UP [(2009) 12 SCC 40-43] held that notice is the first limb of the principle of natural justice, and it must be issued to appraise the party determinatively the case he has to meet. Further, the opportunity of being heard and present case is fundamental to fair and unarbitrary proceedings. In the instant case, non-issuance of notice and failure to accord an opportunity of personal hearing before passing the Impugned Order results in apparent violation of the principle of natural justice. Therefore, the Impugned Order must be quashed inasmuch as it is passed in gross violation of principles of natural justice;



In view of the above the appellant prayed to set aside the Impugned Order passed by the Respondent and allow the Appeal in full with consequential relief and allow the Appellant to carry forward the Input tax credit of VAT claimed in return for the period 01.04.2017 to 30.06.2017.

VIRTUAL HEARING:

5. Virtual hearing in this case was fixed/held on 26.10.2023, 09.11.2023, 20.12.2023 and 18.01.2024. Ms. Swati Agrawal, appeared through virtual, on behalf of the appellant as authorized representative. During the virtual hearing they submitted that since Tran-1 credit is not allowed by Superintendent, there cannot be any recovery and consequences. It is further submitted that the said credit is not availed and utilized therefore no proceedings of any recovery should be initiated. Further since a proceeding in VAT department is going on, the issue may be kept in abeyance till the disposal of said proceedings.

DISCUSSION AND FINDINGS:-

6. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case is whether the disallowance of transition of closing balance of VAT credit, through Form Tran-1, amounting to Rs. 2,48,04,383/- under Section 140(1) of the GGST Act is admissible or otherwise ?



7(i). In the instant case the appellant tried to carry forward the closing balance of Input tax credit of VAT in terms of Section 140(1) of the GGST Act to the GST regime through filing of Form GST TRAN-1. They made multiple attempts to file Form GST TRAN-1 through the online portal before the last date, however, due to technical glitches Form GST TRAN-1 could not be filed. Subsequently, the Hon'ble Supreme Court in Union of India vs. Filco Trade Centre Pvt. Ltd. [SLP (C) No. 32709-32710/2018] directed GSTN to open common portal to enable assessee to file or revise Form GST TRAN-1 during the period 01.10.2022 to 31.11.2022. Subsequently, the CBIC vide Circular dated 09.09.2022 and Chief Commissioner of State Tax, Gujarat State, Ahmedabad vide Circular No. 180/12/2022 dated 17.09.2022 issued guidelines for filing of Form GST TRAN-1 by any registered person during the said period. In pursuance of the directions of Hon'ble Supreme Court and the aforesaid Circulars, the Appellant filed Form GST TRAN-1 on 23.11.2022 and carried forward the closing balance of Input tax credit of VAT claimed in VAT returns in terms of Section 140 (1) of the GGST Act and circular No.180/12/2022-GST dated 09.09.2022.

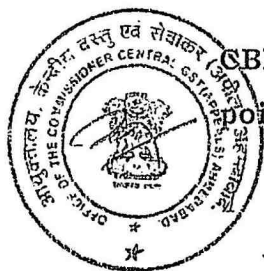
7(ii). Therefore, I find it pertinent to refer Section 140 (1) of the CGST Act, 2017, circular No.180/12/2022-GST dated 09.09.2022 which is reproduced as under:

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:

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.

5. 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.

8(i). Further it is observed that the appellant had filed Tran-1 application on 23.11.2022 and carried forward the closing balance of Input tax credit of VAT claimed in VAT returns. Further in view of 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, I find that after verification of the genuineness of the credit claimed in the Tran-1, the Assistant Commissioner of State Tax (1), Unit-8, Ahmedabad issued verification report in respect of Form TRAN-1 filed by the Appellant and disallowed the closing balance of VAT Input tax credit.

8(ii). After verification of the genuineness of the credit claimed in the Tran-1, by Assistant Commissioner of State Tax (1), Unit-8, Ahmedabad and disallowed the closing balance of VAT Input tax credit. The adjudicating authority reject the appeal and passed the order: "As per the state GST report it was informed that according to the VAT assessment order for the year 2017-18 dated 03.02.2022, the taxpayer has been allowed Rs. 0 as forward to next period."

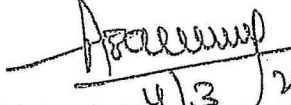
8(iii). As per circular No.180/12/2022-GST dated 09.09.2022 the eligibility of the input tax credit declared in FORM GST TRAN-1 filed/revised by the applicant will be subjected to necessary verification by the concerned tax officers. The applicant may be required to produce the requisite documents/ records/ 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. However in the instant case the Assistant Commissioner of State Tax (1), Unit-8, Ahmedabad has verified the genuineness of the credit claimed in the Tran-1 and accordingly disallowed the credit.


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

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.


4/3/2024
(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 04.02.2024

Attested


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



By R.P.A.D.

To,

M/s Nippon India Mutual Fund,
4th Floor, Megha House, Mithakhali,
Elis Bridge, Law Garden Road,
Ahmedabad-380006.

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

