



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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फाइल संख्या : File No : GAPPL/ADC/GSTP/329/2023 -APPEAL / 3925 - 30

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-72/2023-24**

दिनांक Date : **27-07-2023** जारी करने की तारीख Date of Issue : **28-07-2023**

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri.Adesh Kumar Jain, Joint Commissioner (Appeals)

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Arising out of Order-in-Original No. **CGST-VI/DEM-79/ AZURE/AC/DAP/2022-23 DT.**

31.10.2022 issued by The Assistant Commissioner, CGST, Division-VI, Ahmedabad South

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

M/s. Azure Knowledge Corporation Private Limited, Ground Floor,

Behind Town Hall, Azure House, Ashram Road, Ahmedabad, Gujarat-380006

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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. Azure Knowledge Corporation Private Limited, Ground Floor, Behind Town Hall, Azure House, Asharm Road, Ahmedabad - 380006 (hereinafter referred as 'Appellant') has filed the appeal against Order-in-Original No. CGST-VI/Dem-79/Azure/AC/DAP/2022-23 dated 31.10.2022 (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.24AAFCS3464A1ZR has filed the present appeal on 31.01.2023; as per appeal memorandum the order appealed against was communicated to appellant as on 23.12.2022. The 'Appellant' had filed TRAN-1 and taken transitional credit amounting to Rs.65,07,424/- in their electronic credit ledger (ECL) u/s. 140 of the CGST Act, 2017. 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. 65,07,424/- 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.*

In response to above notice the appellant had submitted reply dated 01.10.2021 along with copies of all required documents related to ITC taken under TRAN-1. Thereafter, the Adjudicating Authority has passed the impugned order as under :

- i. *Confirm the demand of Rs.4,27,737/- out of Rs.65,07,424/ from M/s. Azure Knowledge Corporation 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 a penalty amounting to Rs.4,27,737/- under Section 122 (1)(xvii) of the CGST Act, 2017 on M/s. Azure Knowledge Corporation Pvt. Ltd.*

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

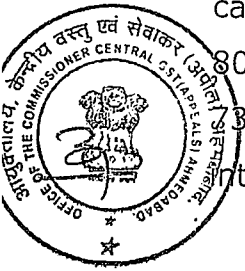
- *They claimed transitional credit in good faith and according to law at the time of filing TRAN-1 on 10.10.2017, while on 01.02.2019 it is settled in the Act that the Cess amount is not eligible to take credit.*
 - *On the basis of order of the department they filed DRC-03 and reverse the ITC related to Cess amount of Rs.427737/-.*
 - *The provisions and procedures of Section 73 read with Rule 142 has not been followed. Referred case of Amadeus India Pvt. Ltd. v/s. Pr. Commissioner (2019) 25 GSTL 486 (Del.).*
 - *Violated the principles of natural justice. The appellant does not get opportunity, as in the initial notice issued for Rs.65,07,424/- and without considering their reply, SCN was issued for same amount. After submission of SCN and Personal Hearing the OIO was issued on 31.10.2022 is received on 23.12.2022.*
 - *The appellant does not receive any intimation in form GST DRC 01A, once the Ld. Assistant Commissioner has confirmed the amount of demand of Rs.4,27,737/- they paid the said amount through DRC 03 dated 30.12.2022.*
- They does not get a reasonable opportunity to be heard; therefore, the order is required to quash due to non following the principle of natural justice.*
- *Interest and penalty are not applicable. At the time of filing TRAN 1, the Cess amount is part of CENVAT amount and the credit was taken as per law. On 01.02.2019, with retrospective effect, the Cess amount was excluded from CENVAT definition.*
 - *They provided all documents in the initial notice reply itself, though transitional credit is taken on the basis of ST 3 for the period April 2017 to June 2017 which is also available to the department. They have taken credit in TRAN 1 in good faith, they submitted documents and information to department on 29.07.21 and therefore, interest and penalty under Section 50 and 122(1)(xvii) of the CGST Act respectively are not applicable.*
 - *In view of above submission, the appellant has made prayer that directions be given to grant all such relief arising from the preceding grounds as also all relief consequential thereto including the grant of refund of the excess taxes and penalty paid.*



The appellant has also submitted additional submission on dated 26.04.2023, wherein referred Section 73(9) of the CGST Act, 2017 and stated that "As GST is new and it is in the developing phase, therefore the appellant has claimed cess amount post GST regime. And after knowing the provisions, the appellant reversed the amount. Therefore, the appellant is indeed in need of relief for interest and penalty. Hence, request you to quash the order."

3. Personal Hearing in the matter was held on 30.06.2023 wherein Mr. Priyank Amin, C.A. appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has stated that they have already paid the dues and present appeal is related to Interest and Penalty only. Apart from written submission, additional submission dated 30.06.2023 submitted and requested for waiver of Interest and Penalty, since, the issue was not clear and there are various decision of Hon'ble High Court in their favour.

In the additional submission the appellant has referred the case of Sutherland Global Services Pvt. Ltd. as reported at 2020 (10) TMI 804 - Madras (HC). The appellant has also referred provision of Section 73(9) and stated that as they have already paid tax amount, relief for interest and penalty may be given.



Discussion and Findings :

4. 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.65,07,424/- 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* out of said transitional credit of Rs.65,07,424/- has rejected the transitional credit of Rs.4,27,737/-. The said credit of Rs.4,27,737/- is rejected on the ground that transitional credit of 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.4,27,737/- on the appellant under Section 122(1)(xvii) of the CGST Act, 2017.

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:

Explanation 3.- For removal of doubts, it is hereby clarified that the expression "eligible duties and taxes" excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975).]

The Explanation 3 is inserted w.e.f. 01.07.2017 by s.28 of 'The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018)'.

As per above statutory provisions, a registered person is allowed to take amount of Cenvat credit carried forward in the return Viz. ER1 and ST3 returns relating to the month of June 2017 in their electronic credit ledger for which the registered person is required to file Form GSTR TRAN-1 in terms of Rule 117 of the CGST Rules, 2017. I find that Section 140 of the CGST Act, which allows various types of credit for transition in GST period through TRAN-1, however, looking to the Explanation 3 it does not cover credit of Cess.

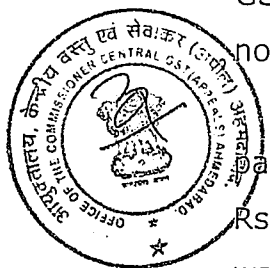
Therefore, I do not find any infraction in *impugned order* passed by the *adjudicating authority* ordering recovery of said credit of Rs.4,27,737/- under Section 73 of the CGST Act, 2017. Since, the credit was disallowed and ordered for recovery, it is a statutory requirement to pay the same along with interest under Section 73 of the CGST Act, 2017 read with Section 50 of the CGST Act, 2017. Therefore, I do not intend to provide any relief on this aspect.

6(i). On carefully going through the submissions of *appellant* I find that the *appellant* is mainly contending about imposition of 100% penalty vide *impugned order*. I hereby refer the relevant provisions as under :

***Section 122. Penalty for certain offences.-**

(1) Where a taxable person who-

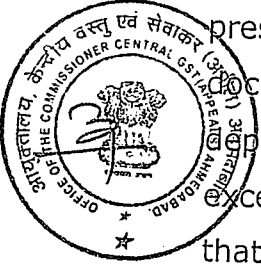
(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;



he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or **input tax credit availed** of or passed on or distributed irregularly, or the refund claimed fraudulently, **whichever is higher.**

In view of above, according to the aforesaid provisions of Section 120(1) (xvii) of the CGST Act, 2017 I find that if any taxable person fails in furnishing information or documents called for or furnishes false information/documents then it attracts penalty of Rs.10,000/- or amount equivalent to the input tax credit so availed. In the instant case the adjudicating authority has pointed out that transitional credit of Rs.4,27,737/- is inadmissible and accordingly, imposed the equal amount of penalty of Rs.4,27,737/- under provisions of Section 122(1)(xvii) of the CGST Act, 2017. However, I find that the appellant has contended in the present appeal proceedings that they have submitted all the documents/information they possessed and based on which the department has confirmed the admissibility of whole transitional credit except Rs.4,27,737/- as pertains to Cess. The appellant has contended that initially, Input Tax Credit of CESS was allowed to be transitioned to GST without any restriction; that however, later on Explanation 3 to section 140 of CGST Act, 2017 was inserted clarifying the exclusion of any Cess not specifically provided, from the expression "eligible duties and taxes" to be carried forward under GST with retrospective effect i.e. w.e.f. 01.07.2017.

6(ii). In view of above, I find that provisions of Section 122(1)(xvii) is very much clear vide which equivalent amount of penalty is imposed on appellant for non submission or failed to furnish information/documents called for. However, I find that inadmissible transitional credit of Rs.4,27,737/- is pertains to Cess which is excluded from "eligible duties and taxes" as per Section 140 of the CGST Act, 2017. Therefore, for the Input Tax Credit denied on this ground, imposition of penalty equivalent to ITC denied is not justified under the provisions of Section 122(1)(xvii) of the CGST Act, 2017. As, said provision is applicable in the matter of taxable person fails in providing details/documents called for in connection



with verification of admissibility of input tax credit or taxable person provides false information. However, in the present matter, it is not the case as the credit of Rs.4,27,737/- is denied as it pertains to CESS which is not admissible in terms of explanation 3 to Section 140 of the CGST Act, 2017. Accordingly, in view of foregoing facts and discussions, I am of the view that since the 'appellant' neither furnishes false information nor fails in furnishing information or documents called for, the penalty under Section 122(1)(xvii) of the CGST Act, 2017 is not justified in the instant case.

6(iii). However, in connection with impositions of penalty is concerned in the present appeal proceedings, I find that the appellant has referred the provisions of Section 73(9) of the CGST Act, 2017 vide additional submission furnished on dated 26.04.2023 and 30.06.2023. The relevant provisions of Section 73(9) is reproduced as under :

Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

In view above, I find that a provision of Section 73(9) is very much clear that in the matter of Input Tax Credit wrongly availed or utilized, penalty is imposable equivalent to 10% of tax or ten thousand rupees, whichever is higher. Further, I find that as the appellant has made payment of wrongly availed credit of Rs.4,27,737/- on 30.12.2022 i.e. after issuance of impugned order, therefore, not eligible for benefit u/s Section 73(8) also. Accordingly, as the recovery of wrongly availed credit is confirmed u/s 73 as well as appellant prayed for relief of penalty u/s 73(9) instead of penalty u/s 122(1)(xvii), I am of the view that penalty u/s 73(9) is more appropriate and justified.



7. In view of above discussions, I do not find any justification in imposition of penalty equal to wrongly availed Input Tax Credit of Cess. Further, I do not find any force in the contentions of the 'appellant' except imposition of penalty. Accordingly, I find that the *impugned order* passed by the *adjudicating authority* is legal and proper and as per the provisions of GST law except imposition of penalty.

8. Accordingly, I do not find any reason to interfere with the decision taken by the *adjudicating authority* vide "*impugned order*" except imposition of penalty. The penalty is reduced to Rs.42,774/- (10% of wrongly availed ITC Rs.4,27,737/-) in terms of provisions of Section 73 (9) of the CGST Act, 2017. Accordingly, appeal is allowed to the extent of reduction of penalty only and rejects the appeal on all other grounds raised by *appellant* in the present appeal.

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.

Adesh Kumar Jain
27/07/2023

(Adesh Kumar/Jain)
Joint Commissioner (Appeals)

Date: 27.07.2023

Attested

Dilip Jadhav
(Dilip Jadhav)
Superintendent (Appeals)



By R.P.A.D.

To,

M/s. Azure Knowledge Corporation Private Limited,
Ground Floor, Behind Town Hall, Azure House,
Asharm Road, Ahmedabad - 380006

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

