



सत्यमेव जयते

आयुक्तकाकार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.  
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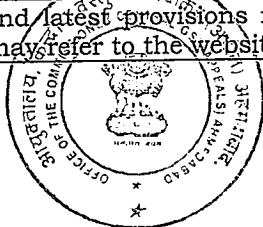
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**DIN NO.: 20240564SW0000111FDC**

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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2183/2024
(ख)	अपील आदेश संख्या और दिनांक / Order-In - Appeal and date	AHM-CGST-001-APP-JC-34/2024-25 and 20.05.2024
(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	20.05.2024
(ङ)	Arising out of Order-In-Original No. MP/190/AC/Div-IV/23-24 dated 28-12-2023 (DRC07 Ref. No.: ZD240224011595R dated 06-02-2024) passed by the Assistant Commissioner, CGST Division- IV, Ahmedabad South Commissionerate.	
(च)	<b>Name of the Appellant</b>	<b>Name of the Respondent</b>
	M/s Aristo Pharmaceuticals Private Limited, Godown No. 3, 4, 5, 6, Ground Floor, Samudra Association, Cadila Estate, Near Alfa Hotel, NH No. 8, Aslali, Ahmedabad, Gujrat-382 427	The Assistant Commissioner, CGST Division- IV, Ahmedabad South Commissionerate

(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 <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 <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> .



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

M/s. Aristo Pharmaceuticals Private Limited. Godown No. 3,4,5,6, Ground Floor, Samudra Association, Cadila Estate, Near Alfa Hotel, NH No. 8, Aslali, Ahmedabad, Gujarat - 382405 (hereinafter referred as 'Appellant') has filed the appeal against Order-in-Original (DRC-07) No. ZD240224011595R, dated 06.02.2024 (MP/190/AC/Div-IV/23-24 dated 28.12.2023 (hereinafter referred as 'Impugned Order') passed by the Assistant Commissioner, CGST & C.EX., Division - IV, Ahmedabad South (hereinafter referred as 'Adjudicating Authority').

**2(i).** A brief fact of the case is that the appellant is a trader of Medicaments and Fruit Juice and receive goods from their manufacturing unit registered at Baddi, Mandideep, Daman and Sikkim. The appellant has migrated from Sales Tax Regime to GST Regime. The appellant holding GSTIN GSTIN-24AAACA4495N1ZE has fled TRAN-1 on 26.10.2017 under Section 140 of the CGST Act, 2017 and has taken transitional credit of Central Taxes amounting to Rs. 79,01,797/- in their electronic Credit ledger as Cenvat Credit Carried forward under Section 140(3), 140(4)(b) and 140(6) and 140(7) of the CGST Act, 2017 [Entry 7A in table 7(a) of Tran-1]. In order to ascertain the admissibility and eligibility of their TRAN-I claim, the appellant was requested vide letters dated 27.10.2020, 01.03.2021 and 16.08.2021 to submit necessary documents/ records in support of their TRAN-I credit claim. The appellant had only submitted summary of stock, product wise details and some sample invoices.

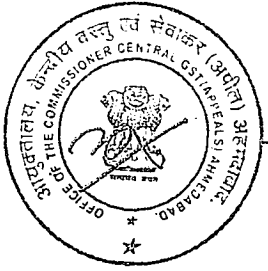


**2(ii).** In absence of submission of proper documents for verification of TRAN-1, the appellant were issued an intimation letter dated 08.09.2021 in Form GST DRC 01A, of tax ascertained as being payable under Section 73(5)/74(5) of the CGST Act, 2017 read with Rule 142(1A) of the CGST Rules, 2017 and to file any submissions by them in this regard by 10.09.2021. The appellant vide letter dated 04.10.2021 stated that they had submitted the details vide their letter dated 26.11.2020 and vide their email dated 08.03.2021. The appellant vide their letter dated 28.03.2022, submitted copy of invoices covering their credit claim of Rs. 44,36,654/- out of total ITC claim of Rs. 79,01,797/-.

2(iii). Verification of the ITC claim of the appellant was carried out on the basis of documents submitted by them vide letter dated 28.03.2022. On verification, it was observed that proper documents which were sought to verify their claim of Tran-1 credit, were not provided by them. Therefore, their TRAN1 claim of 44,36,654/- out of total claim of Rs. 79,01,797/- of Central Taxes could not be ascertained due to want of proper documents. Further, the remaining credit of Rs. 34,65,143/- could not be verified due to nonsubmission of supporting documents. Accordingly, it was observed that their entire claim of ITC amounting to Rs.79,01,797/-, filed by them table 7A table 7(a) of TRAN-1 return, was inadmissible.

3. Accordingly a Show Cause Notice (Form DRC-01) dated 13.06.2022 was issued to the appellant. Thereafter, the adjudicating authority vide impugned order dated 28.12.2023 has passed order and confirm the demand of Rs. 79,01,797/- under Section 73(9) of the CGST Act, 2017 and impose a penalty of Rs. 7,90,180/- under Section 73 of the CGST Act; interest under Section 50 of the CGST Act on the following grounds:

- that the taxpayer had not submitted the proper documents required in order to verify the genuineness of the ITC carried forward in TRAN-1 filed on 26-10-2017. Section 140 of the CGST Act contains elaborate provisions relating to transitional arrangements for ITC; the taxpayer did not submit all the required documents and in absence of the required documents; it was not possible to verify the amount of credit claimed as per Rule 117(3) of the CGST Rules, 2017;
- that in terms of section 155 of the CGST Act, 2017, which is reproduced below, the onus to prove admissibility of the credit availed lies on the person claiming the credit;
- As the tax payer failed to fulfill the mandatory conditions for taking transitional credit primarily the one regarding possession of invoice or other prescribed documents evidencing payment of duty under existing law in respect of such inputs and the credit so claimed appeared to be wrongly availed. Thus the proceedings under Section 73 of CGST Act, 2017 were rightly initiated in terms of Rule 121 of CGST Rules, 2017;
- It is evident from the verification report submitted by the Range Superintendent that the Tax Payer have not submitted requisite documents to claim credit in respect of the claim under table 7(a) of TRAN-1. The provisions of Section 140(3) of CGST Act, 2017 and Rule 117 of CGST Rules, 2017 enjoin upon the person claiming transitional credit to produce documents evidencing payment of duty under existing

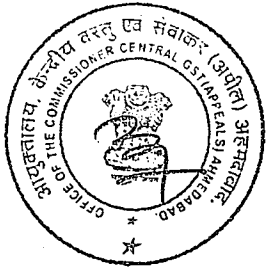


laws and procurement documents evidencing receipt of goods by the Tax payer. In absence of the said requisite documents Tax payer is not entitled' to claim the credit in respect of which such documents have not been produced;

- Once credit is wrongly availed the consequential penalty under Section 73 of the CGST Act, 2017 would follow.

4. Being aggrieved with the *impugned order* the *appellant* has filed the present appeal on 23.03.2024 and additional submission on 16.05.2024 wherein stated that –

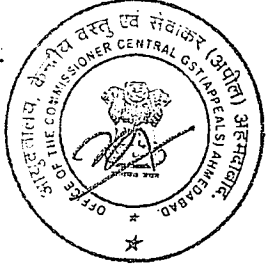
- that the *appellant* has already provided copies of the invoices and stock transfer notes received from manufacturing plant and warehouses/depot to substantiate that the *appellant* is in the possession of the duty paying documents for availing credit. Further, the *appellant* has also provided the stock register to substantiate that the *appellant* is in the possession of the goods on which credit has been availed;
- that the Assistant Commissioner in the *impugned order* has discussed the verification report submitted by the Jurisdictional Range Superintendent wherein the verification officer has provided their observation in the annexure 'A','B','C','D', and 'E' attached to the report. However, the Assistant Commissioner has neither provided the copy of the said verification report and its annexures 'A','B','C','D', and 'E' referred in the said report to rectify the observations of the Jurisdictional range Superintendent;
- that the goods which were lying in the depot on 30.06.2017 have been cleared on payment of GST and hence, the denial of ITC on such stock of goods is incorrect;
- The *appellant* has availed transitional credit only after complied with the conditions prescribed under section 140(3) of CGST Act 2017 ;
- that the *appellant* has attached only the specimen copies of invoices and stock transfer note with lorry receipts of the same. The *impugned matter* is pertaining before GST era and the *appellant* is in process to collect all the documents and lorry receipts. Hence, a proper file of all the invoices and stock transfer notes with lorry receipts will be provided in due course of time;
- There is one-to-one nexus between goods received and credit availed by the *appellant*;



- Credit shall be allowed if the appellant is in possession of invoice which evidencing payment of duty under the existing law;
- The appellant relies on the judgement's in the case of M/s. Aristo Pharmaceuticals Pvt. Ltd. having O-1-0 no. 28/AC/B.Bzr/CGST/Kol-N/2022-23 dated 09.09.2022 passed by the Assistant Commissioner CGST & CX, Burrahbazar Division, Kolkata North Commissionerate; M/s Rupa & Co. 2008 (225) E.L.T. 552 (Tri. - Chennai); Mis Aristo Pharmaceuticals Pvt. Ltd. having O-I-O No. 13/GST/JC/2023-24 dated 07-11-2023; GABRIEL INDIA LTD. - 1993 (67) E.L.T.131 (Tribunal); KREBS BIOCHEMICALS LTD. - 2001 (138) E.L.T. 353 (Tri. - Chennai); Hon'ble Gujarat High Court in the case of Mis Filco Trade Centre Pvt Ltd Vs Union Of India reported in 2018-TIOL-120-HC-AHM-GST.

Additional Submission:

- that the appellant has already provided copies of the invoices and stock transfer notes received from manufacturing plant and warehouses/depot to substantiate that the appellant is in the possession of the duty paying documents for availing credit. Further, the appellant has also provided the stock register to substantiate that the appellant is in possession of the goods on which credit has been availed;
- The verification report of the Jurisdictional Range Superintendent has not been provided to the appellant for the verification. Therefore, principal of natural justice not followed;



In view of the appellant prayed to allow the appeal and set aside the order in the light of settled principle of law.

Personal Hearing:

5. Personal Hearing in the matter was fixed/held on 26.04.2024 and 08.05.2024 wherein Mr. Archit Agrawal, C.A., appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has submitted that the issues involve is regarding verification of Tran-1. No verification report was provided to them. All duty paying documents submitted to Range Officer as well to Adjudicating Authority. L.R. copies and other relevant documents available. Being pharma goods, the same can be co-related with batch number also. Since no report provided order passed in violation of natural justice. Additional submissions will be given within 15 days and requested to allow appeal.



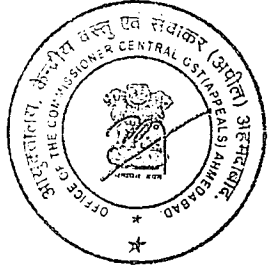
Superintendent vide letter issued from F. No. AR-IV/Div-IV/Tran-1/2021-22 dated 26.07.2023 has submitted that "To verify the admissibility of TRAN-I credit under entry TA of table 7(a), as per guidelines issued by the Board, following checks have been performed;

The applicant is registered under the GST regime as a regular taxpayer. Further, eligibility for ITC under the CGST Act, 2017 is to be verified in terms with Section 16 (2) of the Act which prescribes checks like possession of tax invoice, receipt of goods. In the instant case, the taxpayer has produced copy of stock transfer notes/invoices in respect of stocks held by them as on 30.06.2017 and have submitted summary of stock position (stock ledger) as a proof of possession of goods.

However, such submission is not found as an admissible proof for admitting their ITC claim due to the reason that in respect of all the entries mentioned in their summary stock ledger, the taxpayer has not provided L.R. copy, not even in a single case, to prove that they received such goods in their registered premises and were in possession of such inputs as on 30.06.2017. Therefore, on the instant ground which is common to all the stock input items, their entire claim is liable to be rejected.

Further, verification done on additional parameters following observations were made:

- i) in respect of entries as reproduced in Annexure-A, it is found that they had claimed ITC multiple times in respect of the same stock [issue of duplication].
- ii) in respect of entries as reproduced in Annexure-B, it is found that they had claimed ITC over quantity of stock which is found in excess of quantity available in the invoice/stock transfer note. [issue of claim over excess quantity].
- iii) in respect of entries as reproduced in Annexure-C, it is found that they had claimed ITC over inflated value of excise duty per unit in comparison to such value derived from the invoice/stock transfer note. [issue of claim over excess excise duty per unit].
- iv) in respect of entries as reproduced in Annexure-D, it is found that they had claimed ITC over such input items which could not be found in the given invoice/stock transfer note. [issue of claim over unavailable input].
- v) in respect of entries as reproduced in Annexure-E, it is found that they had claimed ITC over such invoice/Stock Transfer Note which is not a valid document in terms with Rule 92) of the

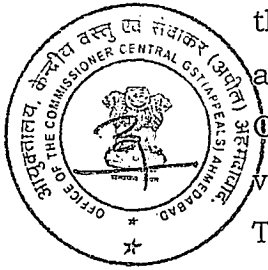


*Cenvat Credit Rule, 2004 hence ITC claim cannot be admitted in such cases. [issue of claim over invalid documents].*

*In view of aforesaid, their entire claim is found inadmissible and liable to be rejected."*

**7(iv).** In view of the verification report submitted by the Range Superintendent it is observed that the appellant have not submitted the required documents and accordingly contravened the provisions of Section 140(3) of the CGST Act, 2017 and wrongly availed the transitional credit of Rs. 79,01,797/- which is not eligible and proper.

**8.** Appellant in his grounds of appeals contended that the Assistant Commissioner in the impugned order has discussed the verification report submitted by the Jurisdictional Range Superintendent wherein the verification officer has provided their observation in the annexure 'A','B','C','D', and 'E' attached to the report. However, the Assistant Commissioner has neither provided the copy of the said verification report and its annexures 'A','B','C','D', and 'E' referred in the said report to rectify the observations of the Jurisdictional range Superintendent. In view of the above it is observed that the Adjudicating Authority, in reference to Show Cause Notice dated 13.06.2022 and for verification purpose, had called for verification report from Jurisdictional Range Superintendent in respect of Trans-1 credit claim of Rs. 79,01,797/- in order to verify its genuineness and admissibility purpose only.

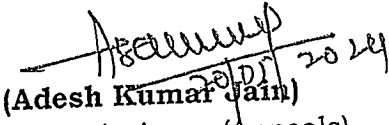


**9.** Further the appellant has relied upon certain case laws in their grounds of appeals. Considering the facts of the present case, the case laws relied upon by the appellant would not be applicable in the present case. As in the instant case all the required documents which were sought to verify their claim of Tran-I credit were not provided by them till the issue of the impugned notice and in absence of the required documents, it was not possible to verify the amount of credit claimed as per Rule 117(3) of the CGST Rules, 2017. Further as per Section 155 of CGST Act, 2017 the burden of proof, in case of eligibility of ITC, availed by the appellant, lies entirely on the appellant. Accordingly, they have contravened the provisions of Section 140(3) of CGST Act, 2017 and Rule 117(3) of the CGST Rules, 2017 and accordingly wrongly availed credit of Rs. 79,01,797/- is liable to be recovered under Section 73 of the CGST Act, 2017, along with the interest under Section 50 of the CGST Act, 2017 and penalty under Section 73 of CGST Act, 2017.

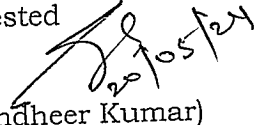


10. In view of the above discussions, I do not find any force in the contentions of the Appellant. Accordingly, I find that the impugned order passed by the Adjudicating Authority is legal and proper. Accordingly, I reject the appeal filed by the Appellant.

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: 20.05.2024

Attested

  
(Sandheer Kumar)  
Superintendent (Appeals)

By R.P.A.D.

To,  
M/s. Aristo Pharmaceuticals Private Limited.  
Godown No. 3,4,5,6, Ground Floor,  
Samudra Association, Cadila Estate,  
Near Alfa Hotel, NH No. 8, Aslali,  
Ahmedabad, Gujarat - 382405.

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 Deputy Commissioner, CGST, Division-IV, Ahmedabad South.
  5. The Deputy Commissioner (RRA), CGST, Ahmedabad South.
  6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
- ① Guard File/P.A. File.

