



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ीअहमदाबाद ३८००१५.
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By Regd. Post/E-mail

DIN NO.: 20240564SW000000A68B

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2127/2024 / 5228-29
(ख)	अपील आदेश संख्या और दिनांक / Order-In - Appeal and date	AHM-CGST-001-APP-JC-35/2024-25 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/177/AC/Div-IV/23-24 dated 26.12.2023 (DRC -07 No. ZD240224011593V dated 06.02.2024) passed by the Assistant Commissioner, CGST Division- IV, Ahmedabad South Commissionerate.	
(च)	Name of the Appellant	Name of the Respondent
	M/s Cipla Health Limited, Ambica Estate, Near Raghuvveer Estate, N.H. No. 8, Aslali, Ahmedabad, Gujarat-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) <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 .

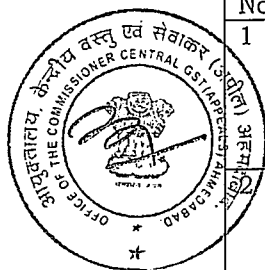


ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Cipla Health Limited, Ambica Estate, Near Raghuveer Estate, N.H. No. 8, Aslali, Ahmedabad, Gujarat - 382427 (hereinafter referred as 'Appellant') has filed the appeal against Order-in-Original No. ZD240224011593V, dated 06.02.2024 (MP/177/AC/Div-IV/23-24 dated 26.12.2023 (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 engaged in business of manufacturing/supplying of pharmaceutical products/medicines. They are holding GSTIN 24AAGCC1585R1Z5. The appellant filed Tran-1 on 09.09.2017 under Section 140 of the CGST Act 2017 and took transitional credit of tax in their electronic credit ledger as under:

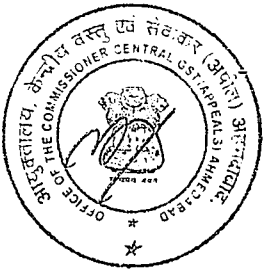
Sr. No.	Table of Tran-1	Provision of CGST Act, 2017	Particulars	Amount
1	7A of 7(a)	140(3) of the CGST Act, 2017	Amount of duties and taxes on inputs claimed as credit excluding the credit claimed under Table 5(a) (under sections 140(3), 140(4)(b) and 140(6) and 140(7))	37,03,200/-
	5(c)	140(5) of the SGST Act, 2017	Amount of tax credit carried forward to electronic credit ledger as State/UT Tax (For all registrations on the same PAN and in the same State)	7,49,302/-
			Total	44,52,502/-



2(ii). 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 Tran-1 claim of 37,03,200/- out of total claim of Rs. 44,52,502/- of Central Taxes could not be ascertained due to want of proper documents..

3. Accordingly a Show Cause Notice (Form DRC-01) dated 24.02.2022 was issued to the appellant. Thereafter, the adjudicating authority vide impugned order dated 26.12.2023 has passed order and confirm the demand of Rs. 37,03,200/- under Section 73(9) of the CGST Act, 2017 and impose a penalty of Rs. 3,70,320/- under Section 73 of the CGST Act; interest under Section 50 of the CGST Act on the following grounds:

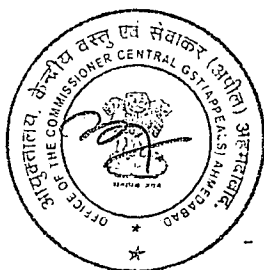
- that Section 140(3), 140(4)(b), 140(6) and 140(7) makes it clear that possession of invoice or other prescribed documents evidencing payment of duty under existing law in respect of such inputs is sine qua non for claiming credit under the said provisions of Section 140 of CGST Act, 2017;
 - that the taxpayer did not submit 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 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;
 - 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 08.02.2024 wherein stated that –

- that the Appellant has claimed the credit in TRAN-1 only on the basis of fulfilment of all the relevant conditions u/s. 140(3) of the CGST Act which deals with transitional credit provisions;

- that the Appellant had paid the Excise duty on the goods during the removal of goods from the factory premises. However, under pre-GST era, only registration of manufacturing unit was mandatory and hence, the excise duty was paid only once at the manufacturing unit based on the invoice copy. Further, these goods were made available to the regional depot on the basis of duty paid invoices of the manufacturing unit to identify the duty paying nature of the stocks;
- that the Appellant has duly fulfilled all the conditions prescribed u/s. 140(3) of the CGST Act. Further, submitting without admission, any technical lapses, while availing transitional credit shall be condoned;
- that credit lying with ISD is merely credit of input taxes discharged which is available for distribution amongst business units. At the end of the day, similar to GST, in Service tax as well, ISD was a distribution mechanism only, but the form and substance of the credit remains the same. Therefore, the intent of the GST law cannot be that transition in normal registrations is allowed, but the same credit when taken in ISD, is faulty. That while there may be procedural anomalies or setbacks in reflecting transition of ISD credit, the law has always been very clear that such credit is valid, rightful and legal and is allowed to be migrated from one taxation regime to another. Therefore, barring the transition of such credit is unlawful and the impugned order based on such faulty observations deserves to be quashed and set aside;
- that denial of transitional cenvat credit would run contrary to the intention of the legislature to provide a seamless flow of credit;
- that denial or Tran-1 ISD credit at this juncture, would defeat the very purpose of re-opening of Tran-1 window;
- that demand of the availed transitional credit will result in double taxation which is not the intention of the law;
- that the concerned sales Depot having stock are in possessions of depot invoices with details of duty paying documents pertaining to closing stock of finished goods. Moreover, the said goods in stocks have already been sold under GST regime on payment of appropriate payment of GST. Basis the above, it is evident that the Appellant had paid the Excise duty on the goods during the removal of goods from the factory premises. Thus, it can be inferred that the Appellant has duly fulfilled all the conditions prescribed u/s. 140(3) of the CGST Act. Accordingly, the Appellant has not contravened the provision relating to availment of ITC, there does not arise any requirement to deny the credit claimed under 7A of table 7(a) and 7B of table 7(a) of the TRAN-1 as it would lead to double taxation on the same subject matter;



- as the tax demand on the Appellant is in itself not sustainable in light of the submissions set out herein, there can be no question of payment of any interest by the Noticee u/s. 50 of the CGST Act. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in RE: Pratibha Processors vs. Union of India [1996 (88) ELT 12] wherein it was held that payment of interest is solely dependent upon the exigibility or factual liability to pay the principal amount. Thus, where the principal amount is not payable, there can be no demand for interest;
- that the department has erred by imposing penalty as there is no mala fide intention on part of the appellant;

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

Virtual Hearing:

5. Virtual Hearing in the matter was fixed/held on 26.04.2024 and 08.05.2024 wherein Mr. Dinesh Hire, Manager & Authorized Person and Mr. Sitaram Masoorkar, Manager & Authorized Person, appeared on behalf of the 'Appellant' as authorized representatives. During hearing they have submitted that they have submitted relevant excise invoice alongwith stock transfer invoice at the time of adjudication before the authority but the same is not considered. Legitimate benefit can't be denied for procedural things. Further being pharmaceutical goods the identity of the same can be established with batch number also, which is not disputed by the Ld. Adjudicating Authority. He further reiterated the written submissions and 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. The main issue to be decided in the instant case is whether the 'Appellant' had availed the Transitional Input Tax Credit of Central Taxes amounting to Rs. 37,03,200/- 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] is legal and proper.

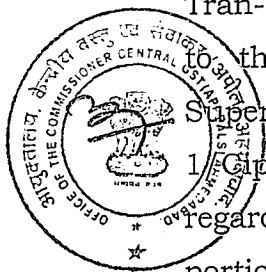
7(i). The appellant mainly contended that that they have availed the transitional credit of Rs. 79,01,797/- (Central Tax) on the basis of held in stock and inputs contained in semi-finished or finished goods held in stock in hand and has submitted the supporting documents and therefore, the case is required to be dropped. However in the instant case it is observed



that the appellant was requested under letter dated 11.12.2018 to submit the documents based on which they have availed the said transitional credit in TRAN-1, in order to ascertain/verify the admissibility of the transitional credit availed. However, 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. As it is clear that possession of invoice or other prescribed documents evidencing payment of duty under existing law in respect of such inputs is sine qua non for claiming credit under the said provisions of Section 140 of CGST Act, 2017.

7(ii). An intimation dated 08.09.2021 (Form GST DRC 01A) of tax as ascertained being payable under Section 73 of the CGST Act, 2017 read with Rule 142(1A) of the CGST Rules, 2017 was issued to the appellant. Appellant submitted details vide their email dated 10.09.2021 and requested for extension of time to submit the requisite documents. However, 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. Therefore, in transitional credit availed by them could not be verified.

7(iii). In order to ascertain the admissibility of credit mentioned in the Tran-1, the documents submitted by the appellant were sent for verification to the Jurisdictional Range Superintendent. The Jurisdictional Range Superintendent vide letter issued from F. No. CGST/AR-IV/Div-IV/Tran-1/Cipla/2021-22 dated 21.12.2023 has submitted the verification report regarding the eligibility/correctness of credit availed in Tran-1. The relevant portion of the verification report is reproduced below:



Verification of Transitional credit claim of Rs. 37,03,200/- in table 7A of 7(a) under section 140(3) of the CGST Act,2017:

"During the verification of their tax credit claim of Rs. 37,03,200/- filed under 7A of Table 7(a), it is found that they have not submitted any documents for verification of the said TRAN-1 credit and in absence of documents, entire amount of Rs. 37,03,200/- is inadmissible which was claimed under 7A of table 7(a) of Section 140(3) of CGST Act, 2017."

The taxpayer has submitted his reply vide letter dated 10.04.2023 to the said SCN dated 24.02.2022 which was verified and found that:

It is observed from the submission of the notice that they have submitted the list of the stock on 30.06.2017 of duty paid invoices for the amount of Rs.

21,27,148/- out of said amount of Rs. 21,27,148/-, excisable documents were not provided for the amount of Rs. 2,50,945/- and some of invoices amounting to Rs. 1,024/- related to the more than 1 year. Details are as under:

Sr. No.	Particulars	Amount
1	Excise invoice copies attached	18,75,179
2	Excise invoice copies not attached	2,50,945
3	Invoice date greater than one year	1,024
	Total	21,27,148

It is found from above table and Stock register that they have submitted the excisable documents for the amount of Rs.18,75,179/- only and remaining amount of Rs. (Rs. 2,50,945/- +Rs. 1,024/-) is not admissible for TRAN-1 Credit under Table 7A of 7(a) as per the Section 140(3) of CGST Act, 2017 due to non submission of the duty paid excise invoices.

Further, on verification of the Excisable documents for the amount of Rs.18,75,179/- it is found from the invoices that most of the invoice were related to the other units i.e. Nagpur & Indore and also noted that they have not submitted the procurement receipt of goods/service as per the section 140 (3)of the CGST Act, 2017. It is also observed from their submission that they have not submitted any list/invoices for the remaining amount of Rs. 15,76,052/- (Rs. 37,03,200/- less Rs. 21,27,148/-). Therefore, said amount of Rs. 15,76,052/- is not admissible for Tran-1 credit.



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. 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. 37,03,200/- 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.

9. 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
20/05/2024
(Adesh Kumar Jain)

Joint Commissioner (Appeals)
Date: 20.05.2024

Attested

Sandheer Kumar
(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To,
M/s. Cipla Health Limited,
Ambica Estate, Near Raghuvveer Estate,
N.H. No. 8, Aslali, Ahmedabad,
Gujarat - 382427.

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.
7. Guard File/P.A. File.

