आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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सत्यमेव जयते

आज़ादी का अमृत महोत्सव

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/GSTP/108/2022 /9060-64
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-001-APP-COM-171/2022-23 and 28.02.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	02.03.2023
(ङ)	Arising out of Order-In-Original No. 01/CGST/Ahmedabad South/JC/2022-23 dated 28.04.2022 issued by the Joint Commissioner, CGST & CE, Ahmedabad South Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Gujarat Gas Limited GSFC House, 4th Floor, Opposite Drive-In Cinema, Behind Reliance Mart, Bodakdev, Ahmedabad - 380054

(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

The present appeal has been filed by M/s. Gujarat Gas Limited, GSFC House, 4th Floor, Opposite Drive-In Cinema, Behind Reliance Mart, Bodakdev, Ahmedabad – 380 054 (hereinafter referred to as the "appellant") against Order in Original No. 01/CGST/Ahmedabad South/JC/2022-23 dated 28.04.2022 [hereinafter referred to as "*impugned order*"] passed by the Joint Commissioner, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant are registered with the CGST department under Registration No.24AAECG8093Q1ZW for supply of services viz. Manpower Recruitment/Supply Agency, Transport of Goods through Pipeline or other conduit, Sponsorship Service, Rent-a-Cab scheme operator service etc. The appellant are also engaged in Gas distribution including sale, purchase, supply distribution, transportation, trading in Natural Gas, CNG, PNG.

2.1 Prior to 01.07.2017, the appellant was registered under Central Excise and Service Tax Department as well as under VAT (under State jurisdiction) for manufacturing of goods viz. CNG, PNG etc. and supply of various services. During the course of audit of the records of the appellant available with their jurisdictional Range Office, conducted by the officers of Indian Audit and Accounts Department, it was observed that appellant had taken transitional credit amounting to Rs.1,53,00,140/- under Section 142 (11) of the CGST Act, 2017 in Tran-1 return. The said credit purportedly belonged to advance service tax paid before the appointed day. However, the details of the proportion of supply, under GST regime on which service tax was paid before the appointed day, was not available on records. The details were sought from the appellant but the same was not submitted by them.

2.2 On scrutiny of the ST-3 returns, it was observed that the appellant had paid service tax amounting to Rs.1,25,88,637/- on the amount received in advance towards services for which bills/invoices/challans or any other

documents were not issued for the period April, 2015 to June, 2017. Therefore, the aforesaid amount of Rs.1,25,88,637/- did not appear to be admissible as transitional credit. Apart from this, the appellant had also taken transitional credit amounting to Rs.27,11,503/- for which no service tax was paid and no documentary evidence was submitted. In terms of Section 142 (11) of the CGST Act, 2017, only that part of service tax paid, which is related to the portion of supply for which tax was paid before the appointed date but the supply of service is made after the appointed date, is eligible for transitional credit through Tran-1 return. It, therefore, appeared that the appellant had availed ineligible transitional credit amounting to Rs.1,53,00,140/- under Section 142 (11)(c) of the CGST Act, 2017 in respect of service tax paid on advances for the period from April, 2017 to June, 2017.

2.3 It was also noticed that the appellant are engaged in the manufacture of Gas and distribution of Gas and in the pre-GST regime, and they were holding Central Excise and Service Tax registration. However, after implementation of GST, the appellant is still having Central Excise Registration as the product Natural Gas is outside the levy of GST. The appellant had filed Tran-1 for taking transitional credit, the details of which are as under :

Tran-1 Column No.	Amount of credit taken (in Rs.)	Section of CGST Act	Remarks
5(a)	1,73,53,351/-	140(1)	Rs.9,12,683/- in respect of Service Tax Registration under existing law and Rs.1,64,40,668/- in respect of Central Excise Registration under existing law.
6(a)	1,39,58,387/-	140(2)	Out of Rs.1,39,58,387/-, credit of Rs.56,60,863/- was in respect of unavailed capital goods credit for 2017-18. Rs.22,87,737/- was of Gandhinagar Registration and Rs.33,73,863/- was of Surat Registration.

2.4 It appeared that as per the provisions of Section 140 of the CGST Act, 2017, cenvat credit of the input/input services/capital goods can be taken as

transitional credit in Tran-1 only if the credit is admissible as input tax credit under the CGST Act, 2017. In the instant case, the products CNG and PNG does not attract GST and, therefore, it appeared that the cenvat credit related to the manufacture of these goods do not qualify as input tax credit under CGST Act, 2017. However, the appellant had taken credit in Tran-1 in respect of those input/input services/capital goods pertaining to CNG and PNG. Such credit did not appear to be in accordance with the provisions of Section 140 (1) and 140 (2) of the CGST Act, 2017. Therefore, the credit amounting to Rs.2,21,01,531/-, taken in Tran-1 in contravention of the provisions of CGST Act, 2017, appeared to be recoverable from the appellant.

2.5 It appeared that the appellant had carried forward unauthorized and inadmissible credit totally amounting to Rs,3,74,01,671/- as transitional credit in Tran-1 and the same is recoverable from them along with interest. The appellant had filed GSTR-9 for F.Y. 2017-18 on 24.08.2019.

3. The appellant were subsequently issued Show Cause Notice No. VI-CGST/4-38/Gujarat Gas/O&A/20-21 dated 15.09.2021 wherein it was proposed to :

A. Disallow and recover the transitional credit amounting to Rs.1,53,00,140/-, wrongly taken in terms of Section 142(11) of the CGST Act, 2017, under Section 74(1) of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017.

B. Disallow and recover the transitional credit amounting to Rs.1,64,40,668/-, wrongly taken in terms of Section 140(1) of the CGST Act, 2017, under Section 74(1) of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017.

C. Disallow and recover the transitional credit amounting to Rs.56,60,863/-, wrongly taken in terms of Section 140(2) of the CGST Act, 2017, under Section 74(1) of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017.

D. Charge and recover interest under Section 50(1) of the CGST Act, 2017.

E. Impose penalty under Section 74(1) of the CGST Act, 2017 read with Section 122(2)(b) of the CGST Act, 2017.

4. The SCN was adjudicated vide the impugned order wherein :

a) The transitional credit amounting to Rs.1,53,00,140/- was disallowed and ordered to be recovered.

b) The transitional credit amounting to Rs.1,64,40,668/- was disallowed and ordered to be recovered.

c) The transitional credit amounting to Rs.56,60,863/- was disallowed and ordered to be recovered.

d) The demand for interest under Section 50(1) of the CGST Act,2017 was confirmed.

e) Penalty amounting to Rs.3,74,01,671/- was imposed under Section 74(1) of the CGST Act, 2017 read with Rule 122 (2)(b) of the CGST Rules, 2017.

5. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :

i. The transitional credit has been disallowed merely on the basis of the grounds of the SCN and the impugned order has been passed without appreciating the evidences and case laws referred to by them.

ii. They had submitted that the department had verified the details of transfer of credit and found the same to be in order. There is no condition under Section 142 (11) (c) for issuance of any bills or any other document for claiming credit of service tax paid in respect of amount received in advance. As per the said section, tax should have been paid under the Finance Act, 1994 and the credit shall be allowed to the extent of supplies made under GST regime.

iii. The allegation of no supply has been made in respect of the service tax paid was baseless and without any evidence. Any customer paying advance would insist for the service and there was no possibility of not supplying service after receipt of payment.

iv. Regarding the transitional credit of Rs.1,64,40,668/-, it was submitted that Section 140(1) does not stipulate that a registered person paying central excise duty is not entitled to carry forward cenvat credit.

v. CNG is excisable, however, supply of services are covered under GST and, therefore, they are entitled to credit of input tax against supply of services.

vi. The 'said amount of credit' referred to in proviso (i) of Section 141 of the CGST Act, 2017 attributes to payment of various taxes. The nature of tax has been considered for carry forward and not the individual product or service. As such, if any credit was admissible under the old regime, the credit of these taxes are allowed to be carried forward.

vii. They had referred to Board's Circular No. 1053/2/2017-CX dated 10.03.2017 contended that the SCN was issued hurriedly and in slipshod manner.

viii. Regarding the allegation of no supply of service, they had submitted that no evidence has been disclosed by the department in this regard. There are evidences of service rendered but there cannot be evidence of service not supplied. However, no finding has been given by the adjudicating authority on these submission.

ix. Regarding disallowing credit of Rs.1,53,00,140/-, it is submitted that there is no bar or limitation in taking transitional credit and no percentage or proportion has been stipulated under Section 142 (11) (c).

x. They had availed credit of service tax paid in respect of advances received and services supplied after 01.07.2017. As they have carried forward the credit to the extent of supplies made after 01.07.2017, they satisfy the provisions of clause (c) of Section 142 (11).

xi. To prove that they had paid service tax, a detailed statement was prepared on the basis of document number generated in respect of advance payment made by customers for installation and gas connection wherein customer number and amount of service tax paid was also shown.

xii. The adjudicating authority has presumed that they had taken credit in respect of advance tax paid and that services might have been rendered before GST regime.

xiii. If the services were rendered in respect of advance received, the accounting entry of advances would not have remained pending. They had furnished statement of service rendered after 01.07.2017 in respect of service tax paid on advances. However, no finding has been given by the adjudicating authority.

xiv. The demand has been confirmed on the ground that no supply has been made after appointed day. However, the evidence of supply of service has been ignored.

xv. Entitlement of credit under Section 142 (11)(c) is commensurate with the extent of supplies made after the appointed day. However, if tax has been paid on the total taxable value under the Finance Act, 1994 and no portion of service has been rendered , GST is payable on the entire supply and accordingly, be entitled to take credit of the entire tax paid.

xvi. They had paid service tax on advances, however, no supply was made under the Finance Act, 1994. Accordingly, they were liable to pay GST on the entire portion of service and entitled to credit of the entire tax paid under Finance Act, 1994.

xvii. The demand has been confirmed by mis-representing the contents of their letter to the jurisdictional Range Office wherein treatment of advances received was explained. They had in the said letter clarified that service tax amounting to Rs.1,25,88,637/- pertained to advance received from customers. Since no service was rendered, question of issuing invoice did not arise.

xviii. An illustrative statement containing month wise details of service tax on advances received and advances adjusted is provided for the period from April, 2016 to June, 2017. From this statement, it is evident that the total service tax paid on advances received is higher than the service tax on advances adjusted at the time of provision of service.

xix. Regarding the observation at Para 25.8 of the impugned order, it is submitted that they had in Tran-1 furnished that service tax of

Rs.1,53,00,140/- was paid in respect of advances and no service was rendered against such advances and that service was to be furnished after the appointed day.

xx. The Tran-1 filed by them was verified by the officer of the department during December, 2017 and December, 2018 and found that the cenvat credit carried forward was in consonance with the transitional provisions. No query was raised in connection with transfer of credit to Tran-1. In fact the CERA audit has, in their LAR-121/19-20/OW-170 dated 20.12.2019, noted that the Tran-1 has been verified by the department.

xxi. The demand has been confirmed on the basis of the belief of the adjudicating authority and not on facts. It is settled principle that demand cannot be confirmed on assumption or presumption.

xxii. Reliance is placed upon the judgment in the case of Punjab Fibres Ltd. Vs. CCE, Delhi – 2002 (141) ELT 819 (Tri.-Del.); CCE, Ahmedabad Vs. Durolam Ltd. – 2007 (212) ELT 419 (Tri.-Ahmd) and Tetra Plastics Pvt. Ltd. Vs. CCE & C, Nashik – 2008 (227) ELT 74 (Tri.-Mumbai).

xxiii. Their submission that provision under Section 142 (11)(c) is revenue neutral situation has not been discussed and no finding has been given.

xxiv. Regarding the transitional credit of Rs.1,64,40,668/- and Rs.56,60,863/-, it is submitted that the provisions of Section 140(1) do not stipulate that all the products and services should be covered under CGST Act for carrying forward the credit. The department has wrongly construed that CNG is not covered under GST law. All supplies of goods or services or both are covered under GST except for alcoholic liquor for human consumption.

xxv. Regarding the finding of the adjudicating authority at Para 26.4 of the impugned order, it is submitted that as per the proviso to Section 140 (1), credit is not allowed to be taken where the said amount of credit is not admissible as input tax credit under this Act. They had availed credit of input service and capital goods which was admissible under Central Excise.

xxvi. They had obtained registration under GST in respect of supply of services. As such credit cannot be denied merely because they are registered under GST as well as Central Excise.

xxvii. The credit has been disallowed by misconstruing proviso (i) of Section 140(1). The phrase used is 'said amount of credit'. Since various central and state taxes levied in the old regime were to be subsumed under GST, the credit earned under the old regime were to be carried forward. The amount of credit earned on payment of various taxes has been referred to as 'the said amount of credit'.

xxviii. It is pertinent to refer to the definition of input tax credit as per Section 2 (63) of the CGST Act. It is the nature of tax which has been considered for being carried forward and not individual product or service.

xxix. If any credit was admissible under central excise or service ax, the credit of these taxes only can be allowed to be carried forward.

xxx. The credit has been disallowed against the guidelines issued by the Ministry of Finance vide D.O.F. No. 267/8/2018-CX dated 14.03.2018.

xxxi. The credit has been also disallowed by referring to Section 17 of the CGST Act. It is submitted that the said Section restricts the credit to be taken on receipt of goods or services or both by the registered person. The said Section does not come in the way of credit earned on central excise or service tax and carried forward under the transitional provisions. The credit of input services and capital goods was availed by them for business purposes only.

xxxii. Reliance is placed upon the judgment in the case of Eicher Motor Vs. UOI – 1999(106)ELT-3; Tata Engineering and Locomotive Co. Ltd. Vs. UOI – 2003 (159) ELT 129 (Bom.); CCE, Pune Vs. Dai Ichi Karkaria Ltd. – 1999 (112) ELT 353 (SC); Advance Surfactants India Ltd. Vs. UOI – 2017 (358) ELT 53(Guj.); Filco Trade Centre Pvt. Ltd. Vs. UOI – 2018(17) GSTL-3 (Guj.); Pyrotech Workspace Solutions Pvt. Ltd. Vs. CCE, Jaipur – II – 2016 (43) STR 299 (Tri.-Del.); CCE, Ahmedabad-II Vs. Omkar Textile Mills Pvt. Ltd. – 2010 (262) ELT 115 (Guj.); Richardson & Cruddas (1972) Ltd. Vs. CCE, Nagpur – 1999(107) ELT 386 (T).

xxxiii. With respect of the findings at Para 26.6 of the impugned order, it is submitted that they had carried forward the credit strictly in consonance with the transitional provisions of CGST Act. Their Tran-1 was verified by the department. In light of their submissions and the judgments, they have discharged the burden cast upon them.

xxxiv. Regarding imposition of penalty, it is submitted that they had pointed out that they had not utilized the transitional credit lying in their credit account and, therefore, the allegation of wrong utilization of credit to discharge GST liability is factually incorrect.

xxxv. They being a State Government undertaking, the allegation of input tax credit being wrongly availed by reason of fraud, wilful misstatement or suppression of facts to evade tax cannot be held against them. Reliance is placed upon the judgment in the case of Nalco Vs. CCE, BBSR-I – 2016 (343) ELT 1005 (Tri.-Kolkata); Indian Petrochemicals Corpn. Ltd. V. CCE, Vadodara – 2009 (27) ELT 317 (Tri.-Ahmd.).

6. Personal Hearing in the case was held on 05.01.2023. Shri P.G. Mehta, Advocate and Shri Pritesh Thakkar appeared on behalf of appellant for the hearing. They reiterated the submissions made in appeal memorandum and submitted a written submission during hearing.

7. In the additional written submission filed on 05.01.2023, the appellant have basically reiterated the submissions made in the appeal memorandum.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the additional written submissions, the submissions made in the course of the personal hearing and the materials available on records. The issues before me for decision are :

a. Whether the appellant are eligible to transitional credit amounting to Rs.1,53,00,140/- availed in terms of Section 142 (11) of the CGST Act, 2017 in their Tran-1 return or otherwise.

b. Whether the appellant are eligible to transitional credit amounting to Rs.1,64,40,668/- availed in terms of Section 140(1) of the CGST Act, 2017 in their Tran-1 return or otherwise.

c. Whether the appellant are eligible to transitional credit amounting to Rs.56,60,863/- availed in terms of Section 140(2) of the CGST Act, 2017 in their Tran-1 or otherwise.

9. It is observed that Section 140 of the CGST Act, 2017 contains transitional provisions for input tax credit. The relevant part of Section 140 is reproduced below :

> "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 of eligible duties carried forward in this returns 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 :
>
> 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.
>
> (2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:
>
> Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act."

9.1. It is observed that the appellant have availed transitional credit amounting to Rs.1,53,00,140/- in terms of Section 142 (11) of the CGST Act, 2017. It is, therefore, pertinent to refer to the said Section, which is reproduced below :

> "142(11) (a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;

(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994 (32 of 1994);

(c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994 (32 of 1994), tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed."

9.2 Further, Rule 118 of the CGST Rules, 2017 provides for furnishing of declaration to be made in terms of Section 142(11) (c) of the CGST Act, 2017. The text of Rule 118 is reproduced below :

"Every person to whom the provision of clause (c) of sub-section 11 of section 142 applies, shall within the period specified in rule 117 or such further period as extended by the Commissioner, submit a declaration electronically in FORM GST TRAN-1 furnishing the proportion of supply on which Value Added Tax or service tax has been paid before the appointed day but the supply is made after the appointed day, and the Input Tax Credit admissible thereon."

9.3 From a conjoint reading of the above provisions of the CGST Act, 2017 and the CGST Rules, 2017, it is evident that in case where the service tax was paid prior to the appointed day and such service is provided after the appointed day, GST is leviable on such service and the taxable person is eligible to avail credit of the service tax paid to the extent of services rendered after the appointed day and the same is to be calculated in the manner prescribed. Further, Rule 118 of the CGST Rules, 2017 provides for furnishing of declaration containing the details of the supply of service made after the appointed day.

9.4 In the instant case, it is observed from the materials on record that the appellant have not furnished the declaration as required under Rule 118 of the CGST Rules, 2017 and have contended that there is no bar or restriction or limitation in taking credit under the transitional provisions and no percentage or proportion has been stipulated under Section 142(11)(c) of the CGST Act, 2017. The appellant have further contended that they had availed credit of service tax paid in respect of advances and that the services were supplied after 01.07.2017. The appellant have also contended that they had submitted before the adjudicating authority a statement of service tax paid on advances. However, the same was not

accepted by the adjudicating authority in view of his findings at Para 25.2 of the impugned order to the effect that the transitional credit of service tax paid from 2011 onwards was availed by the appellant without considering whether the service was provided after the appointed day. The appellant have contended that they had also submitted accounting entries in respect of advances to show that the services were rendered in the GST regime.

9.5 It is observed in this regard that the appellant have, except for contending that the transitional credit in respect of service tax was availed where the services were rendered in the GST regime, have not submitted any documentary evidence as part of their appeal memorandum. They have submitted copies of two accounting transactions, on an illustrative basis. I have perused the document submitted by the appellant and find that in respect of Document No. 650011040495, the date is shown to be 30.06.2017 and in respect of which CGST and SGST is shown to be payable. In this regard, it is pertinent to mention that it cannot be disputed that the transitional credit amounting to Rs.1,53,00,140/- claimed by the appellant could possibly include credit of service tax paid on advances where the appellant have provided services after the appointed day i.e. 01.07.2017. However, the issue on which the appellant have not come forward with satisfactory explanation or produced any relevant documents is the quantum of transitional credit availed by them which pertains to service tax paid on or before 30.06.2017 and where services were provided on or after 01.07.2017. In terms of the provisions of Section 142 (11) (c) of the CGST Act, 2017, the appellant are only eligible for transitional credit to the extent that the service, in respect of which service tax was paid on or before 30.06.2017, and which was rendered on or after 01.07.2017. As the appellant have failed to substantiate their eligibility for transitional credit of Rs.1,53,00,140/- in terms of Section 142 (11) (c) of the CGST Act, 2017, I do not find any infirmity in the impugned order disallowing the transitional credit claimed by the appellant. Accordingly, I uphold the impugned order disallowing the transitional credit amounting to Rs.1,53,00,140/-.

10. Coming to the issue as to whether the appellant are eligible to transitional credit amounting to Rs.1,64,40,668/- availed in terms of Section 140(1) of the CGST Act, 2017 and transitional credit amounting to Rs.56,60,863/- availed in terms of Section 140(2) of the CGST Act, 2017, I find it pertinent to refer to the provisions of Section 140(1) and (2) of the CGST Act, 2017, which are reproduced at Para 9 above. It is observed that the appellant had availed transitional credit amounting to Rs. 1,64,40,668/- in respect of the cenvat credit availed in respect of their Central Excise registration under the existing law. Further, the transitional credit amounting to Rs.56,60,863/- was in respect of the un-availed cenvat credit on capital goods for F.Y. 2017-18.

10.1 The appellant are manufacturer of CNG and PNG, which are excisable goods, and were accordingly, registered under Central Excise law. It is pertinent to note that even after introduction of the GST regime, CNG and PNG continue to attract levy of Central Excise duty and these goods are presently not subjected to levy of GST under the CGST Act, 2017. Accordingly, the appellant continue to hold the central excise registration for manufacture of CNG and PNG.

10.1 In terms of clause (a) of the first proviso to Section 140 (1), the registered person shall not be allowed to take credit where the amount of credit is not admissible as input tax credit under this Act. The adjudicating authority has in the impugned order recorded his findings, at Para 26.3 and 26.4, regarding the admissibility of input tax credit in terms of Section 16 of the CGST Act, 2017. It is, therefore, necessary to refer to Section 16, which is reproduced below:

> "(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person."

10.2 On a plain reading of the above provisions of law, it is evident that what is allowed as input tax credit is the 'input tax charged on any supply of goods or services or both which are used in the furtherance of business'.

The term 'input tax' is defined under Section 2(62) of the CGST Act, 2017 as :

> " "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes –
>
> (a) the integrated goods and services tax charged on import of goods;
>
> (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
>
> (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Act;
>
> (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
>
> (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Act,
>
> but does not include the tax paid under the composition levy;"

10.3 Further, the term 'input tax credit' has been defined under Section 2(63) of the CGST Act, 2017 as " *"input tax credit" means the credit of input tax".* From the above provisions of the CGST Act, 2017, it is clear that what is admissible as input tax credit is the input tax paid on the goods and services under, among others, the CGST Act, 2017 and such goods and services, or both, are used in the furtherance of business. The term 'furtherance of business' unambiguously refers to the goods and services, or both, which are subject to levy of GST. In the instant case, the appellant are registered under the GST Act for various services provided by them but the registration does not include the manufacture of CNG and PNG, which is subject to levy of central excise duty. Accordingly, the term 'furtherance of business' cannot be interpreted to include the manufactured goods CNG and PNG, which are presently not subject to levy of GST. Consequently, the credit of the inputs and capital goods relating to the manufacture of CNG and PNG are not admissible as input tax credit under the CGST Act, 2017.

10.4 It is observed that the appellant have not disputed the fact that the transitional credit amounting to Rs.1,64,40,668/- and Rs.56,60,863/- pertained to the manufacture of CNG and PNG, which are subject to levy of central excise duty and for which the appellant continue to hold Central Excise Registration. The appellant have contended that the provisions of Section 140(1) of the CGST Act, 2017 do not stipulate the condition that all products and services of the taxable person should be covered under CGST

Act for carrying forward the credit lying in Cenvat Credit Rules. They have further contended that it is the nature of the tax which has been considered for carry forward and not the individual product and service. I do not find any merit in the contention of the appellant. As discussed in detail in the preceding paragraphs, the clause (a) of the first proviso to Section 140 (1) of the CGST Act, 2017 clearly stipulates that where the amount of credit is not admissible as input tax credit under the CGST Act, 2017, the same is not allowed to be taken as credit in terms of the transitional provisions of Section 140(1) of the CGST Act, 2017. Since credit of the inputs and capital goods relating to the manufacture of CNG and PNG are not admissible as input tax credit under the CGST Act, 2017, the appellant are not eligible to take credit, of the cenvat credit under the existing law, under the transitional provisions of Section 140(1) of the CGST Act, 2017. In view of the above, I do not find any infirmity in the impugned order disallowing the transitional credit amounting to Rs.1,64,40,668/- and Rs.56,60,863/- and, accordingly, I uphold the impugned order.

11. The appellant have referred and relied upon various judicial pronouncements to the effect that the vested rights of the assessee cannot be deprived. In this regard, it is observed that the contentions of the appellant are totally ill founded. The department has not sought to deprive the appellant of the cenvat credit accruing to them under the Central Excise Act, 1944 or the Finance Act, 1994. The impugned order has only disallowed carrying forward, under the transitional provisions, of the cenvat credit pertaining to manufactured goods subject to levy of central excise duty and which are presently out of the purview of levy under GST. This cannot however, be construed as depriving the appellant of the vested right to the cenvat credit, which they are entitled to carry as cenvat credit balance in their records under the Central Excise registration.

12. The appellant have also contended that they have not utilized the transitional credit lying in their credit account and, therefore, the wrong utilization of credit to discharge GST liability is factually incorrect. In this regard, it is observed that the appellant have not submitted any

documentary evidence supporting this contention of non utilization. However, this is a subject matter of verification. Accordingly, if on verification of the records, it is found that the appellant have not utilized the transitional credit for payment of GST, they would not be liable to pay any GST. The appellant would, however, be liable to reverse the transitional credit to the extent they are not eligible and which was disallowed in terms of the impugned order.

13. The impugned order has also confirmed the demand of interest under Section 50(1) of the CGST Act, 2017, the text of which is reproduced below :

> "Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendation of the Council."

13.1 In terms of the above provisions of law, interest under Section 50 (1) is attracted only in cases of short payment or non payment of tax. In the instant case, it is the contention of the appellant that they have not utilized the transitional credit availed by them in terms of Section 142(11) and 140(1) and (2) of the CGST Act, 2017. As stated in Para 12 above, this is a matter which requires to be verified. It is, therefore, ordered that in the event on the verification of the records it is established that the appellant had not utilized the transitional credit for payment of their output tax liability, the appellant would not be liable to pay interest in terms of Section 50(1) of the CGST Act, 2017.

14. The appellant have also challenged the imposition of penalty and contended that they are a State Government Undertaking and the allegation of wrongly taking input tax credit and its utilization thereof, by reason of fraud, wilful mis-statement or suppression of facts cannot be held against them. It is observed that the adjudicating authority has imposed penalty under Section 74 (1) read with Section 122(2)(b) of the CGST Act, 2017. These provisions are reproduced below :

> **Section 74 (1)** : " Where it appears to the proper officer that any tax has been not paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by 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 equivalent to the tax specified in the notice."

Section 122(2) : " Any registered person who supplies any goods or services or both on which any tax has not been paid or short paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised, -

(a) .....
(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher."

14.1 In the instant case, it is observed that the appellant had contended before the adjudicating authority that the Tran-1 filed by them claiming transitional credit was verified by the department during December, 2017 and December, 2018. The appellant had further contended that even the CERA Audit had recorded in their LAR-121/19-20/OW-170 dated 20.12.2019 that *"This TRAN 1 has already been verified by the department".* It is observed that the adjudicating authority has, in the impugned order, not considered these facts while imposing penalty under Section 74(1) read with Section 122 (2)(b) of the CGST Act, 2017. These provisions of the CGST Act, 2017 invoked by the adjudicating authority are applicable in cases of fraud, wilful misstatement or suppression of facts to evade tax. However, considering the fact that the Tran-1 filed by the appellant was verified by the department twice, it cannot be alleged that the appellant had resorted to fraud, wilful misstatement or suppression of facts. Consequently, the provisions of Section 74(1) or Section 122(2)(b) of the CGST Act, 2017 are not applicable in the facts and circumstances of the case. Accordingly the penalty amounting to Rs. 3,74,01,671/- imposed by the adjudicating authority on the appellant in the impugned order in terms of Section 74(1) or Section 122(2)(b) of the CGST Act, 2017 is set aside.

15. As the provisions of Section 74(1) and Section 122(2)(b) of the CGST Act, 2017 are not applicable to the facts and circumstances of the present case, in terms of Section 75(3) of the CGST Act, 2017, the issue of penalty is required to be re-determined by the proper officer, by deeming as if the impugned notice has been issued under Section 73(1) of the CGST Act, 2017.

16. In view of the facts discussed herein above, I uphold the impugned order disallowing the transitional credit amounting to Rs.1,53,00,140/-, Rs.1,64,40,668/- and Rs.56,60,863/-. The impugned order to the extent of charging interest and imposing penalty amounting to Rs.3,74,01,671/- is set aside and sent back to the adjudicating authority for re-determination of interest and penalty in terms of Section 75(3) of the CGST Act, 2017.

17. 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.

28th February, 2023.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 28.02.2023.

Attested:

(N.Suryanarayanan. Iyer)
Assistant Commissioner (In situ),
CGST Appeals, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. Gujarat Gas Limited, — Appellant
GSFC House, 4th Floor,
Opposite Drive-In Cinema,
Behind Reliance Mart,
Bodakdev, Ahmedabad – 380 054

The Joint Commissioner, — Respondent
CGST,
Commissionerate : Ahmedabad South.

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South. (for uploading the OIA)
4. ~~Guard~~ File.
5. P.A. File.