



सत्यमेव जयते

आयुक्त(अपील)काकार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५,
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN NO. 20230964SW000000ACF8

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/COM/GSTP/36/2023 /6386 - 91

ख अपीलआदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-136-2023-24

दिनांक Date : 25.09.2023, जारी करने की तारीख Date of Issue : 26-09-2023

आयुक्त (अपील) द्वारा पारित

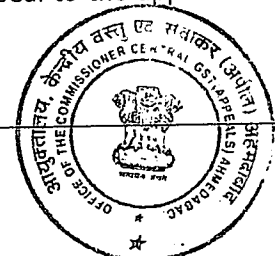
Passed by Shiv Pratap Singh, Commissioner (Appeals)

ग Arising out of Order-in-Original No 69/CGST/Ahmd-South/ADC/TGR/2022-23 dated 04.01.2023 issued by The Additional Commissioner, CGST, Ahmedabad South,

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

M/s Anil Manaklal Shah,
604-605, Shri Balaji Heights,
B/s. IDBI Bank, Near Tanishq Show Room,
C. G. Road, ahmedabad-380006.

(A)	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)	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

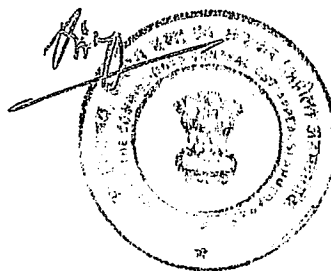
The present appeal has been filed by M/s. Anil Maneklal Shah, 604-605, Shri Balaji Heights B/s. IDBI Bank, Near Tanishq Show Room, C.G. Road, Ahmedabad – 380006 (hereinafter referred to as “the appellant”) against Order-in-Original No. 69/CGST/AHMD-SOUTH/ADC/TGR/2022-23 dated 04.01.2023 (hereinafter referred to as “the impugned order”) passed by the Additional Commissioner, Central GST, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant are engaged in the manufacture/providing service of “Wholesale Business, Others”. They were registered with the Central Excise and Service Tax Department having Service Tax Registration No. AEAPS2639PEI002 and at present holding GSTIN 24AEAPS2639P1Z3 The appellant filed TRAN-1 on 20.12.2017 and had taken transitional credit of Central Excise/Service Tax amounting to Rs. 1,96,22,630/- in their Electronic Credit ledger under Section 140 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as ‘CGST Act, 2017’).

2.1 In order to ascertain/verify the admissibility of the transitional credit availed, the appellant was requested to submit the documents based on which they have availed the said transitional credit in TRAN-1 vide letter F.No. CGST/WS0604/TRAN VERIFICATOIN/P-1/3/2019-20 dated 03.01.2020 subsequent to which reminders/ email were issued for said information. However, in-spite of repeated request the taxpayer has not submitted the required documents for verifying the admissibility of transitional credit claimed by them. In absence of the required documents, the department is not in a position to arrive at the admissibility of transactional credit claimed by them. Thereafter, an intimation dated 03.09.2021 (Form GST DRC 01A) of tax ascertained being payable under Section 73(5)/74(5) of the CGST Act, 2017 read with Rule 142(1A) of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as ‘CGST Rules, 2017’) was issued to the taxpayer.

2.2 As the appellant has failed to submit the required documents, admissibility of geniuses of the credit could not be verified. Hence it appears that the transitional credit amounting to Rs. 1,96,22,630/- availed by them is not admissible to them and the same requires to be recovered from them under the provisions of Section 73(1) of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017 along with applicable interest under Section 50 of the CGST Act, 2017.

2.3 Subsequently, the appellant were issued Show Cause Notice No. CGST/WS0604/TRAN-1/Tran Verification/P-1/3/2019-20 dated 10/09/2021 demanding wrongly forwarded



and utilized transitional credit of input tax amounting to Rs.1,96,22,630/- under the provisions of Section 73(1) of the CGST Act, 2017 read with the provisions of Rule 121 of the CGST Rules, 2017. The SCN also proposed recovery of interest under Section 50 of the CGST Act, 2017 and imposition of penalty Section 122 (1) (xvii) of the CGST Act, 2017.

2.4 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the transitional credit of Rs. 1,96,22,630/- was disallowed and order for recover the same from the appellant under Section 73(9) of the CGST Act, 2017 along with Interest under Section 50 of the CGST Act, 2017. Further Penalty of Rs. 19,62,263/- was imposed on the appellant under Section 73(9) of the CGST Act, 2017.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:

- o The appellant originally registered with Central Excise Authority as dealer in name of M/s. Anil Organics. While granting the registration under Rule 9 of Central Excise Rules, 2002 on 01.03.2007, it was clearly mentioned in the certificate issued by the Central Excise Authority that the appellant was registered as a dealer of excisable goods. The appellant was granted Registration bearing number AEAPS2639PXD001 on 01.03.2007. A copy of the registration certificate issued to the appellant on 01.03.2007 as dealer was submitted by them along with appeal memorandum.
- o The appellant subsequently decided to import trading items and therefore, sought another registration as importer of excisable goods in the same name. Accordingly, the appellant was granted another registration on 15.04.2014 which was numbered AEAPS2639PE1002. A copy of the registration certificate issued to appellant on 15.04.2014 as importer was submitted by them along with appeal memorandum.
- o The appellant filed periodical returns on a quarterly basis separately as dealer for domestic purchase of goods and import of the goods. Copies of acknowledgements showing filing of Central Excise Returns for the fourth quarter of 2016-17 and first quarter of 2017-18 were submitted by them along with appeal memorandum.
- o In terms of Rule 117 of CGST Rules, 2017, if the registered person sought to claim transitional credit under Section 140 under CGST Act, 2017, a declaration in Form GST TRANS-1 was required to be filed within 90 days from the date of 20h September 2017. Proviso to 117 of CGST granted power to CGST Commissionerate to extend the time limit for



- filing TRAN-1 on recommendation of the CGST Council by a further period not exceeding 90 days. In view of the powers conferred under Rule 117 of the CGST Rules, 2017 the said time limit for filing Form GST TRAN-1 was initially extended from 28.09.2017 to 31.10.2017 vide order No. 03/2017-CGST dated 21.09.2017. Subsequently, the time limit was further extended to 27.12.2017 through order Nos. 07/2017-GST dated 28.10.2017 and 09/2017-GST dated 15.09.2017.
- Accordingly, the appellant filed declaration in Form GST TRANS-1 on 20.12.2017 by declaring balance CENVAT credit carrying forward in the GST.
- The appellant being a dealer and importer of excisable goods, ought to have declared the above amount in column 7(a) of GST-TRAN-1 as per Section 140(3) of the CGST Act, 2017. The appellant inadvertently declared the above amount in column 5(a) of GST TRAN-1. Prescribed GST Form TRANS-1 downloaded from the website was submitted by them along with appeal memorandum.
- The Deputy Commissioner, State Corporate Cell, Ahmedabad issued the letter to the appellant for carry out the audit under GST for the period July 2017 to March 2018 in terms of Section 65 of the SGST Act, 2017. The appellant was directed to appear before the State Authority alongwith the documents as mentioned in the letter. A copy of the letter dated 31.12.2020 issued by the Deputy Commissioner-1, State Corporate Cell, Ahmedabad conducting audit for the period 2017-18 was submitted by them along with appeal memorandum.
- The appellant vide letter dated 06.09.2021 pointed out to the Deputy Commissioner of CGST, Ahmedabad South that the State GST Authority conducted audit for the period 2017-18. The appellant furnished all the documents including TRAN-1 with its supporting documents. After examination the documents, no objection was raised regarding denial of ITC. A copy of the letter dated 06.09.2021 addressed to the Deputy Commissioner of CGST, Ahmedabad was submitted by them along with appeal memorandum.
- The appellant vide its letter dated 07.09.2021 submitted detailed statements in 2 sets related to TRANS-1 credit alongwith all the requisite documents to support their claims. It was categorically mentioned that one statement was pertained to import, and another statement was of domestic purchase. The appellant also mentioned that all future correspondence related to the captioned matters may be communicated at the



new address. A copy of the letter dated 07.09.2021 with its annexures was submitted by them along with appeal memorandum.

- The adjudicating authority without furnishing the report dated 25.11.2022 provided by the Jurisdictional Assistant Commissioner, CGST, Division-VI relied upon the said report and held that the appellant incorrectly carry forwarded ITC in TRAN-1 under Table 5(a) of GST TRAN-1.
- The adjudicating authority ought not to have disallowed transitional credit by holding that the appellant incorrectly carried forward the transitional credit in TRANS-1 under Table 5(a) of GSTR TRAN-1 instead of Table 7(a) of GST TRAN-1. The adjudicating authority ought to have allowed transitional credit by dispensing with an inadvertent error made by the appellant while claiming transitional credit through GST TRANS-1. The action of the adjudicating authority for denial of transitional credit by taking hyper technical view is contrary to the well settled legal positions laid down by various Hon'ble High Courts and the Hon'ble Supreme Court. The impugned order is therefore, contrary to the well settled legal positions. Hence, the same is required to be quashed and set aside in the interest of justice.
- The appellant submitted that the appellant being registered dealer under erstwhile provisions of the Central Excise Act, 1944, was eligible to take credit of eligible duties in respect of inputs held in stock subject to compliance of the conditions provided in Section 140(3) of the CGST Act, 2017.
- The appellant complied with all the conditions as provided under Section 140(3) and therefore, the impugned order denying transitional credit on account of filling up the details in wrong column of GST TRANS-1 Form is contrary to the law.
- It is submitted that in respect of the first condition imposed under Condition No. (i) of Section 140(3), the Appellant used such inputs or goods to make taxable supplies under the Act. It is not even disputed by the adjudicating authority that the appellant used closing stock lying on 30.06.2017 for making taxable supply on which the appellant paid GST.
- The adjudicating authority ought to have appreciated that the appellant complied with Condition No. (ii) of Section 140(3) regarding eligibility of Input Tax Credit of closing stock under the provisions of CGST Act. The appellant is in the business of



trading chemical items which were dutiable under erstwhile Central Excise Act and is taxable under the provisions of the CGST Act.

- The appellant submitted that they complied with Condition No. (iii) of Section 140(3) as they possessed invoices evidencing payment of duty under the Central Excise Act, 1944. The adjudicating authority has mentioned in Para 12.5 of the impugned order regarding possession of the duty paid documents.
- The appellant submitted that the appellant complied with Condition No. (iv) of Section 140(3) as the appellant possessed invoices and other documents which were issued not earlier than 12 months immediately preceding 30.06.2017. Upon verification of invoices, where the adjudicating authority found that the appellant possessed the invoices for a period more than 12 months, the adjudicating authority denied the credit as mentioned in para 13.2 of the impugned order. Based on the verification report dated 25.11.2022 regarding eligibility/correctness of credit filed in TRANS-1 furnished by the Jurisdictional Assistant Commissioner, CGST, the jurisdictional officer found that invoices having tax amount of Rs.1,32,788/-is for the period of more than one year and therefore, the jurisdictional officer proposed denial of credit to that extent. Since the appellant availed ITC on domestic purchase of the goods only of Rs.17,37,632/- against eligibility of credit of Rs.17,65,263/-, it was specifically mentioned in the report that there was no impact of eligibility of credit. Similarly, the appellant submitted Bills of Entry evidencing payment of CVD for the stocks of imported lying on 30.06.2017. Based on Bills of Entry submitted by the appellant, the adjudicating authority denied credit after relying upon the report dated 25.11.2022 issued by Jurisdictional Officer that one Bill of Entry having CENVAT credit of Rs.51,183/- was of more than one year as on 30.06.2017. However, instead of denying ITC to that extent, the adjudicating authority denied the entire amount of ITC, which is contrary to the law.
- Without prejudice to the aforesaid, it is submitted that the Hon'ble Gujarat High Court in the case of **Filco Trade Centre Pvt. Ltd. Vs. Union of India - 2018 (17) GSTL 3 (Guj.)** declared Condition No. (iv) of Section 140(3) is unconstitutional and the same was strike down.
- The appellant submitted that they had not claimed any abatement under any provisions of CGST Act and therefore, Condition No. (v) of Section 140(3) has not been violated. The adjudicating authority even has not disputed these facts.



- Since the appellant complied with all the conditions as provided Section 140(3), the adjudicating authority ought not to have been denied transitional credit by taking hyper technical view that the appellant would have claimed closing balance of ITC in Table 7(a) of GST TRANS-1 Form instead of claiming ITC in column 5 (a) of GST TRANS-1 form.
- The appellant submits that identical issue arose in the case of **G.C. Infra Innovations Vs. Union of India - 2022 (65) GSTL 17 (Ker.)** wherein the Petitioner by inadvertent mistake, submitted declaration in Form GST TRANS-1 declaring the details of ITC in Table 7(d) of Part B instead of Table 7(a) of Para 7B. The Hon'ble High Court held that registered tax-payers who are eligible for credit of tax paid under pre GST regime were entitled to claim ITC as per provisions of Section 140 of the CGST Act. It was held that as far as GST regime was concerned, the period between 2017 and 2020 ought to have been referred as nascent period of legislation. Several hindrances occurred even from the department. The said period was referred to by various High Courts as trial-and-error phase as far as implementation of GST statute was concerned. The Hon'ble High Court after referring to the decision of **Brand Equity Treaties Ltd. Vs. Union of India - 2020 (38) GSTL 10 (Del.)** held as under:

"these problems could be attributed either to the failure of the system maintained by the Department or even on the in experience of the assesseees in the ways and means provided by the new regime. The Court went on to observe that the Department, which ought to have come to the rescue of the taxpayers, especially during the nascent stage of its legislation, has failed in respect of the petitioner to provide succour for the difficulty faced by it."

- The Hon'ble Delhi High Court in the case of **Bharagava Motors Vs. Union of India - 2019 (26) GST 164** in identical situation held as under:

"10. The GST System is still in a 'trial and error phase' as far as its implementation is concerned. Ever since the date the GSTN became operational, this Court has been approached by dealers facing genuine difficulties in filing returns, claiming input tax credit through the GST portal. The Court's attention has been drawn to a decision of the Madurai Bench of the Madras High Court dated 10th September, 2018 in W.P. (MD) No. 18532/2018 (Tara Exports v. Union of India) where after acknowledging the procedural difficulties in claiming input tax credit in the TRAN-1 form that Court directed the respondents "either to open the portal, so as to enable the



petitioner to file the TRAN-1 electronically for claiming the transitional credit or accept the manually filed TRAN-1" and to allow the input credit claimed "after processing the same, if it is otherwise eligible in law".

- The adjudicating authority ought to have appreciated that the Hon'ble Supreme Court in the case of **Filco Trade Centre Pvt. Ltd.** (Supra) issued specific direction to Goods and Service Tax Network (GSTN) to open common portal for filing concerned forms for filing transitional credit whoever could not be filed TRANS-1 and TRANS-2 irrespective whether the assessee filed Petition before High Court or whether the case of tax payer has been decided by Information Technology Redressal Technical Committee or not.
- The appellant submitted that in terms of the decision passed by the Hon'ble Supreme Court, the appellant would have filed revised TRAN-1 by making correct entry in GST TRAN-1 Form in respect of transitional credit. However, C.B.I. & C. Circular No. 180/12/2022-GST, dated 9-9-2022 issued by the Central Board of Indirect Taxation and Customs pursuant to the decision of **Union of India Vs. Filco Trade Centre Pvt. Ltd.** (supra) wherein the assessee like the Appellant was specifically debarred to file Form GST-TRAN-1 and GST TRAN-2 where the ITC has been disputed by the GST Officers. Relevant para 4. 7 is reproduced hereunder:

"4,7 It is clarified that those registered persons, who had successfully filed TRAN-1/TRAN-2 earlier, and who do not require to make any revision in the same, are not required to file/ revise TRAN-1/TRAN-2 during this period from 1-10-2022 to 30-112022. In this context, it may further be noted that in such cases where the credit availed by the registered person on the basis of FORM GST TRAN-1/TRAN-2 filed earlier, has either wholly or partly been rejected by the proper officer, the appropriate remedy in such cases is to prefer an appeal against the said order or to pursue alternative remedies available as per law. Where the adjudication/appeal proceeding in such cases is pending, the appropriate course would be to pursue the said adjudication/appeal. In such cases, filing a fresh declaration in FORM GST TRAN-1/TRAN-2, pursuant to the special dispensation being provided vide this circular, is not the appropriate course of action".

- The appellant submitted that the adjudicating authority categorically mentioned in the impugned order that the appellant furnished all the documents for eligibility of ITC. Since the appellant incorrectly carried forward ITC in TRANS-1 under Table 5(a) of



GST TRAN-1 instead of Table 7(a), the appellant had been denied transitional credit under Section 140 of the CGST Act.

- In view of the submissions made hereinabove and the decisions rendered by various Courts including Hon'ble Supreme Court, the adjudicating authority ought to have allowed ITC by dispensing with inadvertent error made by the appellant.
- The adjudicating authority ought to have supplied the letter bearing F. No. CGST/WS06/O&A/Misc./2021-22 dated 25.11.2022 issued by the Assistant Commissioner, CGST Division to the appellant whereby verification report regarding the eligibility/correctness of credit availed in Tran-1 was submitted. Since the impugned order has been passed without supplied the letter with the verification report, it violates principle of natural justice and therefore, the impugned order is required to be quashed and set aside.
- The adjudicating authority erred in imposing penalty under Section 73(9) on the premise that the appellant wrongly availed transitional credit of ITC. The appellant submits that they have rightly availed ITC of transitional credit and therefore, penalty ought not to have been imposed.
- The appellant submit that as the entire demand is unsustainable since they are not liable to repay transitional credit, the imposition of penalty under Section 73(9) of the CGST Act and the demand of interest under Section 50 of the CGST Act cannot be sustained.

4. Personal hearing in the case was held on 11.08.2023. Shri Hardik P. Modh, Advocate, appeared on behalf of the appellant for personal hearing and reiterated submissions made in appeal memorandum. He referred to para 13.2 of the impugned order and submitted that their claim for transitional credit was denied because they had claimed the ITC in Table 5(a) instead of Table 7(a) applicable to their case. He submitted that the substantial benefit of transitional credit cannot be denied only because of such inadvertent technical mistakes. In this regard, he referred to the judgement of Hon'ble High court of Madras in the case of Vikas Elastochem Agencies Private Limited Vs. Deputy Commissioner of Central Excise and GST – 2022 (63) GSTL – 100 (Madras). He also mentioned that after Hon'ble Supreme Court's judgement in the case of Union of India Vs. Filco Trade Centre Private Limited – 2022 (63) GSTL-162, the board had issued circular number 180/12/2022 dated 09.11.2022 and the portal window for submission of Tran-1 filing and rectification of Tran-1 mistakes was opened for the benefit of the taxpayers. However, in view of the direction for exclusion of the



subjudice cases from this facility, the appellant could not avail the facility for rectification of their claim as DRC-01 was already issued by the department on 10.09.2021 and the matter was pending before the adjudicating authority. Therefore, he requested to set aside the impugned orders and to allow the transitional credit.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum; submission made during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the disallowance of transitional credit of Rs. 1,96,22,630/- by the adjudicating authority in the impugned order in the facts and circumstance of the case, is legal and proper or otherwise.

6. It is observed that the main contention of the appellant are that they, being a dealer and importer of excisable goods, ought to have declared the transitional credit amount of Rs. 1,96,22,630/- in column 7(a) of GST-TRAN-1 as per Section 140(3) of the CGST Act, 2017, however, by inadvertently, they have declared the above amount in column 5(a) of GST TRAN-1. The appellant ^{claims to have} complied with all the conditions as provided under Section 140(3) and therefore, the impugned order denying transitional credit on account of filling up the details in wrong column of GST TRANS-1 Form is contrary to the law.

6.1 It is also observed that the adjudicating authority has disallow^{ed} the transitional credit vide the impugned order observing as under:

"13.2 In order to ascertain the admissibility of credit mentioned in the Tran-1, the documents submitted by the taxpayer were sent for verification to the Jurisdictional Assistant Commissioner, CGST Division-VI, Ahmedabad South on 26/09/2022. The Assistant Commissioner, CGST Division-VI, Ahmedabad vide letter issued from F.No. CGST/WS06/O&A/Misc/2021-22 dated 25/11/2022 has submitted the verification report regarding the eligibility/ correctness of credit availed in Tran-1. The relevant portion of the verification report submitted by the Assistant Commissioner, CGST Division-VI, Ahmedabad is reproduced hereunder:

"The taxpayer has claimed credit in Tran-1 in table 5(a) for Rs.1,96,22,630/- The table 5(a) is for amount of Cenvat credit carried forward to electronic credit ledger as central tax [Section 140(1) and Section 140(4)(a) and Section 140(9)]. As per the reply of the Taxpayer and documents submitted by him, it is noticed that his claim pertains to the inputs held in stock as on 30.06.2017. It appears that he should have claimed the ITC in Table 7(a) of Tran-1 but he has claimed in table 5(a). Since, the ITC claim in table 5(a) is for closing

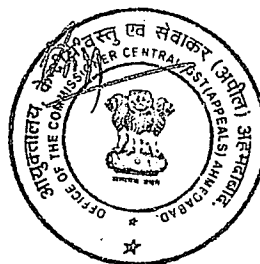


balance of the eligible Cenvat Credit of the Returns of June, 2017 and the above taxpayer has not filed any returns showing the closing balance of Cenvat credit as on 30.06.2017, the ITC claimed should be disallowed. However, findings in respect of the copies of invoices, bill of entries and list of stocks as held on 30.06.2017 have been verified and the findings are as under :

i) List of input stocks held on 30.06.2017 on the basis of local purchase having Excise tax invoices: On going through the copy of invoices and list of input stocks as on 30.06.17 provided by the taxpayer, it is noticed that there are some invoices having tax amount of Rs.1,32,788/- are of more than one year as on 30.06.2017, ITC claim of which are not allowed as per Section 140(3)(i) of CGST Act, 2017. Hence. the eligible amount as per this list is Rs. 17,65,263/- but he claimed Rs. 17,37,632/- which is below the credit available as per stocks held.

ii) List of inputs stocks held on 30.06.2017 on the basis of Bills of Entries: On going through the copies of Bill of entries and list of input stocks as on 30.06.17 for the cenvat amount of Rs. 1,78,52,396/- provided by the taxpayer, but he claimed in Tran-1 as Rs. 1,78,84,998/- which is in excess of Rs. 32,602/- . Further, it is also noticed that there is one Bill of entry having cenvat amount of Rs.51,183/- is of more than one year as on 30.06.2017, ITC claim of which is not allowed as per Section 140(3)(iv) of CGST Act, 2017. Accordingly, the taxpayer has claimed excess amount of Rs.83,785/- (Rs. 32,602/- + Rs. 51,183/-) in Tran-1 as compared to the list of stocks given by him."

13.3 In view of the above discussion and findings, perusal of the show cause notice, submissions made by the taxpayer, supporting documents and the verification report submitted by the jurisdictional Assistant Commissioner, CGST Division-VI, Ahmedabad South, I conclude that the ITC amounting to Rs. 1,96,22,630/- has been incorrectly carried forward in TRAN-I under table 5(a) of GST TRAN-1. Table 5(a) of GST TRAN-1 is for the amount of Cenvat credit carried forward to the electronic credit ledger as central tax [Section 140(1) and Section 140(4)(a) and Section 140(9)]. The ITC claimed in table 5(a) is for closing balance of the eligible Cenvat Credit of the returns of June, 2017 whereas the taxpayer has not filed any returns showing the closing balance of Cenvat credit as on 30.06.2017. This coupled with the claiming of excess and clearly ineligible credit of Rs.83,785/- leads me to conclude that the ITC amounting to Rs.1,96,22,630/- claimed in TRAN-1 is not eligible."



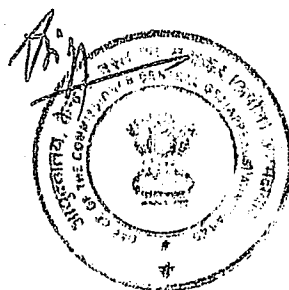
7. I find that the appellant, have taken transitional credit of Rs. 1,96,22,630/- in Tran-1 return. Out of the said amount of Rs. 1,96,22,630/-, the input tax credit of Rs. 1,78,52,396/- belongs to the amount of CVD and SAD in respect of the stock held as on 30.06.2017 of the goods imported vide 61 Bills of Entry (BoE) which was claimed as TRAN-1 credit. The input tax credit of the remaining amount of Rs. 17,37,632/- belongs to the amount of Central Excise duty in respect of the stock held as on 30.06.2017 against the purchase made from domestic market vide 70 invoices. I also find that the appellant have to declare the transitional credit amount of Rs. 1,96,22,630/- in column 7(a) of GST-TRAN-1 as per Section 140(3) of the CGST Act, 2017, however, by mistake, they have declared the said amount in column 5(a) of GST TRAN-1. The adjudicating authority has in the impugned order disallowed the transitional credit on account of filling up the details in wrong column of GST TRANS-1 Form. I also find that the adjudicating authority has also observed that the appellant has claimed excess credit of Rs. 32,602/- in respect of 61 Bills of Entry and also Rs. 51,183/- in respect of one out of 61 Bills of Entry is of more than one year old as on 30.06.2017 and ITC claim of which is not allowed as per Section 140(3)(iv) of CGST Act, 2017. Accordingly, the adjudicating authority has observed that the appellant has claimed total excess and ineligible credit amounting to Rs.83,785/- (Rs. 32,602/- + Rs. 51,183/-) in Tran-1 as compared to the list of stocks given by him.

7.1 I find that in accordance with the directions of Hon'ble Supreme Court vide order dated 22.07.2022 in the matter of Union of India vs. Filco Trade Centre Pvt. Ltd. , SLP(C) No. 32709-32710/2018, the facility for filing TRAN-1/ TRAN-2 or revising the earlier filed TRAN-1/TRAN-2 on the common portal by an aggrieved registered assessee made available by GSTN during the period from 01.10.2022 to 30.11.2022 and the CBIC vide Circular No. 180/12/2022-GST dated 09.11.2022 issued Guidelines for filing/revising TRAN-1/TRAN-2 in terms of order dated 22.07.2022 & 02.09.2022 of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd.. The relevant portion of the Circular No. 180/12/2022-GST dated 09.11.2022, reads as under:

Circular No. 180/12/2022-GST dated 09.11.2022

4. Guidelines for the applicant for filing TRAN-1/TRAN-2 or revising earlier filed TRAN-1/TRAN-2:

4.1 The applicant may file declaration in FORM GST TRAN-1/TRAN-2 or revise earlier filed TRAN-1/TRAN-2 duly signed or verified through electronic verification code on the common portal. In cases where the applicant is filing a revised TRAN-1/TRAN-2, a facility for downloading the TRAN-1/TRAN-2 furnished earlier by him will be made available on the common portal.



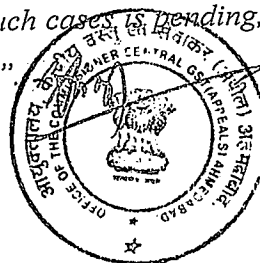
4.2

4.7 It is clarified that those registered persons, who had successfully filed TRAN-1/TRAN-2 earlier, and who do not require to make any revision in the same, are not required to file/ revise TRAN-1/TRAN-2 during this period from 01.10.2022 to 30.11.2022. In this context, it may further be noted that in such cases where the credit availed by the registered person on the basis of FORM GST TRAN-1/TRAN-2 filed earlier, has either wholly or partly been rejected by the proper officer, the appropriate remedy in such cases is to prefer an appeal against the said order or to pursue alternative remedies available as per law. Where the adjudication/ appeal proceeding in such cases is pending, the appropriate course would be to pursue the said adjudication/ appeal. In such cases, filing a fresh declaration in FORM GST TRAN-1/TRAN-2, pursuant to the special dispensation being provided vide this circular, is not the appropriate course of action.

5. The declaration in FORM GST TRAN-1/TRAN-2 filed/ revised by the applicant will be subjected to necessary verification by the concerned tax officers. The applicant may be required to produce the requisite documents/ records/ returns/ invoices in support of their claim of transitional credit before the concerned tax officers for verification of their claim. After the verification of the claim, the jurisdictional tax officer will pass an appropriate order thereon on merits after granting appropriate reasonable opportunity of being heard to the applicant. The transitional credit allowed as per the order passed by the jurisdictional tax officer will be reflected in the Electronic Credit Ledger of the applicant on the common portal."

7.2 In this regard, I am of the considered view that the adjudicating authority has denied / disallow^{ed} the transitional credit merely on the ground that the appellant has not shown the said amount in correct Table 7(a). If the appellant would have filed revised TRAN-1 by making correct entry in Table 7(a) in GST TRAN-1 Form in respect of transitional credit, on the basis of direction of the Hon'ble Supreme Court and the department will allow the transitional credit.

7.3 I also find that as DRC-01 was already issued by the department on 10.09.2021 and the matter was pending before the adjudicating authority, the appellant had not filed the revised Tran-1 showing the transitional credit in correct Table 7(a) applicable to their case, in view of the Para 4.7 of the aforesaid circular dated 09.11.2022, wherein it was stated that "Where the adjudication/ appeal proceeding in such cases is pending, the appropriate course would be to pursue the said adjudication/ appeal."



7.4 In view of the aforesaid discussion, I find that the substantial benefit of transitional credit cannot be denied only because of such inadvertent technical mistake i.e. showing the transitional credit in Table 5(a) instead of correct Table 7(a) applicable to their case, in back drop of the situation that the facility for filing TRAN-1 / TRAN-2 or revision the earlier filed TRAN-1 / TRAN-2 on the common portal by an aggrieved registered assessee made available by GSTN during the period from 01.10.2022 to 30.11.2022 in terms of order of Hon'ble Supreme Court as enumerated above.


8. I also find that the appellant not made any arguments in respect of findings of the adjudicating authority with regard to total excess and ineligible credit of Rs. 83,785/- (Rs. 32,602/- + Rs. 51,183/-) in Tran-1. Thus, I find that the appellant also agree with the findings of the adjudicating authority in this regard.

9. In view of the above, I allow the Transitional Credit of Rs. 1,95,38,845/- and disallow the Transitional Credit of Rs. 83,785/- and order to recover the same from the appellant under Section 73(9) of the CGST Act, 2017 along with appropriate interest under Section 50 of the CGST Act, 2017. I reduce the penalty under Section 73(9) of the CGST Act, 2017 to Rs. 10,000/- as the same is higher than 10% of the tax i.e. Rs. 8,379/-.

10. In view of the above, the appeal is partially allowed.

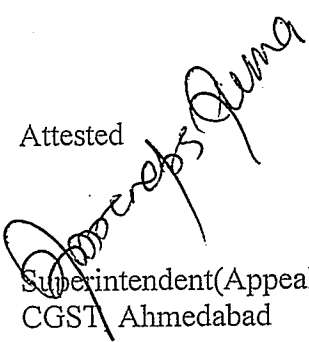
11. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

The appeal filed by the appellant stands disposed of in above terms.


(Shiv Pratap Singh)
Commissioner (Appeals)

Date : 25.12.23

Attested


Superintendent(Appeals),
CGST Ahmedabad

By RPAD / SPEED POST

To,
M/s. Anil Maneklal Shah,
604-605, Shri Balaji Heights,
B/s. IDBI Bank, Near Tanishq Show Room,
C.G. Road, Ahmedabad - 380006



Appellant

The Additional Commissioner,
Central GST,
Ahmedabad South

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Additional Commissioner, CGST, Ahmedabad South
- 4) The Assistant Commissioner, CGST, Division VI, Ahmedabad South
- 5) The Assistant Commissioner (HQ System), CGST, Ahmedabad South
(for uploading the OIA)

- ~~6) Guard File~~
- 7) PA file



