



आयुक्त(अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाडी, अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015.

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DIN NO. : 20220364SW0000666FF4

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/683/2021-APPEAL / 7121

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-ADC-113/2021-22**

दिनांक Date : **30-03-2022** जारी करने की तारीख Date of Issue : 30-03-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **GST/D-VI/O&A/21/ASAHI/JRS/2020-21** dated **29.01.2021** issued by Assistant Commissioner, Central Goods and Services Tax, Division-VI, Ahmedabad North

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

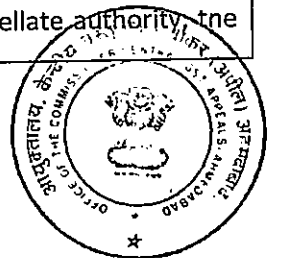
M/s. Asahi Songwon Colors Ltd.,

Asahi House, 13, Aryans Corporate Park,

Nr. Shilaj Railway Crossing, Thaltej,

Ahmedabad, Gujarat – 380059

(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 अपीलार्थी 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 :-**

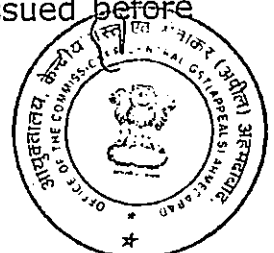
M/s. Asahi Songwon Colors Ltd., Asahi House, 13, Aaryans Corporate Park, Near Shilaj Railway Crossing, Thaltej, Ahmedabad – 380059 (hereinafter referred as '*appellant*') has filed the present appeal against Order No. GST/D-VI/O&A/21/ASAHI/JRS/2020-21 dated 29.01.2021 (hereinafter referred as '*impugned order*') passed by the Assistant Commissioner, CGST & C. Ex., Division – VI, Ahmedabad North (hereinafter referred as '*adjudicating authority*').

2. Briefly stated the facts of the case are that on the basis of audit observation a Show Cause Notice was issued to the '*appellant*'. It was alleged in the SCN that the '*appellant*' was having CENVAT credit balance of Rs.93,31,219/- (*Inputs & Capital Goods : 7745092 + Service Tax : 1586128*) as of 30.06.2017. However, the '*appellant*' has carried forward the CENVAT credit of Rs.1,46,74,467/- (*Inputs & Capital Goods : 7763311 + Service Tax : 6911156*) under TRAN-I in GST regime considering it as admissible ITC. Therefore, it was alleged that the '*appellant*' has wrongly availed the credit and carried forward excess amount of credit in the TRAN-1 in GST era. The *adjudicating authority* has confirmed the said SCN vide *impugned order*. As per the *impugned order* the *adjudicating authority* has confirmed the demand of wrongly availed and transferred Cenvat Credit of Rs.46,68,404/- under Section 73 of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017 with interest under Section 50 of the CGST Act, 2017. Further, the *adjudicating authority* has imposed penalty of Rs.4,66,840/- under Section 122(2) of the CGST Act, 2017.

3. Being aggrieved with the *impugned order* the *appellant* has preferred the present appeal on 26.03.2021. The '*appellant*' is mainly contending for the credit availed in TRAN-1 in GST as under :

1	Credit availed on the basis of Challan of Service Tax which was paid under RCM	Rs.9,49,697/-
2	Credit availed on the basis of invoices which were issued before 30.06.2017	Rs.37,18,707/-

The '*appellant*' in the grounds of appeal has submitted that the credit availed on the basis of Challan of Service Tax Rs.9,49,697/- paid under RCM and the credit of Rs.37,18,707/- taken on the invoices issued before



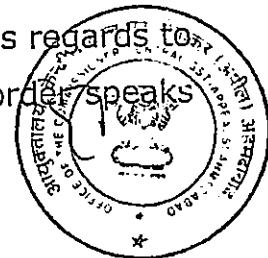
30.06.2017 not admissible as TRANSITIONAL CREDIT in TRAN-1 is not acceptable. The '*appellant*' has referred the provisions of Section 174 and 140 of the CGST Act, 2017 and stated that the *adjudicating authority* has discussed the provisions of Section 140 in the *impugned order* but no specific findings given as to how the '*appellant*' failed to comply, the conditions of Section 140. Further, the *adjudicating authority* has discussed the D.O. letter No. 267/8/2018-CX.8 dated 14.03.2018 and para 12 of the Guidance Note on CGST Transitional Credit, however, no findings given on applicability of the same in the present matter. The *appellant* has further submitted that the provisions of Section 73, 50 & 122 are simply copy paste in the *impugned order* but no specific findings given on its applicability in the present matter.

In view of above, the '*appellant*' has submitted that the *adjudicating authority* has issued the *impugned order* without examined provisions of law of transitional arrangement for Input Tax Credit as provided under Section 140 of the CGST Act and Rule 117 & 118 of the CGST Rules, 2017, therefore, the *impugned order* is deserved to be quashed.

4. In the grounds of appeal the '*appellant*' has submitted that in the present matter, the admissibility of credit as ITC under CGST Act, 2017 is neither disputed in SCN nor in the *impugned order*. The '*appellant*' has further submitted that they have paid the Service Tax under RCM by Challan under the provisions of Finance Act, 1994 and as not carried forward credit of same in the Returns, such amount of payment is admissible as ITC under the CGST Act, 2017.

5. The '*appellant*' has referred the three circumstances mentioned in the Section 140(1) of the CGST Act, 2017 and submitted that (1) there is no dispute about admissibility of credit, (2) they have furnished all the returns required under existing law and (3) no exemption notification notified by government for goods manufactured and cleared, related to the credit in question. Accordingly, the '*appellant*' has submitted that the credit in TRAN-1 is appeared to be proper.

6. The '*appellant*' has submitted that the credit claimed in TRAN-1 is admissible as CENVAT Credit under the provisions of Central Excise Act, 1944 and Finance Act, 1994 therefore, they have complied the condition of Section 140(2); that the provisions of sub section 3 and 4 of Section 140 of the CGST Act, 2017 is not applicable in the present case; that as regards to the sub section 5 of Section 140, neither SCN nor *impugned order* speaks



about its applicability hence, not discussed here; that sub section 6,7,8,9 & 10 of Section 140 of the CGST Act, 2017 is not applicable in the present case.

7. The 'appellant' has further submitted that the duties they have claimed in TRAN-1 are eligible duties as per the explanation 1 & 2 provided in Section 140 of the CGST Act, 2017. Hence, the recovery of eligible duties confirmed in *impugned order* is not legal and sustainable in law.

8. The 'appellant' has referred the following case laws, wherein Cenvat Credit were allowed, where manufacturer has failed to follow the procedure laid down under Cenvat Credit Rules, 2004 :

- (1) 2021(44) G.S.T.L. 101 (Tri. Bang) Hical Technologies V/s. Commissioner of C. Ex.-1, Bangalore
- (2) 2017(49) S.T.R. 581 (Tri. All) Dhampur Sugar Mills Ltd. V/s. Commissioner of C. Ex., Meerut-II

9. Considering the foregoing facts and submissions the 'appellant' has submitted that the credit of tax paid on input and input services cannot be denied on the ground that a person has not followed the procedure for availing Cenvat Credit under Central Excise Act, 1944 or CGST Act, 2017.

Further, in support to defend their case the 'appellant' on 03.03.2022 through e-mail submitted the copies of following case laws and requested to considered the same :

- (1) 2021(050) G.S.T.L. 0514 (Del) Jahanpanah Club V/s. Union of India
- (2) 2019 (31) G.S.T.L. 422 (Guj.) Jakap Metind Pvt. Ltd. V/s. Union of India
- (3) 2020(41) G.S.T.L. 600 (A.P.) Sri G. K. Exim V/s. Deputy Commissioner of Commercial Tax, Visakhapatnam

Personal Hearing :

10. Personal Hearing in the matter was through virtual mode held on 04.03.2022, Shri R. R. Dave, Tax Consultant, appeared on behalf of the 'Appellant' as Authorized Representative. During P.H. he has reiterated the written submissions made till date and informed that they have nothing more to add to their written submissions/documents/details submitted till date to defend the case.

Discussion and Findings :

11(i). I have carefully gone through the facts of the case available on records as well as submissions made by the 'Appellant' till



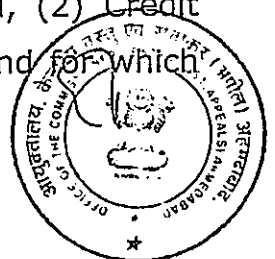
date. I find that under the present appeal, out of the total transitional credit of Rs.1,46,74,467/- claimed by appellant through TRAN-1, the following credit of Rs.46,68,404/- are now in dispute :

1	Credit availed on the basis of Challan of Service Tax which was paid under RCM	Rs.9,49,697/-
2	Credit availed on the basis of invoices which were issued before 30.06.2017	Rs.37,18,707/-
	TOTAL	Rs.46,68,404/-

11(ii). On going through the *impugned order* I find that the aforesaid credit is denied on the grounds that –

- As per TRAN-1 along with ER-1 return of June-2017, ST-3 Return of June-2017, RG 23 A Pt. II, RG 23 C Pt. II & Service Tax Pt. II, there was Cenvat Credit balance as admissible ITC aggregating to Rs.93,31,219/-. However, Cenvat Credit of Rs.1,46,74,467/- was carried forward in TRAN-1 as admissible ITC.
- Availment of Credit of Rs.46,68,404/- is not in accordance with the conditions so prescribed in Section 140 for availment of such credit.
- According to GUIDANCE NOTE the transitional cenvat credit can be carried forward in TRAN-1 for a manufacturer – (a) Cenvat Credit carried forward in Return (ER-1-2-3/ST-3) of period ending on 30.06.17, (b) un-availed credit of Capital Goods in Pre-GST era to be availed in two installments of 50% each and (c) Input or Input Services received after 01.07.17 but taxes on which paid under existing law (Goods / Services in transit).
- Service Tax Credit arises as a consequence of payment on RCM basis after 30.06.17 by 5th/6th July 2017 to be indicated in Part-I of ST-3 in entries 13.1.2.6, 13.2.2.6 and 13.3.2.6 Linked entries in Part H of ST-3. In case returned already filed they can file revised return. However, assessee failed to follow said procedure as mandated under law.
- The assessee failed to comply with provisions as defined for Goods/Services in Transit under Section 140 of the CGST Act, hence they have carried forward excess credit under TRAN-1.

12. In view of above, I find that the credit is mainly denied on the ground that (1) credit availed on the basis of challan of Service Tax paid under RCM and for which prescribed procedure not followed, (2) Credit availed on the basis of invoices of period prior to 30.06.17 and for which




failed to follow condition of Section 140 of the CGST Act, 2017. However, I do not find any allegation in the SCN or findings in the *impugned order* about the inadmissibility of credit under Cenvat Credit Rules, 2004. There is no dispute about receipt of input/capital goods or input services and no dispute about its use in the course of manufacture of final product etc. Therefore, I find that basically there is no dispute about the admissibility of credit so availed/claimed under TRAN-1. On going through the records available I find that prima-facie the credit is otherwise admissible, but due to not follow the prescribed procedure the credit is denied under the *impugned order*. Further, *appellant* has also referred three circumstances mentioned in the Section 140(1) of the CGST Act, 2017 and submitted that the credit availed by them is proper.

13. Further, on going through the case laws referred and relied upon by the *appellant* in the present appeal, I find that in the said case laws the credits are allowed even if prescribed procedure not followed. Accordingly, I find that said case laws are squarely applicable to the facts and circumstance of the present case.

14. In view of foregoing, I find force in *appellant's* contention and accordingly, I am of the view that they are eligible for the credit of Rs. Rs.46,68,404/- which is denied under the *impugned order*. Since the *appellant* is eligible of the said credit, imposition of penalty is not justified. Accordingly, I hereby set aside the *impugned order* to the extent of denial of credit of Rs.46,68,404/- as well as penalty of Rs.4,66,840/- and allowed the appeal filed by the '*Appellant*'.

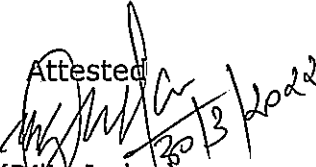
15. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

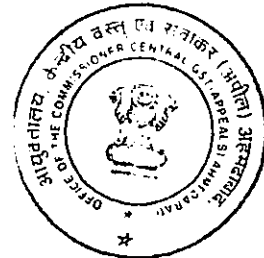
The appeal filed by the *appellant* stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 20.03.2022

Attested

(Dilip Jadav)
Superintendent
Central Tax (Appeals)
Ahmedabad



By R.P.A.D.

To,
M/s. Asahi Songwon Colors Ltd.,
Asahi House, 13, Aaryans Corporate Park,
Near Shilaj Railway Crossing, Thaltej,
Ahmedabad - 380059

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-North.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division - VI,
Ahmedabad North.
- ✓ 5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File

