



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
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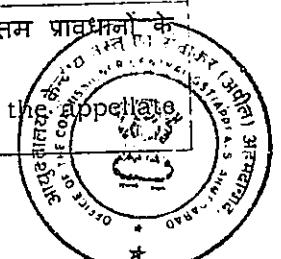


**By Regd. Post**

DIN NO. : 20220264SW0000222CC8

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/320/2021-APPEAL / 6108
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-91/2021-22 and 10.02.2022
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपर आयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	10.02.2022
(ङ)	Arising out of Order-In-Original No. CGST/A'bad North/Div- VII/GST/DC/04/2020-21 dated 26.10.2020 issued by The Deputy Commissioner, CGST, Division-VII, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Torrent Pharmaceuticals Ltd. (GSTIN - 24AAACT5456A3ZP) Address: - Torrent House, Off Ashram Road, Ahmedabad -380009

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to <u>twenty five per cent</u> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax ( Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



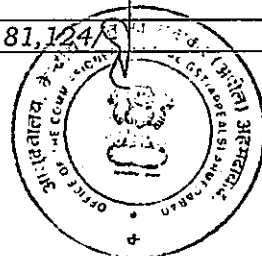
**ORDER-IN-APPEAL****Brief Facts of the Case :**

**M/s. Torrent Pharmaceuticals Limited**, Torrent House, Off Ashram Road, Ahmedabad – 380 009 (hereinafter referred as 'appellant') has filed the present appeal against Order No. CGST/A'bad North/Div. VII/GST/DC/04/2020-21 dated 26.10.2020 (hereinafter referred as 'impugned order') passed by the Deputy Commissioner, CGST, Division – VII, Ahmedabad North (hereinafter referred as 'adjudicating authority').

**2(i).** The 'appellant' is holding GST Registration having GSTIN No.24AAACT5456A3ZP has filed the present appeal on 25.01.2021. The Appellant has mentioned the statement of facts in the appeal memo as under –

- the 'appellant' was registered as Input Service Distributor (ISD) under the Service Tax Law under the provisions of Finance Act, 1994. Thereafter, w.e.f. 01.07.2017 under GST regime the appellant is registered as ISD under Section 24 (viii) of the CGST Act, 2017 having registration No. 24AAACT5456A3ZP.
- Specific transitional provisions were made under the CGST Act, 2017 which allowed the taxpayers to carry forward the unutilized credits available to the taxpayer under the previous taxation regime into the GST regime under the credit ledgers.
- Specifically, Section 140 of the CGST Act, 2017, which provides the carry forward of erstwhile credits into the GST regime. Vide Notification No. 10/2017-Central Tax dated 28.06.2017, Rule 117 was introduced into the CGST Rules, 2017. Rule 117 provided that for a person to avail the benefits of Section 140 of the CGST Act, a person would have to submit an electronic declaration namely form GST TRAN-1.
- At the onset of the GST Regime on 01.07.2017, the Appellant had accumulated credit amounting to Rs.24,81,124/- under their ISD registration which was due to be distributed to the various units of the Appellants. The amount of credit are as follows :

Sr. No.	Particular	Amount Rs.	Remarks
1	Credit balance in ST – 3 Return. Invoices booked prior to the appointed date but pending for distribution	3,31,393/-	Section 140(1) read with Section 140(7) of the CGST Act, 2017
2	Credit pertaining to input services for which duty or tax has been paid by the supplier under the erstwhile law and the same was recorded in the books of accounts by the Appellant within 30 days.	21,49,731/-	Section 140(5) read with Section 140(7) of the CGST Act, 2017
	<b>TOTAL</b>	<b>24,81,124/-</b>	



- Checked all the provisions, notifications, clarifications and circulars for transfer of accumulated ISD Credit, but none of them mentioned about any bar on transfer of ISD Credit through TRAN-1 to the Electronic Credit Ledger into the GST Regime. Hence, the appellant proceeded to transfer the ISD Credit to the tune of Rs.24,81,124/- to its Electronic Credit Ledger, through the TRAN-1 on 27.10.2017.
- After transferring the ISD credit into the Electronic Credit Ledger, the appellant have distributed the ISD credit in books of accounts in compliance with ISD Law but they are unable to upload distribution invoice in GSTR-6. Accordingly, the appellant has informed the said problem to jurisdictional officer vide letter dated 05.10.2018. However, the department vide letter dated 22.10.2018 denied the entire transitional credit carried forward by the Appellant under ISD registration. The appellant has replied vide letter dated 19.11.2018.
- A Show Cause Notice issued to the appellant on 14.07.2020, proposing as to why "ISD Credit balance of Rs.24,81,124/- wrongly carried forward as transitional credit should not be demanded/recovered under Section 73(1) of the CGST Act read with Rule 121 of the CGST Rules along with interest u/s 50(3) and penalty u/s 125 of the CGST Act, 2017.
- Appellant has filed detailed reply to the SCN vide letter dated 21.09.2020 along with requisite documents in which the appellant inter alia denied all the charges leveled against them. The appellant has attended the personal hearing on 09.10.2020.
- The adjudicating authority has confirmed the demand along with interest and penalty vide impugned order on the following grounds :
  - o ISD neither has any liability of its own nor credits and therefore no ledgers as well. When an ISD does not have any electronic credit ledger of its own then it is not possible for it to carry forward any credit (para 24 of OIO)
  - o Section 140(5) and 140(7) of the CGST Act does not talk about transition of undistributed credit lying with an ISD under the erstwhile service tax law. (Para 24 of OIO)
  - o TRAN-1 does not contain any table or column to transition undistributed credit lying with an ISD. Further, guidance note of CBIC cautions against transition of any kind of credit by reading policy intention into the law. (Para 24 of OIO)
  - o It is not a case of denial of substantive right due to technical glitch hence case laws referred by appellant in this regard are not

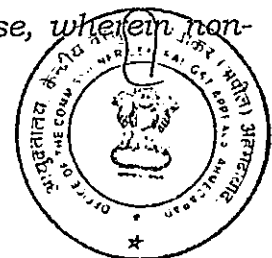


applicable. The issue is of wrongful availment of credit (Para 24 of OIO).

- o As per Section 16 of CGST Act, the ITC claimed by appellant are not entitled to an ISD therefore, the credit availed by them is also not entitled to them. (Para 25 of OIO).
- o Since, the SCN has not been issued to the ISD for demand of credit that has been distributed by the ISD. The demand is for credit that was lying undistributed in the balance of the ISD on appointed date and the Appellant are the recipient of such wrongfully transitioned credit. There is no other recipient of the credit. Thus, the demand has been correctly made for credit availed by the Appellant (Para 27 of OIO).
- o Since the demand is for undistributed and unlawfully transitioned credit the judgements and Board Circular quoted by the Appellant are not relevant to the case (Para 27 of OIO).
- o Since, the Circular No. 122/41/2019 states that DIN would be used for search, authorization, summons, arrest memo, inspection notices and letters issued in the course of any enquiry, however, the impugned show cause notice does not fall within the above definition. (Para 28 of OIO).

**2(ii).** Being aggrieved with the impugned order the appellant has preferred present appeal on the following grounds of appeal :

- ISD Credit of Rs.24,81,124/- has been rightfully availed under Service Tax Laws and which has neither been refuted by the Department in the SCN nor has been refuted in the impugned order. Availed the credit on valid invoices and it has not been challenged by department in any form or manner.
- Referred Section 140(1), 140(5) & 140(7) of the CGST Act, 2017.
- On conjoint reading of Section 140(1), 140(5) read with 140(7) of the CGST Act, 2017 it is clear that every registered person shall be entitled to take, in his electronic credit ledger, amount of Cenvat Credit carried forward in the last return furnished existing law. Since the appellant are a registered person under the CGST Law, hence the appellant i.e. ISD unit shall be eligible to carry forward the credit amount in the Electronic Credit Ledger.
- There is no bar expressly or implicitly in the act or rules made there under with respect to the transfer of ISD credit through TRAN-1 into the electronic credit ledger.
- Referred case of Kunhayammed V. State of Kerala 2001 (129) ELT 11(SC). Same is squarely applicable to the present case, wherein non-



obstante clause present in Section 140(7) of the CGST Act, override all other provisions of the CGST Act, and therefore ISD credit lying in the electronic credit ledger of the appellant are rightfully available.

- Referred para 24 of impugned order, wherein it is held that present case is not of denial of substantive right but wrongful availment of credit which in itself a contradictory statement in as much as the credit available with the appellant are rightful credit and not allowing the appellant to carry forward rightful credit without any authority of law is in itself denial of substantive right.
- As regards to technical irregularities/glitches, referred case of Continental India Pvt. Ltd. and another V/s. UOI [2018-TIOL-04-HC-ALL-GST], M/s. Abicor and Binzel Technoweld Pvt. Ltd. V/s. The Union of India and Anr. (2018-TIOL-05-HC-MUM-GST).
- Further, referred case of Collector of Central Excise, Pune V/s. Dai Ichi Karkaria Ltd. [1999 (112) ELT 353 SC], Bharat Heavy Electricals Ltd. V/s. Commissioner of CGST and CE 2020-VIL-402-CESTAT-DEL-CE.
- As regards to non applicability of Section 16 of CGST referred Section 140(7) of the CGST Act.
- Appellant has further referred following case laws :
  - o UOI V/s. Srinivasan reported in 2012 (281) ELT 03 SC
  - o International Consultants and Technocrats Pvt. Ltd. V/s. UOI reported at 2013 (29) STR 9 (Del.) affirmed by Supreme Court as reported at 2018 (10) GSTL 401 (SC).
  - o Kunj Behari Lal Butail V/s. State of HP – 2000 (1) SCR 1054
- Referred Section 73 (1) of the CGST Act, 2017. Demand under Section 73(1) shall be issued to the person who has wrongly availed and utilized credit. However, the ISD unit neither avail any credit nor utilize any credit. The ISD units are simply taking credit and distributing the same to the concerned units. In this regard referred case of Mahindra and Mahindra Ltd. Vs. CST, Mumbai – 2017 TIOL 2364 CESTAT – MUM. Appellant is of considered view that the demand raised on the appellant being an ISD is not sustainable in law. Also referred case of Kansai Nerolac Paints Ltd. Vs. Commissioner of GST, Mumbai Central 2018 (5) TMI 673.
- Guidance Note on CGST transitional credit is wrongly interpreted by the adjudicating authority. Impugned order travelled beyond the scope of SCN which is not permissible. Referred case laws –
  - o R R Paints Pvt. Ltd. Vs. CCE Mumbai – 2016 (3) TMI 950
  - o Gujarat Forging Ltd. Vs. CCE, Rajkot – 2014 (36) STR 677
  - o DHL Logistics Pvt. Ltd. Vs. CST, Mumbai-I – 2014 (36) STR 874

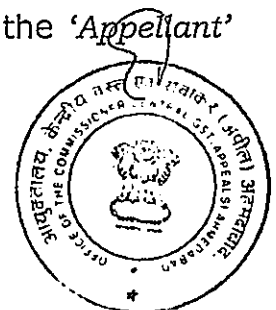


- o *Saci Allied Products Ltd. Vs. CCE, Meerut – 2005 (183) ELT 225*
- o *CCL Products (India) Ltd. Vs. CESTAT, Chennai – 2015 (316) ELT 625 (Mad.)*
- o *Kandarp Dilipbhai Dholakia Vs. UOI 2014 (307) ELT 484 (Guj.)*
- *SCN was not uploaded on the GST Portal as specified under Rule 142 of the CGST Rules, 2017 and does not contain DIN No. as specified under Circular No. 122/41/2019 dated 05.11.2019.*
- *No interest could be levied as tax itself is not payable. Referred case of Pratibha Processors Vs. UOI – 1996 (88) ELT 12 (SC), Commissioner of Customs, Chennai Vs. Jayathi Krishna & Co. – 2000 (119) ELT 4 (SC).*
- *Appellant is not liable to pay amount of credit carried forward as transitional credit. Hence, no question of imposing penalty on the appellant. Referred case laws –*
  - o *Coolade Beverages Limited – 2004 (172) ELT 451 (All.)*
  - o *Tamil Nadu Housing Board Vs. Collector of Central Excise, Madras – 1994 (74) ELT 9 (SC)*
  - o *DCW Ltd. Vs. Asst. Collector of Central Excise – 1996 (88) ELT 31 (Mad.).*
- *There is no fraud, suppression or willful mis-statement on part of the Appellant so as to attract penalty under Section 125 of the CGST Act, 2017. Therefore, on merits of the matter imposition of penalty and demand of interest is not sustainable.*
- *Respectfully Prayed –*
  - o *Set aside the impugned order and allow the appeal in full with consequential relief to the appellant*
  - o *Grant a personal hearing*
  - o *Pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case.*

### **Personal Hearing :**

**3.** Personal Hearing in the matter was through virtual mode held on 11.12.2021. Shri Jigar Shah appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has stated that he wants to submit some additional details. He was given 5 working days for the same.

Accordingly, the 'Appellant' has submitted the additional submission on 19.01.2022. Through additional submission the 'Appellant' has submitted that –

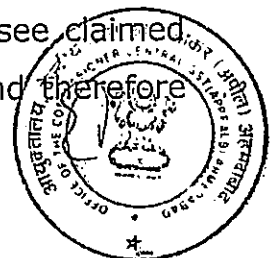


- Provisions of Rule 24 cannot be interpreted in the manner relied upon by department as the same would override the provisions of Section 140(7) of the CGST Act.
- From the bare reading of Rule 24 read with Section 139 of the CGST Act, it is evident that both the provisions relate to migration of registration of existing taxpayer from erstwhile Service Tax/Central Excise regime to the current GST regime. Neither Rule 24 nor Section 139 deals with the transitional credit or refund of balance credit eligible to tax payer at the time of introduction of GST i.e. 30.06.2017. However, entire reliance is placed on Rule 24 and Section 139 in the SCN and impugned order.
- Section 140(7) specifically dealt with credit available to ISD.

### **Discussion and Findings :**

**4(i).** I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeal Memorandum as well as additional submission given on 19.01.2022.

At the outset, I find that in the *impugned order* transitional credit of Rs.24,81,124/- taken by the 'Appellant' in TRAN-1 was denied on the premise that – **(i)** 'Appellant' is registered as an ISD under registration No. AA ACT5456ASD006 in pre GST period and GSTIN 24AAACT5456A3ZP in post GST period **(ii)** From a simple reading of Rule 24 of the CGST Rules and Section 139 of the CGST Act it is clear that an ISD was not allowed migration to GST but was required to register afresh **(iii)** As per Guidance Note on CGST transitional credit issued by the CBIC "only such Cenvat credit can be taken as credit of CGST in the electronic credit ledger by filing TRAN-1 for which explicit legal authority exists in section 140 of the CGST Act" . None of the sub-section of Section 140 {Section 140(1), 140(5) & 140(7)} talks about transition of undistributed credit lying with an ISD under the erstwhile Service Tax law **(iv)** Under GST, an ISD neither has any liability of its own nor credits and therefore no ledger as well. When an ISD does not have an electronic credit ledger of its own then it is not possible for it to carry forward any credit as all the credit which is carried forward by any unit is taken in its electronic credit ledger (ECL) as mentioned in Section 140(1). Hence, an ISD unit does not appear eligible for availment of ITC under transitional provisions **(v)** that the ISD unit registered under GST is not eligible for ITC under Section 16 of the CGST Act as they are not using the inputs in the course or furtherance of their business nor can they use the ITC for the payment of output tax as provided under Section 49 **(vi)** That the assessee claimed that they were able to carry forward the credit in TRAN-1 and therefore



the restriction by GSTR-6 on its distribution was a technical glitch. It is not a case of denial of substantive right due to a technical glitch but it is a case of wrongful availment of credit by the assessee. Thus, the judgments cited by assessee are not relevant (vii) Demand is relating to undistributed credit lying in balance of the ISD and that was unlawfully transitioned by the ISD without any legal provision allowing the same. No other recipient of the credit, so demand has been correctly made under Section 73 of the CGST Act.

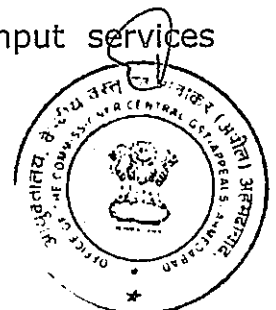
**4(ii).** Regarding contentious issue of transitional credit of Rs.24,81,124/-, first of all I refer to provisions of CGST Act, 2017 relating to subject case which is as under :

*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 carried forward in the return 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:*

*140 (5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, within such time and in such manner as may be prescribed, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:*

*140 (7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act, within such time and in such manner as may be prescribed, even if the invoices relating to such services are received on or after the appointed day.*

**4(iii).** As per above statutory provisions, a registered person is allowed to take amount of Cenvat credit carried forward in the return Viz. ER1 and ST3 returns relating to the month of June 2017 in their electronic credit ledger for which the registered person is required to file Form GSTR TRAN-1 in terms of Rule 117 of the CGST Rules, 2017. I find that Section 140 of the CGST Act, which allows various types of credit for transition in GST period through TRAN-1, does not cover credit of input services





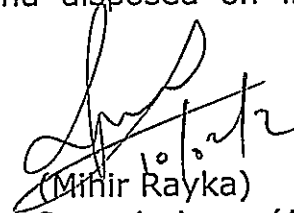
available for distribution as on 30.06.2017 for transition. Since, the closing balance of such credit is not allowed under Section 140 for transition, I hold that the 'Appellant' has wrongly taken transitional credit of Rs.24,81,124/- in their TRAN-1. I further find that unlike in case of regular tax payers, the 'Appellant' in their capacity as distributor of credit, is also not required to pay tax, to use inputs, to take input credit or to maintain electronic credit ledger.

**4(iv).** Therefore, I do not find any infraction in *impugned order* passed by the *adjudicating authority* ordering recovery of said credit under Section 73 of the CGST Act, 2017. Since, the credit was disallowed and ordered for recovery, it is a statutory requirement to pay the same along with interest under Section 73 of the CGST Act, 2017 read with Section 50(3) of the CGST Act, 2017. As regards to imposition of penalty I find that the *adjudicating authority* has imposed general penalty under Section 125 of the CGST Act, 2017 which I find is in commensurate with the wrong availment of credit. Therefore, I do not intend to provide any relief on this aspect.

**4(v).** Accordingly, I reject the appeal filed by the appellant and upheld the order passed by the adjudicating authority.

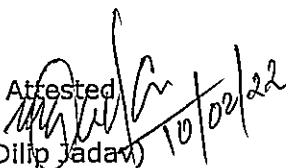
**5.** अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the 'Appellant' stand disposed off in above terms.

  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: | 0.02.2022

Attested  
  
(Dillip Jadau) 10/02/22  
Superintendent  
Central Tax (Appeals)  
Ahmedabad



By R.P.A.D.

To,  
M/s. Torrent Pharmaceuticals Limited,  
Torrent House, Off Ashram Road,  
Ahmedabad - 380 009

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-VII, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File