



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. GST/15-24/OA/2022

DIN- 20231264WT000000BC99

आदेश की तारीख/Date of Order: - 19.12.2023

जारी करने की तारीख/Date of Issue :- 19.12.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 49/JC/ LD /GST/2023-24

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 90 दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form GST-APL-01 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

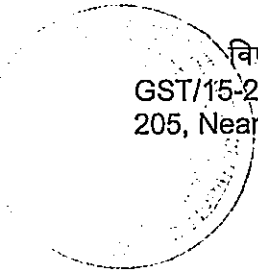
उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केंद्रीय जी. एस. टी. नियमावली, 2017 के नियम 108 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form GST-APL-01 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 108 of CGST Rules, 2017. It should be accompanied with the following:

- (1) Copy of accompanied Appeal.
- (2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. GST/15-24/OA/2022 issued to M/s Indian Oil Corporation Limited (GSTIN 24AAAC11681G1ZV), 205, Near Sola Flyover, SG Highway, Sola, Ahmedabad - 380060.





BRIEF FACTS OF THE CASE

M/s. Indian Oil Corporation Limited, (hereinafter referred to as "the noticee) having their Principal Place of Business at 205, Near Sola Flyover, SG Highway, Sola, Ahmedabad-380060 and having GSTIN 24AAACI1681G1ZV and are engaged in the business of supply of PETROLEUM OILS and GASES falling under HSN code 2710, which falls under the purview of Central Goods & Service Tax Act, 2017 (herein after referred to as "CGST Act 2017") and availing the benefit of Input Tax Credits on inputs, capital goods and inputs services under the Central Goods & Service Tax Rules, 2017 (herein after referred to as "CGST Rules, 2017").

2. During the course of TRAN -1 verification, it is observed that the said Noticee has filed Tran-1 return, wherein they have transited the CENVAT Credit in light of Section 140 of the CGST Act, 2017 read with Rule 117 of the CGST Rules, 2017. The noticee has availed the credit under Table in 6(a) of the Trans-1 as detailed below:

(amount in Rs.)	
Trans-1	Column 6 (a)
Credit availed	11,35,76,931/-
Total	11,35,76,931/-

3. The relevant provisions of Section 140 of CGST Act, 2017 is reproduced as under –

"(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 the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law within such time and 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 within such time and 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.

Explanation.—For the purposes of this sub-section, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished [goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to]107 the following conditions, namely:—

- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
- (iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
- (v) the supplier of services is not eligible for any abatement under this Act:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994, but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger:—

- (a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and
- (b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

(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:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished [goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to]109 the following conditions, namely:-

- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is not paying tax under section 10;
- (iii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and
- (v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(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."

(8) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day [within such time and in such manner]113 as may be prescribed:

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier: Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

Provided also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralised registration was obtained under the existing law.

(9) Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such [credit can be reclaimed, within such time and in such manner as may be prescribed, subject to]114 the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

(10) The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.

Explanation 1.—For the purposes of sub-sections (3), (4) and (6), the expression —eligible duties means—

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;
- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;
- (iv) [****]115;
- (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;
- (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and
- (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

Explanation 2.—For the purposes of sub-section (5), the expression —eligible duties and taxes means—

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;
- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;
- (iv) [****]116;
- (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;
- (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985;
- (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001; and
- (viii) the service tax leviable under section 66B of the Finance Act, 1994, in respect of inputs and input services received on or after the appointed day.

Explanation 3.—For removal of doubts, it is hereby clarified that the expression —eligible duties and taxes// excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975.

4. The credit under column 6(a) pertains to amount of un-availed cenvat credit in respect of capital goods carried forward to electronic credit ledger as central tax under Section 140(2) of the CGST Act, 2017. The noticee have availed credit amounting to Rs.11,35,76,931/- under Table 6(a) of the Tran-1. Further, Scrutiny of detailed statement of Capital Goods credit revealed that the taxpayer has claimed the credit of capital goods on the basis of invoices which were very old and pertaining to the year 2009, in some cases. The amount claimed through such invoices is Rs. 6,09,84,303/. The details of such invoices are as per statement-I attached. Since the invoices are very old and few pertaining to the year 2009, a doubt arises, as to why the taxpayer had not claimed the balance credit earlier and why it is being claimed now, under transitional provisions of the Act. It appears that the taxpayer was not eligible to avail Cenvat credit of capital goods under existing law.

5. It is observed that the CERA Audit has issued Half Margin Memo. No. 74, dated 05.04.2021 for verification of TRAN - 1 as detailed below;

“HM No. 74: A guidance note for verification of Transitional Credit claims was issued by the Board vide letter D.O. F. No. 267/8/2018-CX.8 Dated: 14th March,

2018. It was envisaged to verify the correctness of the Transitional credit taken, in a more focused and concerted manner. To facilitate the same, a detailed Guidance Note was issued to aid and assist the field formations in verification of transitional credit.

As per Section 140(2) of the CGST Act, 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 un-availed 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.

Explanation - For the purposes of this sub-section, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

During the verification of TRAN-1 of the above taxpayer, audit observed the following:

The detailed statement of Capital Goods credit also revealed that the taxpayer has claimed the credit of capital goods on the basis of invoices which were very old and pertaining to the year 2009, in some cases. The amount claimed through such invoices is Rs. 6,09,84,303/-. The details of such invoices are as per statement-I attached.

Since the invoices are very old and few pertaining to the year 2009, a doubt arises, as to why the taxpayer has not claimed the balance credit earlier and why it is being claimed now, under transitional provisions of the ACT. It appears that the taxpayer was not eligible to avail Cenvat credit of capital goods under existing law. This aspect requires further detailed verification by the department.

Further, it is also required to be verified as to whether the assessee had claimed depreciation on Cenvat amount of such capital goods at that material time because the taxpayer did not claim CENVAT credit under existing law.

In view of above observations, it appears that the assessee has wrongly claimed the credit of Rs. 6,09,84,303/- again in TRAN-1.

6. In view of the above said observations/ discrepancies noticed, the Range Superintendent, AR-IV, Division-VI, Ahmedabad-North vide letters issued from F.No. CGST-06/04-8/IOC/TRAN-1/HM-74/AR-IV/2021-22 dated 31/05/2021 had requested the Noticee to submit the documents / clarification.

6.1 The Noticee had replied vide letter dated 22/07/2021 in reference to above said letter. They had stated that IOCL had availed an amount of Rs. 6,09,29,912/- as 50% of amount of CENVAT credit in F.Y 2017-18 and the balance amount of 50 % CENVAT Credit of Rs. 6,09,84,303/- was carried in TRAN-1. The remaining 50% of the CENVAT credit was also carried in TRAN-1.

and assessee vide letter dated 07/09/2021 had informed that no depreciation was claimed on CENVAT availed in Tran-1.

6.2 The Range Superintendent, AR-IV, Division-VI, Ahmedabad-North vide letters F.No. CGST-06/04-8/IOC/TRAN-1/HM-74/AR-IV/2021-22 dated 17/02/2022 has asked to provide the credit register as some of the invoices pertain to very old period, in absence of credit register, it cannot be ascertained that balance credit was availed or not. But even lapse of considerable time, the assessee failed to submit the credit register required for verification.

6.3 Further, this office has provided the opportunity of Pre- Show Cause Notice consultation to the assessee vide letters dated 17.08.2022 and 31.08.2022. The authorized signatory, Shri Rajesh Priyadarshi,,Sr. Manager(fin) GSO, appeared for the Pre show cause consultancy on 07.09.2022 and submitted the reply dated 06.09.2022 in this matter. The assessee vide said reply dated 06.09.2022 submitted that they had availed the Cenvat credit of Rs. 11,35,76,931/- through Trans-1 return, out of which Cenvat credit of Rs. 11,33,40,871/- pertains to the FY 2017-18 (Rs.5.26 crores) & 2016-17(Rs. 6.08 Crores) and an amount of Rs. 2.32 lakhs pertain to older period. However, the assessee is failed to furnish the documentary proof for the same.

6.4 As per guidance note for verification of Transitional Credit claims was issued by the Board vide letter D.O. F. No. 267/8/2018-CX.8 Dated: 14th March, 2018 :-

Indicative Nature of Credit for table 6 (a) - This table captures details of unavailed credit of capital goods in the pre-GST era. Capital Goods credit was allowed to be availed in two installments of 50% each. This table is meant to be used by the taxpayers who have availed a portion of CENVAT credit on capital goods through ER or ST return and now intend to avail remaining credit in respect of capital goods which has not been availed through the ER or ST return.

Checks for Table 6(a):

Check 4: Check that in table 6 only credit on capital goods not availed in any return is taken. If second installment of any capital goods credit is taken through return in table 5(a) and again the details are filled in table 6, it would lead to double credit getting taken. For example, the second installment of capital goods credit where first installment credit was availed in 2016-17 and second installment can be availed in the financial year 2017-18, provided the second installment was not availed in any of the returns filed in the first quarter of 2017-18 under Central Excise or Service Tax. If no credit was availed earlier, credit of entire amount cannot be availed through this Table.

Check 5: For some of the invoices involving large credit, if the invoice date is very old, please take confirmation from assessee that the capital goods are in existence in the place of business.

6.5 Regarding H.M. No 77, wherein it detailed statement of Capital Goods credit revealed that in the Noticee has claimed the credit of capital goods on the

basis of invoices which were very old and pertaining to the period earlier than April'2017. Further, as per Cenvat provisions the noticee was to take unavailed credit in the subsequent year after the year in which first 50% of credit was availed. Further, it was also to be verified as to whether the taxpayer had claimed depreciation on Cenvat amount of such Capital Goods at that material time because the taxpayer did not claim Cenvat Credit under existing Law. As such, the amount claimed in Table 6(a) to the tune of Rs. 6,09,84,303/- appears incorrect and in contravention to the transitional provisions of the Act and checks provided in Guidance Note and is required to be reversed along with interest thereon. Further, the noticee have not provided any evidences which proves that such credit was not availed in periodic returns of Central Excise and therefore, the said credit carried forwarded in their Tran-1 is not legal and it is inadmissible and required to be reversed along with interest thereon under the Section 73 of the CGST Act, 2017.

However, as per the provisions of Section 140(2) clarifies that "Explanation. For the purposes of this sub-section, the expression "un-availed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law." Further as per the Guidance Note for verification of Transitional Credit claims issued by the Board vide letter D. O. F. No. 267/8/2018-CX.8 dated 14.03.2018, it is clarified at Sr. No. 2 of Table of Para 2 that column 11 of table 6(a) (140)(2)) captures details of un-availed credit of capital goods in the pre-GST era. But assessee has failed to provide any evidences which proves that such credit was not availed in periodic returns of Central Excise. Further, the assessee has failed to provide credit register for verification. Thus the availment of this credit by the Noticee was not entitled and required to be recovered along with interest under the provisions of Section 73 of the CGST Act, 2017.

7. In view of the foregoing paras, the taxpayer has claimed the credit of capital goods on the basis of invoices which were very old and pertaining to the year 2009, in some cases. The amount claimed through such invoices is Rs. 6,09,84,303/-. The details of such invoices are as per statement-I attached. Since the invoices are very old and few pertaining to the year 2009, a doubt arises, as to why the taxpayer had not claimed the balance credit earlier and why it is being claimed now, under transitional provisions of the Act. It appears that the taxpayer was not eligible to avail Cenvat credit of capital goods under existing law and in contravention to the transitional provisions of the Act.

8. It may be mentioned here that in terms of the provisions of Section 155 of the CGST Act, 2017, the onus to prove admissibility of the credit availed lies on the assessee. Text of the said Section is reproduced as under.

Section-155, Burden of proof .— Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

In view of the above, the burden to prove admissibility of the credit availed under Tran-I rest with the taxable person which they have not fulfilled by not providing the required documents for verification. Therefore, in view of discussion in forgoing paras, it appears that the Noticee has failed in

providing documents / clarification in respect of the Cenvat Credit wrongly transited to GST regime through TRAN 1.

9. From the foregoing paras it appeared that M/s. Indian Oil Corporation Limited, have intentionally availed in-admissible credit amounting to Rs. 6,09,84,303/- as transitional credit. From Para supra(s), it also appears that the Noticee has contravened the provisions of Section 140 and 142 of the CGST Act, 2017. Therefore, the wrongly availed/transited credit of Rs. 6,09,84,303/- appears to be recoverable from them under Section 73(1) of the CGST Act, 2017. Interest under Section 73(5) of the CGST Act, 2017 read with section 50 of CGST Act, 2017, is required to be covered on total amount of Rs. 6,09,84,303/- and the Noticee have rendered themselves liable for penal action under Sections 122(2) read with section 73(1) of CGST Act, 2017.

10. Accordingly, Show Cause Notice No.GST/15-24/OA/2022 dated 28.09.2022 was issued to M/s. Indian Oil Corporation Limited, having their Principal Place of Business at 205, Near Sola Flyover, SG Highway, Sola, Ahmedabad-380060 called upon to show cause as to why:

- (i) Input Tax Credit of Rs. 6,09,84,303/- (Rupees Six Crore Nine lakhs Eighty four Thousand Three Hundred Three Only) as determined hereinabove should not be demanded and recovered under Section 73 (1) of the Act;
- (ii) Interest at the appropriate rate on the amount mentioned at Sr. No. (i) above should not be charged and recovered from them under Section 50 of the CGST Act, 2017 read with section 73(5) ibid;
- (iii) Penalty on the amount mentioned at Sr. No. (i) above should not be charged and recovered under the provisions of Section 73(1) read with section 122(2)(a) of CGST Act, 2017;

DEFENCE REPLY

11. The said assessee vide their letter dated 20.12.2022 submitted their reply to SCN wherein they stated that the authroised officer has emphasised and reiterated that Cenvat credit based on invoices which has been taken into TRAN 1 are very old and pertains to the year 2009. However, the assumption of AO is incorrect. To substantiate their claim period wise bifurcation of Cenvat credit amount becomes inevitable and which is produced herein below.

Sl No.	FY	Period	Total eligible Cenv. credit under existing law	Total Cenvat credit availed under existing law	Total Cenvat credit unavailed under existing law (credit carry forward in Tran 1)
1	2017-18	April 17 to June 17	10,50,44,553.52	5,24,79,232.88	5,25,65,320.64
2	2016-17	Apr.16 to March 17	12,14,73,149.15	6,06,97,609.48	6,07,75,539.67
	Total		22,65,17,711.65	11,31,76,852.36	11,33,40,871.31
3	Various FY	April 2009 to March 2016	4,64,604.90	2,32,302.45	2,32,302.45
	Grand Total		22,69,82,316.55	11,34,09,154.81	11,35,73,173.76

It is evident from the above that the Cenvat credit of Rs.1133,40,871.31 pertains to FY 2017-18 (Rs.5.26 Cr.) & FY 2016-17 (Rs.6.08 Crore) and only 2.3 lakhs pertain to the older period.

12. They further stated that they are indeed eligible and has rightfully taken Cenvat credit of Rs.6,06,97,609.48 as 50% of cent credit amount during the FY 2016-17 and the balance amount of 50% Cenvat credit of Rs.6,07,75,539.67 was carried in TRAN 01. As per Rule 3(1) of the CCR, 2004, Cenvat credit on capital goods can be availed to the extent of 50% only in the year of receipt of capital goods and balance can be availed in the subsequent financial year. Thus the noticee has rightfully become eligible for claiming Cenvat credit on capital goods in FY 2017-18 which were received in FY 2016-17. They reproduced the relevant portion of the Rule 4(2) of CCR, 204 as under:

Rule 4(2) of CCR 2004

- a) *The Cenvat credit in respect of capital goods received in a factory or in the premises of the provider of output service at any point of time in a given financial year shall be taken only for an amount not exceeding fifty percent of the duty paid on such capital goods in the same financial year.*
- b) *The balance of Cenvat credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer or the premises of the provider of output service, if the capital goods, other than components, spares and accessories, refractory and refractory materials, moulds and dies and goods falling under heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act are in the possession of the manufacturer of final products, or provider of out put service in such subsequent years.*

13. It is clarified that the restriction is imposed for availment of first 50% Cenvat credit in the FY in which the capital goods are received in the premises of the assessee with a provision of availing balance 50% in subsequent FYs. Thus 50% of Cenvat credit pertaining to FY 2016-17 was availed in the in the year of receipt of capital goods and the balance 50% i.e.unavailed credit of Rs.6,07,75,539/- was carried forward to the subsequent FY 2017-18 and was rightfully carried to Trans-1. Further, there is no restriction/bar in availing 100% Cenvat credit in the subsequent years if the first 50% Cenvat credit has not been availed by the assessee in the year of receipt of capital goods. Thus the noticee has carried forward un availed credit of Rs. 2.32 lakhs in TRAN 1 which was inadvertently left to be availed in the relevant past FY

14. Provision of section 140(2) clearly mandates "*credit of unavailed Cenvat credit in respect of capital goods not carried forward in a return, furnished under the existing law*" and does not restrict availment of Cenvat credit of 50% only. Provision of section 140(2) permits to carry forward un availed credit o FY 2016-17 & 2017-18 where only 50% credit could be availed as per restriction imposed under Rule 4(2) of CCR 2004. Further eligible Cenvat credit of Rs.2.32 lakhs inadvertently left to be availed under the existing law in the relevant past FY was rightfully carried forward in TRAN 1. The assessee further stated that department has raised concern or doubt as to why tax payer had not claimed the balance credit earlier and why is being claimed under transitional

provision. It is submitted in this regard that Cenvat credit amounting to Rs.6.07 crores out of Rs.6.09 crores was the balance unavailed credit of capital goods pertaining to the FY 2016-17 which the noticee became eligible for claiming this balance credit only in the year 2017-18. Therefore the observation regarding they claimed Cenvat credit amounting to Rs.6,07,75,539/- in FY 2017-18 by carrying forward the same in TRAN 1 and not claiming the same earlier is not unfounded, illogical and not sustainable at all. Further it is also noticed that the Cenvat credit of Rs.6,07,75,539.67 pertaining to FY 2016-17 which was taken to TRAN 1 constitutes 99.66% of total demand of Rs.6,09,84,303/-.

15. Further on the allegation that the assessee has not produced the relevant documents for verification is concerned, the assessee stated that details of relevant invoices based on which Cenvat credit availed were indeed provided to Department, however considering large volume of transactions and that are 479 invoices for the FY 2016-17, only sample invoice copies of high value have been provided. Now they have provided copies of all invoices are submitted along with credit register from May 2016 and June 2016 and copy of ER 1.

16. As far as claiming depreciation has been claimed by them presuming that tax payer was not eligible to claim Cenvat credit under existing laws. In their connection they stated that they are following double entry system of accounting which does not permit availing credit of Cenvat amount as well as capitalisation of Cenvat amount simultaneously. Further, the assessee is working on an EPR platform in SAP for recording all its transaction and SAP system can be considered as most robust system for recording business transaction wherein every transaction gets recorded. They further reiterate that they have not claimed any depreciation on total Cenvat amount of Rs.6.09 Cr for FY 2016-17 and earlier period. Further credit of Rs.2.32 lacks pertaining to the year 2009 to 2015 which constitutes 0.38 % of the total amount of Rs.6,09,84,303/-. Credit of the amount was inadvertently missed out to be availed in the previous FY for which same was carried forward to TRAN 1 for which they are rightly eligible.

17. They further stated that SCN has been raised purely on assumption without bringing any fact on record. It was utterly ignored that fact that they have transferred only the balance amount of Cenvat credit in TRAN 1 after availing 50% in the year of receipt of material in the FY 2016-17. The Department has also resorted to the provisions of section 155 to shift the burden of proof of tax without putting any endeavour to understand the subject matter. As they have rightly availed the Cenvat credit on the subject capital goods, the demand of interest and penalty also is not sustainable.

PERSONNEL HEARING

18. In the instant case, Personnel Hearing was granted to the assessee on 26.05.2023. Shri Ashit Mehtaji, Dy General Manager Finance, Gujarat Refinery and authorised signatory appeared on behalf of the assessee. They reiterated their written submissions dated 26.05.2022 & 20.12.2022 and requested to decide the SCN on merits.

DISCUSSION AND FINDINGS

19. In the instant case, I have carefully gone through the Show Cause Notice, reply to SCN, facts of the case on record, copies of invoices and other submissions made by the noticee. On recapitulating, I find that the issue involved in the present show cause notice is related to admissibility of Cenvat Credit of Rs.6,09,84,303/- taken in TRAN-1 Return filed by the noticee. The said credit purportedly belonged to the remaining amount of 50% of Cenvat credit of capital goods which was claimed as TRAN -1 credit.

20. On perusal of the above referred case records, I find that the issue is came out when the Cera Audit Party has issued a Half margin Memo No.74 wherein it was pointed out that on perusal of detailed statement of Capital Goods credit of the noticee, it was revealed that the Noticee has claimed the credit of capital goods on the basis of invoices which were very old and pertaining to the period earlier than April 2017. Further, as per Cenvat provisions the noticee was to take unavailed credit in the subsequent year after the year in which first 50% of credit was availed. Further, it was also to be verified as to whether the taxpayer had claimed depreciation on Cenvat amount of such Capital Goods at that material time because the taxpayer did not claim Cenvat Credit under existing Law. As such, the amount claimed in Table 6(a) to the tune of Rs. 6,09,84,303/- appears incorrect and in contravention to the transitional provisions of the Act and checks provided in Guidance Note and is required to be reversed along with interest thereon. Further, the noticee have not provided any evidences which proves that such credit was not availed in periodic returns of Central Excise and therefore, the said credit carried forwarded in their Tran-1 is not legal and it is inadmissible and required to be reversed along with interest thereon under the Section 73 of the CGST Act, 2017.

21. In This regard to ascertain the eligibility of the credit, the Range Superintendent vide letter dated 17.02.2022 asked the noticee to provide the credit register, however they failed to produce the required docuemtns or register to verify the same. Accordingly the instant SCN issued to recover the said Cenvat credit of Rs.6,09,84,303/-. In this connection, I have gone through the reply filed by the noticee wherein they claimed that they are indeed eligible and has rightfully taken Cenvat credit of Rs.6,06,97,609.48 as 50% of cent credit amount during the FY 2016-17 and the balance amount of 50% Cenvat credit of Rs.6,07,75,539.67 was carried in TRAN 01. As per Rule 3(1) of the CCR, 2004, Cenvat credit on capital goods can be availed to the extent of 50% only in the year of receipt of capital goods and balance can be availed in the subsequent financial year. Thus the noticee has rightfully become eligible for claiming Cenvat credit on capital goods in FY 2017-18 which were received in FY 2016-17. Provision of section 140(2) clearly mandates "*credit of unavailed Cenvat credit in respect of capital goods not carried forward in a return, furnished under the existing law*" and does not restrict availment of Cenvat credit of 50% only. Provision of section 140(2) permits to carry forward unavailed credit o FY 2016-17 & 2017-18 where only 50% credit could be availed as per restriction imposed under Rule 4(2) of CCR 2004. Further eligible Cenvat credit of Rs.2.32 lakhs inadvertently left to be availed under the existing law in the relevant past FY was rightfully carried forward in TRAN 1.

22. As far as the allegation that the noticee has not produced the relevant documents for verification is concerned, the noticee stated that details of relevant invoices based on which Cenvat credit availed were indeed provided to Department, however considering large volume of transactions and that there are 479 invoices for the FY 2016-17, only sample invoice copies of high value have been provided. Now vide their letter dated 20.12.2022, they have provided copies of all invoices i.e. 479 invoices are submitted along with credit register from May 2016 and June 2016 and copy of ER 1.

23. Now with regard to the demand of Rs. 6,09,84,303/-, I find that the noticee has taken transitional credit of Rs. 6,09,84,303/- under Section 140(3) in Tran-1 return. As per Section 140, the transitional mechanism for carrying forward the credit pending with the erstwhile registered persons or who was not liable to be registered under the existing law, to the GST regime. The details of the Section 140 of the COST Act 2017 are reproduced herewith:-

"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:

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.

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;

Explanation.—For the purposes of this sub-section, the expression 'unavailed CENVAT credit' means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

Now let me look into the provision of law that determines eligibility and conditions for taking input tax credit.

Section 16 of the CGST Act provides as under:

SECTION 16. Eligibility and conditions for taking input tax credit. — (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.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

f(aa) the details of the invoice or debit note referred to in) clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;1

(b) he has received the goods or services or both.

[Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services —

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

(c) subject to the provisions of [section 41 or section 43A3, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39 :

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment :

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed :

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

24. As far as the correctness/admissibility of Cenvat credit is concerned, I find that the jurisdictional Officer is the competent authority to examine/ verify the correctness / admissibility of documents submitted for taking credit. I further find that if the taxpayer have provided all the documents for verification, The jurisdictional Officer could have verified the same to ascertain admissibility of the input tax credit. However the taxpayer have submitted all the documents along with their reply to SCN dated 20.12.2022 only.

25. In order to ascertain admissibility of credit mentioning in the Tran-1 and SCN, the documents/invoices submitted by the taxpayer were sent for verification to the Jurisdictional Deputy Commissioner, Central Excise Div- VI, Ahmedabad North vide letter F.No.GST/15-14/OA/2022 dated 06.09.2023. Accordingly, I find that the admissibility of the credit was verified by the Deputy Commissioner, Central Excise Div.-VI, Ahmedabad North vide letter F.No. CGST-06/AR-IV/Misc/2022-23 dated 06.12.2023 and no discrepancy has been pointed out. As far as the point regarding possession of the capital goods is concerned, the possession of the capital goods with the noticee has also been confirmed by them vide their letter dated 24.11.2023 addressed to jurisdictional office and also certified by Chartered Accountant. Further as far as claiming depreciation on capital goods is concerned, the noticee stated that they are following double entry system of accounting which does not permit availing credit of Cenvat amount as well as capitalization of Cenvat simultaneously. They are conducting their entire operation including accounting on the ERP platform in SAP software. The noticee has also produced certificate issued by M/s.Jeenalal Darji and Associates, Chartered Accountants regarding the admissibility of the said Cenvat credit of Rs.6,09,84,303/-, possession of capital goods with the noticee and non claiming of depreciation on capital goods in question to the jurisdictional officer vide their letter dated 24.11.2023. In the said certificate, the said Chartered Accountant has also certified the admissibility of Cenvat credit of Rs.6,09,84,303/- under existing law as well as CGST Act, 2017, that the capital goods were in possession of the tax payer at the time of taking Cenvat credit in TRAN 1, that the tax payer has not claimed depreciation on capital goods and that the tax payer has claimed 50% of credit on capital goods in previous year before taking balance Cenvat credit in TRAN 1. The Chartered Accountant, who audited the accounts of the assessee, being qualified professional has given declaration that the balance sheet and profit and loss accounts of the noticee reflect true and correct picture of the transaction and therefore, I accept the certificate issued in the instant case

26. In view of the above, on relying upon the verification report dated 06.12.2023 submitted by the Deputy Commissioner, Division

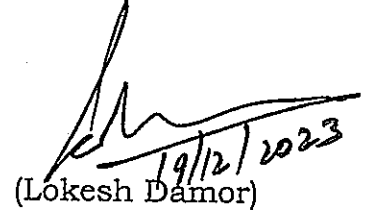
VI, Ahmedabad North, noticees submission dated 24.11.2023 and C.A Certificate dated 24.11.2023, I conclude that notice has correctly availed ITC on capital goods amounting to Rs.6,09,84,303/- in their TRAN 1. As the ITC in question is admissible to the noticee, the Show Cause Notice issued for recovering the inadmissible Cenvat credit or Rs.6,09,84,303/- is not sustainable therefore required to be dropped. As the demand itself is not sustainable, the question of charging interest under section 50 of CGST Act, 2017 or imposing penalty under the provisions of Section 73(1) read with Section 122 (2)(a) of CGST Act, 2017 does not arise.

27. Accordingly, I pass the following order:

O R D E R

28. I hereby order to drop proceedings initiated for demand and recovery of wrongly availed ITC of Rs.6,09,84,303/- along with interest and penalty against M/s. Indian Oil Corporation Ltd vide SCN No. GST/15-24/OA//2022 dated 28.09.2022.

29. Accordingly the Show Cause Notice No. SCN No. GST/15-24/OA//2022 dated 28.09.2022 is disposed off.



(Lokesh Dāmor)

Joint Commissioner,
Central GST & CE,
Ahmedabad North

F.NO.GST/15-24/OA/2022

DT.

By speed post/hand delivery

To,
M/s. Indian Oil Corporation Limited,
205, Nr.Sola Fly Over,
S.G.Hghway, Sola,
Ahmedabad-Gujarat-380060

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Div- VI Ahmedabad North.
3. The Superintendent, Range-IV, Division-VI, Central GST & Central Excise, Ahmedabad North with a request to upload the OIO electronically in terms of DSR advisory No.01/2018 dated 26.10.2018 of the ADG, Systems & Data Management, Bengaluru.
4. The Supdt.(System), CGST & C.E. Ahmedabad North for uploading the order on website.
5. Guard File.

