
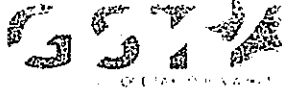


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- aaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN-20231264WT0000717217

फा.सं./F.No. GST/15-31/OA/2022-23

आदेश की तारीख/Date of Order: - 28.12.2023

जारी करने की तारीख/Date of Issue :- 28.12.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 56/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/15-31/OA/2022-23 issued to M/s Tevapharma India Private Limited., Plot No.SM-46, Sanand II Industrial Estate AT & Post, Sanand Ahmedabad-382110.



BRIEF FACTS OF THE CASE

M/s. Tevapharm India Private Limited, situated at Plot No. SM-46, Sanand II Industrial Estate AT & Post, Sanand Ahmedabad -382110 (hereinafter referred to as the "said assessee") having GSTIN 24AABCR7561F1ZG for manufacture of Pharmaceuticals mainly Vicks Vaporub and Vicks Cough Drops falling under sub - heading 30049011 of Chapter 30 of CGST, Act, 2017. The said assessee is also registered with Service tax Department having Registration No AABCR7561FSD005 and paying service tax under the category of Business Auxiliary Services. The assessee also receives Cenvat credits of Service tax paid on the services utilized, through their Input Service Distributor M/s. Procter and Gamble Hygiene and Health Care Limited, P&G Plaza, Chakala, Cardinal Gracias Road , Andheri East, Mumbai-400099 registered as Input Service Distributor ('ISO') with the Service Tax Department having Service Tax Registration Number AAACP6332MST001.

2. During the course of Tran-1 verification, it is observed that the assessee 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 assessee has availed the credit under Column 6(a) and 7(b) in the Trans-1 as detailed below:

(amount in Rs.)

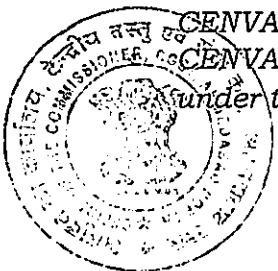
Trans-1	Column 6(a)	Column 7(b)
Credit availed	15,46,092/-	4,33,92,686/-
Total	4,49,38,778/--	

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.

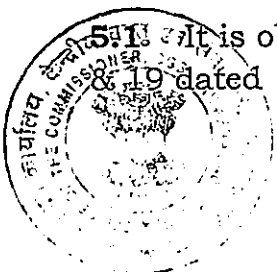
(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as [credit under this Act, within such time and in such manner as may be prescribed,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

4. On verification of the credit availed by the assessee in Tran-1 in different category under different sub-section of Section 140 of CGST Act, 2017, there is some discrepancies have been noticed as under:-

4.1 The credit availed under column 6(a) pertains to amount of unavailed 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 is verified with the invoices and found that the invoices pertains to the period earlier than April 2017 and some are pertain to the year 2016. The assessee has availed total credit in Trans-1 amounting to Rs. 15,46,092/- for such invoices. Therefore, the doubt arises, as to why the assessee has not claimed the balance credit earlier and why it is being claimed now, under transitional provisions of the Act. If the said credit availed earlier in full during the relevant period, then there was wrong availment of credit twice in Trans-1 and required to be reversed along with interest thereon.

4.2 On verification of the credit availed on under Column 7(b) of Tran-1 availed under sub-section (5) of Section 140 of CGST Act, 2017, it is found that many invoices do not have proper description of goods/services and remaining invoices were issued after appointed day. The taxpayer has availed credit in Trans-1 for Rs.4,01,34,560/- on such invoices of inputs. The Cenvat credit on these invoices should have been needed detailed verification of invoices and other supporting documents. Therefore, the said credit is not admissible and such wrong availment of credit in Trans-1 required to be reversed along with interest thereon.

It is observed that the CERA Audit has issued Half Margin Memo. No. 18 dated 16.03.2021 for verification of Tran-1 as detailed below:-



- (a) **H.M. No. 19** - 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 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.

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.

Further, checks for Col. 6(a) of the Guidance Note also provides that, if no credit was availed earlier, credit of entire amount cannot be availed through this Table. The 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 period earlier than April 2017. The amount claimed through such invoices is Rs. 15,46,092/-.

Since the invoices are earlier than April 2017 and some were pertaining to the year 2016 also, 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.

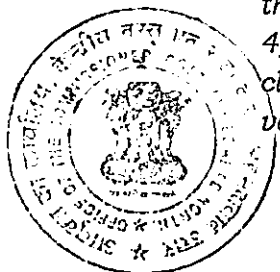
Further, it is also required to be verified as to whether the assessee had claimed depreciation on Cenvat amount of such capital goods at that material time because the taxpayer did not claim CENVAT credit under existing law. The documents/invoices shown in the statement of TRAN-1 along with correspondence Cenvat Credit Register (Part-II) may be made available to the audit for verification.

- (b) **H.M. No. 18** - Section 140(5) of the Act stipulates that a registered person shall be entitled to take, in his electronic credit edger, 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, subject to the condition that the invoice or any other duty or taxpaying 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.

During verification of TRAN-I records of the above taxpayer, it is noticed that the taxpayer has carried forward CENVAT credit amounting to Rs. 4,33,92,686/- under table 7(b) of TRAN-1. Further scrutiny of statement of credit claimed under table 7(b) revealed that ITC claim needs further detailed verification of invoices and other supporting documents due to following reasons.



Invoices at SI. No. 1 to 31 (attached statement) do not have proper description of goods/services to verify the correctness of the claim.

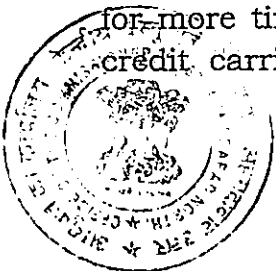
Taxpayer claimed ITC on invoices at SI. No. 32 to 36 (attached statement) which were issued after appointed day.

5.2 In view of above observations, Audit has observed that the assessee has wrongly claimed the credit of Rs. 15,46,092/- under table 6(a) of Tran-1 and Rs. 4,01,34,560/- under table 7(b) of TRAN-1.

6. In view of the above said observations/ discrepancies noticed, the range Superintendent, AR-V, Division-III, Ahmedabad-North vide letter F. No. AR-V/Div-III/Tevapharma/TRAN-1/20-21 dated 23.03.2021, 01.06.2021, 06.08.2021 and 22.12.2021 requested to the assessee to submit the documents / clarification. The assessee vide their reply through email dated 01.06.2021 submitted that due to Covid-19, Govt. has issued certain restrictions and all their corporate offices are not functioning and most of the people are working from home. Further, M/s Tevapharma India Pvt Ltd has sold the OTC plant to M/s Gillette Diversified Operation Pvt Ltd (P & G group company) in Oct 2018 and therefore, all his manpower who were handling at that point of time are no more in the company and therefore, to redo same work would be big task for them.

7. Regarding H.M. No. 19, wherein it was observed that the assessee has claimed credit of Rs. 15,46,092/- pertaining to Capital Goods in table 6(a) of TRAN-1. The 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 period earlier than April 2017. The amount claimed through such invoices is Rs 15,46,092/- appears to be incorrect. In this regards, the assessee has neither supplied the documentary evidences nor complied with the observation. They have asked for more time to submit the documents / clarification and therefore the said credit carried forwarded in their Tran-1 is not eligible 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 "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." 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 unavailed credit of capital goods in the pre-GST era.

8. Regarding H.M. No 18, wherein it is observed that the assessee has carried forward CENVAT credit amounting to Rs. 4,33,92,686/- under table 7(b) of TRAN-1. Further scrutiny of statement of credit claimed under table 7(b) revealed that ITC claim needs further detailed verification of invoices and other supporting documents. In this regards, the assessee has neither supplied the documentary evidences nor complied with the observation. They have asked for more time to submit the documents / clarification and therefore the said credit carried forwarded in their Tran-1 is not eligible and required to be



reversed along with interest thereon under the Section 73 of the CGST Act, 2017.

9. The provisions of Section 140(5) clearly says that 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. It appeared in the present case that neither the notice has received input or input services after appointed day nor they have made the payment in existing law, which is violation of the provisions of Section 140(5) and therefore, the Notice is not entitled to avail the said credit in Tran-1 and required to be recovered along with interest thereon under the Section 73 of the CGST Act, 2017.

10. In view of the foregoing paras, the summary of wrongly availed Cenvat Credit in Tran-1 is as under:

Sr No.	Para No. of SCN	Credit availed under Section	Colum No. of Trans-1	Total credit availed in Tran-1	Wrongly availed credit
1	6.1	140(2)	6(a)	15,46,092/-	15,46,092/-
2	6.2	140(5)	7(b)	4,33,92,686/-	4,01,34,560/-
	TOTAL				4,16,80,652/-

11. Further, this office has provided the opportunity Pre Show Cause Notice Consultation to the assessee vide letter/DRC I A dated 03.08.2022, 29.08.2022 and 23.09.2022. The authorised signatories S/Shri Amit Sangvi & Shri V.R.Kulkarni appeared for the pre show Cause Notice consultancy on 29.09.2022 and submitted reply dated 28.09.2022 wherein they claimed that in view of the position explained under CGST law and based on relevant act, they have rightly availed the unavailed Cenvat credit on capital goods and carried forward the Cenvat credit into GST regime and therefore no question of reversal of Cenvat credit arise. However the assessee failed to furnish all the documentary evidence for the same.

12. Accordingly, Show Cause Notice No. F.No.GST/15-31/OA/2022-23 dated 18.10.2022 was issued to M/s. Tevapharm India Private Limited, situated at Plot No.SM-46, Sanand II Industrial Estate AT& Post, Sanand Ahmedabad -382110 called upon to show cause as to why:

- (i) Input Tax Credit of **Rs. 4,16,80,652/- (Rupees Four Crores Sixteen Lakhs Eighty Thousand Six Hundred Fifty Two Only)** as determined hereinabove should not be demanded and recovered under Proviso to 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 CGST Act, 2017 read with Section 73(5) of the Act;



- (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

13. The said assessee vide their letter dated 28.09.2022 submitted their reply to SCN wherein they stated that:-

- (i) **Cenvat credit wrongly claimed on Capital Goods under Section 140 of the CGST Act 2017.**

Reply:- As per point no. 6(a) of Trans-1 form, read with section 140 (2), details of unavailed Cenvat credit in respect of capital goods, not carried forward in the return, furnished under the existing law can be carried forward in the Trans-1. The section does not distinguish anything on invoices issued prior to April 2017 or post April 2017 as far as availment of credit in Trans-1 form is concerned. The only requirement u/s 140 (2) is that, cenvat credit should be unavailed and eligible under the previous law. It seems that, CERA auditor are going beyond jurisdiction and totally bad in law and their contentions are not tenable. In our instant case, there is no dispute/allegation on admissibility of Cenvat credit under earlier law other than the allegation with regard to date of invoices prior to April, 2017 in so far as availment of credit in Trans-1 is concerned.

Section 140(2) permits the claim of unavailed credit on capital goods in cases where the credit under the existing laws is available in instalments. A declaration for the same is required to be given in Table 6 of TRAN-1. An explanation to said subsection reads out as under —

for the purpose 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 Capital Goods under the existing law.

They stated that, they had carried forward only the unavailed portion of Cenvat credit related to capital goods into Trans-1 form. In other words, only balance 50% of unavailed Cenvat credit of Capital goods has been carried forward in Trans-1. In this connection, they are enclosing the copies of invoices of capital goods and copies of ER-1 return for the month of April'17 to June'17.

- (ii) **Cenvat Credit on Input/input services has been issued after appointed date & some of the Invoices do not have proper description of goods/Services under Section 140 of the CGST act, 2017.**

Reply:- With respect to the above grounds of disqualification of eligible Cenvat credit on Goods/Services, they enclosed the entire sets of Invoices as Annexure-3 and for verification of the same to clear the issue of proper description of Goods/Services on the Invoices. Further it was also alleged that some of the Invoices have been issued after the appointed date and therefore they are not eligible to carry forward as Cenvat credit in 7(b) of Trans-1 form.

In this connection, they submitted that those invoices are issued by Input Service Distributor (ISD) after the appointed date and they are very much eligible in accordance with provisions of section 140(7) of the CGST act, 2017. They enclosed the copy of ISD invoices. The exact reading verbatim of Section 140(7) is as under:

(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 even if the invoices relating to such services are received on or after the appointed day.

Section 140(7) permits input service distributor to distribute credit in respect of input services received before the appointed day, even if invoice relating to such services are received after the appointed date. Such cases are required to be reported in Table 7(b) of Form TRAN-1. In our instant case, the unit has received various services related to Vicks brand from Input Service Distributor prior to the appointed date however, its distribution has been done after the appointed date and it has been correctly done as per section 140(7) of the CGST act, 2017. Therefore, no reversal of Cenvat credit warranted. Further, in the backdrop of recent Supreme Court rulings in the case of Union of India & Anr. Vs. Filco Trade Center Pvt. Ltd. & Anr. on the issue of Trans-1.

CENVAT credit accumulated in the erstwhile regime represents the property of the assessee which is a vested right under sub section (1) of section 140. Such accrued or vested right cannot be taken away by on account of failure to fulfil conditions which are merely procedural in nature.

CENVAT credit which stood accrued and vested is the property of the assessee, and is a constitutional right under Article 300A of the Constitution. The Procedure could not run contrary to the substantive right vested under sub section (1) of Section 140. The same cannot be taken away merely by way of delegated legislation by framing of rules, without there being any overarching provision in the GST Act.

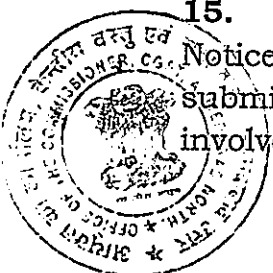
The above recent Supreme Court ruling became law of land and therefore, the Contentions raised by CERA auditors are not tenable and totally bad in law. No Interest liability u/s 73(5)/74(5) if the Cenvat Credit itself are eligible and correctly carried forward.

PERSONNEL HEARING

14. In the instant case, Personnel Hearing was granted to the assessee on 06.09.2023. Shri Neerav Manikar, Advocate and authorised signatory appeared on behalf of the assessee. They reiterated their written submissions dated 28.09.2022 & 05.12.2022 and requested to decide the SCN on merits.

DISCUSSION AND FINDINGS

15. 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. 4,16,80,652/- taken in TRAN-1 Return filed by the noticee.
Details of which are as under:-

Sr No. o.	Para No. of SCN	Credit availed under Section	Colum No. of Trans-1	Total credit availed in Tran-1	Wrongly availed credit
1	6.1	140(2)	6(a)	15,46,092/-	15,46,092/-
2	6.2	140(5)	7(b)	4,33,92,686/-	4,01,34,560/-
	TOTAL				4,16,80,652/-

16. I find that said issue is came out when the CRA Audit Party has issued a Half margin 18 & 19 wherein it was pointed out that the taxpayer has wrongly claimed credit of Rs. 15,46,092/- in table 6(a) and Rs. 4,01,34,560/- in table 7(b) in TRAN-1 Return. For sake of brevity, I am discussing said case/issue point wise.

Point-1 Cenvat credit of Rs. 15,46,092/- wrongly claimed on Capital Goods under Section 140 of the CGST Act 2017.

On perusal of the above referred case records, I find that the issue is came out when the CRA Audit Party issued a Half margin Memo No.19 wherein it was pointed out that the taxpayer 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. The amount claimed through such invoices is Rs. **15,46,092/-** under table 6(a) in TRAN-1 Return.

17. In this connection, I have gone through the reply filed by the notice wherein they claimed that they had carried forward only the unavailed portion of Cenvat credit related to capital goods into Trans-1 form. In other words, only balance 50% of unavailed Cenvat credit of Capital goods was carried forward in Trans-1. In this connection, they submitted the copies of invoices of capital goods and copies of ER-1 return for the month of April'17 to June'17. I find that as per Section 140(2) of CGST Act 2017 a registered person is eligible for credit of the unavailed CENVAT credit in respect of capital goods. The details of Section 140(2) of CGST Act 2017 are reproduced below:-

(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.

18. I find that the jurisdictional Officer is the competent authority to examine/ verify the correctness /admissibility of documents submitted for taking credit. I observe, that if the taxpayer has provided all the documents for verification before issuance of the SCN, the jurisdictional Officer could have verified the same to ascertain admissibility of the input tax credit. However the taxpayer has submitted the documents later stage.

19. In order to ascertain admissibility of credit mentioned in the Tran-1, the document submitted by the taxpayer were sent for verification to the Jurisdictional Deputy/Assistant Commissioner, Div.-III, CGST, Ahmedabad North on 13.09.2023. I find that the verification of document to ascertain admissibility of the credit was verified by the Assistant Commissioner, Central Excise Div.-III, Ahmedabad North vide letter F.No. III/SCN/DC/TEVA/104/2021-22 dated 14.12.2023. He reported that with respect to para 6.1 of SCN, all the invoices required for verification of credit to be availed are in order and amount of Rs. 15,46,092/- matches with total credit shown in table 6(a) of Tram-1 form.

20. Further, I also find that that as per Rule 4(2) 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. For sake of brevity, Rule 4(2) of the CCR, 2004 is reproduced below:-

(2)(a) The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service [or outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory, [or in the premises of the job worker, in case capital goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be]] at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent. 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 in the premises of the provider of output service, if the capital goods, other than components, spares and accessories, refractories 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 output service in such subsequent years

Illustration. - A manufacturer received machinery on the 16th day of April, 2002 in his factory. CENVAT of two lakh rupees is paid on this machinery. The manufacturer can take credit up to a maximum of one lakh rupees in the financial year 2002-2003, and the balance in subsequent years.

On going through copy of invoices of capital goods, I find that said capital goods were received in FY 2016-17 and Provision of section 140(2) permits to carry forward unavailed credit of FY 2016-17 where only 50% credit could be availed as per restriction imposed under Rule 4(2) of CCR 2004. Therefore, noticee is eligible for claiming 50 % of unavailed Cenvat credit on capital goods in Tran-1 which were received in FY 2016-17.

21. In view of the above, on relying upon the verification report dated 14.12.2023 submitted by the Assistant Commissioner, Division III, Ahmedabad North, and noticees submission dated 28.09.2022, I conclude that notice has



correctly availed Cenvat credit on capital goods amounting to Rs.15,46,092/- in their TRAN 1 in table 6(a).

Point-2 Cenvat Credit on Input/input services has been issued after appointed date & some of the Invoices do not have proper description of goods/Services under Section 140 of the CGST act, 2017.

22. I find that vide Half margin Memo No.19 CRA Audit Party has pointed out that the taxpayer has wrongly carried forward CENVAT credit amounting to Rs. 4,01,34,560/- under table 7(b) of TRAN-1 due to following reasons.

Invoices at SI. No. 1 to 31 (attached statement) do not have proper description of goods/services to verify the correctness of the claim.

Taxpayer claimed ITC on invoices at SI. No. 32 to 36 (attached statement) which were issued after appointed day.

23. In this connection, I have gone through records and the reply filed by the noticee wherein they claimed that they had rightly carried forwarded CENVAT credit amounting to Rs. 4,01,34,560/- under table 7(b) of TRAN-1. In order to ascertain admissibility of credit mentioned in the Tran-1 (for invoices amounting to 1,35,69,372/- mentioned at SI. No. 32 to 36), the document submitted by the taxpayer were sent for verification to the Jurisdictional Deputy/Assistant Commissioner, Div.-III, CGST, Ahmedabad North on 13.09.2023. I find that the verification of document to ascertain admissibility of the credit was verified by the Assistant Commissioner, Central Excise Div.-III, Ahmedabad North vide letter F.No. III/SCN/DC/TEVA/104/2021-22 dated 14.12.2023 and reported that said noticee is not eligible of availment of cenvat credit. Verification report is as under:-

S.No.	Supplier C.Ex No.	Invoice No.	Invoice date	Value	Eligible duties	Date on which entered in book of accounts	Reason for ineligibility for availment of credit
1	AAACP6332MST001	GO/17-18/32	30.07.17	7138462	895163	25.12.17	Invoice date falls under the regime of GST.
2	AAACP6332MST001	GO/17-18/33	30.07.17	3482888	2850047	25.12.17	Invoice date falls under the regime of GST.
3	AAACP6332MST001	GO/17-18/34	30.07.17	3861078	484179	25.12.17	Invoice date falls under the regime of GST.
4	AAACP6332MST001	GO/17-18/35	30.07.17	35167027	4923384	25.12.17	Invoice date falls under the regime of

							GST.
5	AAACP6332MST001	GO/17-18/36	30.07.17	5397286	4416599	25.12.17	Invoice date falls under the regime of GST.
Total					1,35,69,372/-		

24. I also find that as per Section 140(5) of the Act, invoices should be recorded in the books of account of such person within a period of thirty days from the appointed day. However, as per report of Jurisdictional Deputy/Assistant Commissioner, Div.-III, CGST, Ahmedabad North, invoices were entered in book of accounts on 25.12.2017 i.e. after one month of the appointed day. In view of verification report of Jurisdictional Deputy/Assistant Commissioner, Div.-III, CGST, Ahmedabad North, I find that said taxpayer is wrongly claimed credit of Rs. 1,35,69,372/- in Tran-1 return.

25. Further, as regard Invoices at SI. No. 1 to 31 amounting to Rs. 2,65,65,188/- having not proper description of goods/services. I find that Jurisdictional Deputy/Assistant Commissioner, Div.-III, CGST, Ahmedabad North has informed that for further verification, stock register of said taxpayer is required, however same was not provided by the taxpayer, thus verification cannot be done. Further, Assistant Commissioner, Div.-III, CGST, Ahmedabad North vide letter F.N. III/SCN-GST/Ford India/JC Hq/04/2021-22 dated 28.12.2023 has submitted copy of email dated 21.12.2023 wherein they requested to the said assessee to submit stock register from Jan 2017 to July 2017 for verification of Tran-1 credit, however, said taxpayer not submitted relevant documents. I have also gone through all records submitted by said taxpayer/records available with this section and find that said taxpayer has failed to submit stock register for verification purpose. Further, according to provision made under section 155 of the CGST Act, 2017, 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 the admissibility of the credit availed under Tran-I rest with the Tax Payer which they have not fulfilled by not providing the required documents for verification. Therefore, transactional credit of Rs. 2,65,65,188/- taken under Tran-1 under Section 140 are not admissible.

26. I rely upon the verification report of the Jurisdictional Deputy/Assistant Commissioner, Div.-III, CGST, Ahmedabad North and I conclude that credit amounting to Rs.15,46,092/- under table 6(a) of TRAN-1 is admissible and remaining credit amounting to Rs. 4,01,34,560/- under table 7(b) of TRAN-1 is inadmissible which is required to recover from the taxpayer.



27. Now, I would like to discuss the applicability of interest. I find that the noticee have not reversed/paid the Input Tax Credit of Rs. 4,01,34,560/- wrongly carried forward in their Electronic Credit Ledger through TRAN-1. I also observe that the noticee have nowhere claimed that they have not utilized the ITC availed through TRAN-1, nor have they produced any document to this effect before me. It is incumbent upon me to mention it here that once the wrongly availed credit has been utilised for discharging the output liability, the same needs to be recovered or reversed along with applicable interest. I find that the case before me, no reversal of wrongly availed Input Tax Credit has been done and no interest on such Input Tax Credit has been paid by the noticee. The provisions of Section 50(3) of the CGST Act, 2017, prescribe interest on Input Tax Credit wrongly availed and utilised. For ease of reference the relevant provisions is reproduced as under:-

Section 50. Interest on delayed payment of tax.-

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

[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

[(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed].

28. In view of above, it is evident that interest liability would squarely arise on wrong availment of Input Tax Credit and subsequent to utilization of the same. I find that the noticee have failed to reverse/pay such wrongly availed ITC and did not pay applicable interest on such wrong availment and utilization of ITC.

29. Further, I find that a new Rule 88B of Central Goods and Service Tax Rules, 2017, regarding manner of calculating interest on delayed payment of tax has been inserted retrospectively w.e.f. 01.07.2017 vide CBIC Notification No. 14/2022-Central Tax, dated 05.07.2022 for easy of reference the same is reproduced as under:-

"Rule 88B. Manner of calculating interest on delayed payment of tax.-

(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished



after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.

(2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.

Explanation.-For the purposes of this sub-rule, -

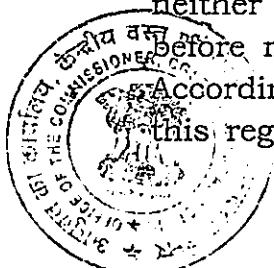
(1) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

(2) the date of utilisation of such input tax credit shall be taken to be, -

(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or

(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases."

30. As per the provisions of the sub-rule (3) of Rule 88B of the CGST Rules, 2017, it is evident that the utilisation of wrongly availed ITC would attract interest provisions if balance of such wrongly availed ITC has been reduced in guise of discharging of output tax liability. I find that the wrong availment of ITC is through TRAN-1 has been established beyond doubt as per discussions in foregoing paras and as regards utilisation of the said ITC, the noticee have neither made any written submission nor produced any documentary evidence before me to explain the situation of non-utilisation of wrongly availed ITC. Accordingly, the liability of interest would arise on such wrongly availed ITC. In this regard, I rely upon the judgement of Hon'ble Jharkhand High Court in



case of M/s. Mahadev Construction reported at 2020 (36) G.S.T.L. 343 (Jhar.), wherein it was held that:-

"Liability of interest is automatic, the same is required to be adjudicated in event of an assessee disputes in computation or vary levability of interest, by initiation of adjudication proceeding under section 73 or section 74 of the CGST Act."

31. In view of the above, I am hold that Interest, on wrongly availed and utilised ITC through TRAN-1, is correctly applicable as per provisions of Section 50(3) of the CGST Act, 2017 read with sub rule (3) of Rule 88B of the CGST Rule, 2017, as amended.

32. Now, Coming to next limb regarding imposition of penalty under the provisions of Section 73(1) read with Section 122(2) of the CGST Act, 2017. I find from facts of case elaborated in the notice that the demand of wrong availed and utilised ITC has been proposed by invoking the provisions of Section 73 of the CGST Act, 2017 and penalty has been proposed under the provisions of Section 122(2) of the CGST Act, 2017. Before going ahead, it would be pertinent to look into the provisions of Section 122(2) of CGST Act, 2017 first, the same is reproduced as under:-

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

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

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

33. On plain reading of the above provisions, it is evident that clause (a) of the Section 122(2) of the Act, speaks about the penalty commensurate to Section 73(9) of the Act for contraventions of provisions of the Act. Further, it is also evident that quantum of penalty equal to ten thousand or ten percent of tax due, whichever is higher, is liable on a registered taxable person who supplies any goods or service or both; or where the input tax credit has been wrongly availed or utilised for reason other than fraud or any wilful misstatement or suppression of facts to evade tax. Looking to the facts of the case, the wrong availment of ITC through TRAN-1 has been soundly established in the instant case. Further, the utilisation of such wrongly availed ITC and consequent to liable for interest has also been justified as per discussions in foregoing paras. I find that the noticee have availed transitional Credit in contravention of provisions of Section 140 of the CGST Act, 2017 and have wrongly utilized the same. Accordingly, they have made themselves liable for penalty under the provisions of Section 122(2)(a) of the CGST Act, 2017.

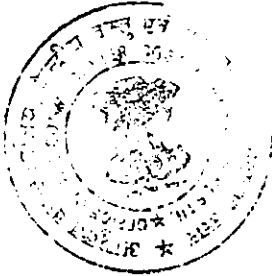
34. In view of the above discussions and findings, I pass the following order:



ORDER

- (i) I allow the Transitional credit of Rs.15,46,092/- (Rupees Fifteen Lakhs Forty Six Thousand Ninety Two only) claimed in Table-6(a) of FORM GST TRAN-1 under Section 140(2) of the CGST Act,2017 and drop the demand of same.
- (ii) I disallow the Transitional credit of Rs. 4,01,34,560/- (Rupees Four Crore One lakhs Thirty Four thousand Five Hundred Sixty only) claimed in Table-7(b) of FORM GST TRAN-1 under Section 140 of the CGST Act,2017 and order to recover the same from them under Section 73(9) of the CGST Act,2017;
- (iii) I confirm the demand of interest under Section 50(3) of the CGST Act,2017 in respect of the demand at (ii) above;
- (iv) I impose penalty of Rs.40,13,456/- (Rupees Forty Lakhs Thirteen Thousand Five Hundred Fifty Six only) under Section 73(9) of the CGST Act,2017 read with Section 122(2)(a) of the Central Goods and Services Tax Act, 2017 for the wrongly availing, carrying forward and utilization of inadmissible Cenvat Credit as transitional credit in TRAN-1;

35. Accordingly, the Show Cause Notice bearing F.No. GST/15-31/OA/2022-23 dated 18.10.2022 is disposed off in above terms.



(Lokesh Damor)
Joint Commissioner,
Central GST & CE,
Ahmedabad North
Dated 28.12.2023

F.NO.GST/15-31/OA/2022-23

By RPAD/MAIL

To,

M/s. Tevapharm India Private Limited ,
Plot No.SM-46, Sanand II Industrial Estate AT
& Post, Sanand Ahmedabad -382110

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Div- III Ahmedabad North.
3. State Tax Officer, Ghatak 11(Ahmedabad), Range-3, Division-1, Commercial Tax Office, 3rd Floor, Taluka Seva Sadan, Near Gandhi Hospital, Mandal Road, Viramgam **for generating and uploading DRC-07 on the portal in terms of DSR advisory No.01/2018 dated 26.10.2018 and Instruction No. 04/2023-GST dated 23.11.2023.**
4. The Superintendent, Range-V, Division-III, Central GST & Central Excise, Ahmedabad North
- ✓ 5. The Supdt.(System), CGST & C.E. Ahmedabad North for uploading the order on website.
6. Guard File.