आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER
केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH
पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद – 380009
FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD – 380009
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. **GST/15-321/OA/2021** आदेश की तारीख़/Date of Order:- 24.06.2022

जारी करने की तारीख़/Date of Issue :- 24.06.2022

DIN NO: 20220664WT0000914839

द्वारा पारित/Passed by:- आर गुलजार बेगम */R. GULZAR BEGUM*

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 30/ADC/GB/2022-23

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 विरूद्ध अपील ,इसकी प्राप्ति से) 60 साठ (दिन के अन्दर आयुक्त) अपील ,(केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन ,अंबावाड़ी ,अहमदाबाद-380015को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

उक्त अपील ,अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-.में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क) अपील (नियमावली 2001 के नियम 3 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 विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. 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.2.00.

विषयः- कारण बताओ सूचना/ Show Cause Notices **F. No. GST/15-321/OA/2021 dated 15.02.2022** issued to M/s. Nirma Limited, Nirma House, Ashram Road, Navrangpura, Ahmedabad – 380009

Brief facts of the case: -

M/s. Nirma Limited, Nirma House, Ashram Road, Navrangpura, Ahmedabad – 380009 (hereinafter referred to as 'the Noticee'), is registered under The Central Goods and Services Tax Act, 2017 (herein after referred to as 'CGST Act, 2017' and is engaged in supply goods falling under HSN code 3401, 3817, 2836 and 1515 and also supplying services such as Goods Transport Agency, Legal and consultancy service etc. The supplies are falling well within CGST Act, 2017. The Noticee is also availing the benefit of input tax credit on inputs, capital goods and input service under Central Goods and Service Tax Rules, 2017 (hereinafter referred to as CGST Rules, 2017). Before implementation of CGST Act, 2017 i.e. before 01.07.2017, the Notice was registered under Central Excise Act, 1944 and Finance Act, 1994, was migrated to CGST Act, 2017.

2. The CENVAT credit of the erstwhile act that is Central Excise Act 1944 and CENVAT credit Rules, 2004 amended from time to time and credit of service tax paid under the Finance Act 1944 maybe transited under CGST Act, 2017 in terms of section 140 of CGST Act, 2017 in form of TRANS-1. The credit of various Units of the Noticee and various categories were transited amounting to Rs. 53,87,19,978/- as tabulated at Para 2 of the Show Cause Notice. The form TRANS-1 was filed by the Noticee on 27.12.2017.

3. At column number 5(a) of the FORMTRANS-1, the Noticee transited the Cenvat Credit to the tune of Rs. 32,87,25,141/- on the basis of closing balance lying in ER-1 return as 30.06.2017 in respect of different units of the Noticee, as tabulated at Para 4.1 of the Show Cause Notice. At column number 6(a) of FORM TRANS-1, the Noticee has availed CENVAT Credit amounting to Rs. 8,57,52,517/- with regards to 50% balance of the capital goods credit available for the year 2017-18 as indicated in para 4.2 of the Show Cause Notice. At column number 7(a) of the FORM TRANS-1 credit amounting to Rs. 3,15,228/- was transited. This credit is availed on the stock held as on 30.06.2017 as indicated in para 4.3 of the show Cause Notice. The credit under column 7(b) pertains to eligible duties and Taxes (VAT/ET) in respect of inputs and input services under section 140 (5) of CGST Act, 2017. The credit under this section is admissible with regards to invoices which pertains to the period prior to June 2017 and inputs received after the appointed day for which payment of such invoices are made after June 2017. The credit of Central Excise duty on inputs amounting to Rs. 8,75,62,529/- has been availed by the Noticee as indicated at para 4.4 of the Show Cause Notice.The credit under column 7(b) of FORM TRANS-1 pertains to eligible duties and Taxes in respect of input services.The credit under this section is admissible with regards to invoices which pertains to the period prior to June 2017 and input services are received after the appointed day for which payment of such invoices are made after June 2017. The credit of Service Tax on input services amounting to Rs. 3,63,64,563/- has been availed by the Noticee as indicated at para 4.5 of the Show Cause Notice.

4. The verification of the credit availed by the Noticee in the FORM TRANS-1 was undertaken and following discrepancies was noticed: -

(i) The credit availed under column 6(a) of the FORM TRANS- 1, in respect of capital goods. On verification it is observed that some invoices pertaining to the period 2016-17, where in first credit of 50% shall be availed in 2016-17

and remaining 50% credit may be availed in the year 2017-18 i.e. in the month of April 2017. The Noticee has avail total credit amounting to Rs. 42,21,114 for such invoices, that is full credit of the capital goods of the relevant period was transited as detailed in Annexure B attached to the show Cause Notice, resulting into wrong availment of credit.

(ii) on verification of the invoice is found that credit transited under column 7(b) of Trans 1, it is observed that the Noticee has availed credit to the tune of Rs. 5,42,14,604/- on the basis of invoice of inputs and input service where invoices pertain to period prior to the appointed day i.e., 01.07.2017, implementation of GST, while the inputs and input services were received prior to the appointed date and payment has been made after the appointed day. The details of such invoices are given at Annexure-C attached to the show Cause Notice, resulting into wrong availment of credit.

(iii) further it is also observed that the Noticee has avail the credit in respect of invoices issued after the appointed day which is not admissible. The amount of credit transited to the tune of Rs.6,52,368 on the basis of invoice issued after the appointed date i.e., 01.07.2017 the details of such invoices given at Annexure-D attached to the show Cause Notice, resulting into wrong availment of credit.

5. CERA Audit was also undertaken. CERA Audit issued half margin memo number 69, 70 and 71 dated 01.04. 2021 the details are given at para 5.4 of the show Cause Notice. It is also observed that due to duplicate entry credit to the tune of Rs. 71,25,418/- was availed as an excess credit which was reverse by the Noticee in their GSTR-3B return for the month of May 2018. it is also observed that the Noticee has availed the credit of Rs.4,10,124/- in respect of Cess which was also reversed in their GSTR-3B return for the month of January, 2019. However, the Noticee has not paid interest on the reversal made, which is required to be recovered.

6. Pre-Show Cause Notice consultation and clarification was also called for to which the Noticee replied point wise vide their letter dated 29.12.2021. The clarification was not found to be satisfactory by the proper officer therefore Show Cause Notice bearing F.No. GST/15-321/OA/2021 dated 15.02.2022 was issued. Vide said Show Cause Notice the Noticee was called upon as to why :-

(i) input tax credit of Rs. 13,75,54,998/- as determined hereinabove should not be demanded and recovered under Proviso to Section 73(1) of the CGST Act, 2017

(ii) interest at the appropriate rate on the amount mentioned at serial number (i) should not be charged and recovered from them under section 73(5) of the CGST Act, 2017

(iii) the irregular credit availed for Rs. 75,35,542/-(This includes the credit of Rs. 5,29,280/- as pointed out vide Half Margin Memo No. 70 of CERA Audit as discussed in para 6.5) which is Reverse by the Noticee should not be appropriated.

(iv) Interest at appropriate rate on the amount of credit reversed for Rs. 75,35,542/- should not be charged and recovered from them under Section 73 (5) of the Act.

(v) Penalty on the amount mentioned ar 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.

DefenceReply:-

1. Submission on Sr.No. 1 of the above table, wrongly availed credit of Rs. 42,21,114/-

1.1 In para 5.1 of the SCN, it is contended that 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 CGST Act, 2017 is verified and found some invoices pertains to the period 2016-17 wherein first credit of 50% availed in 2016-17 and remaining 50% credit may be availed in 2017-18 i.e. in the month of April, 2017. The Noticee has availed total credit in Trans-1 amounting to Rs.42,21,114/ for such invoices. If the said credit availed 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.

1.2 Noticee under their reply dtd. 29.12.2021 at point No. (iii) has already explained that the credit is availed in terms of section 140(2) of CGST Act in Column 6(a) against the Noticee's detailed submission, in para 6.1 of the SCN, it is alleged that:

"The contention of the Noticee is not logical as they stated that they have not availed first 50% credit at the time of receiving capital goods during the year 2016-17 as they have not provided any evidences which proves that such credit was not availed in 2016-17 but availed in 2017-18 for the goods received in the year 2016-17, and therefore the said credit carried forward in their Tran-1 is not eligible and required to be reversed along with interest thereon under section 73 of the CGST Act, 2017."

1.3 As regard to credit Rs.42,21,114/- claimed under Table 6(a) of Tran-1, it is submitted that, Notice has not availed the credit twice as alleged in the SCN. For better appreciation of the fact, the relevant provisions dealing with availment of Cenvat credit under the existing law i.e.cenvat credit rules is as under:

Rule 4(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 or the final products 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.

1.4 From the above provision of law, the credit of capital goods 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. In the present case the invoices in question pertains to the capital goods received in the financial year 2016-17, Noticee has not availed the Cenvat credit of first fifty percent in the said financial year in which the

capital goods were received. The first Fifty percent credit was availed in the First quarter of the financial year 2017-18 (April,17 to May,17) the date of credit, amount of credit of the first fifty percent credit can be verified from the entries appearing in the RG23 Part-2 register which is maintained in the existing law. Therefore, Noticee has availed the credit of first Fifty percent as per Rule 4(2)(a) of the Cenvat credit Rules in the year 2017-18, though the invoices pertain to the year 2016-17. The remaining Second fifty percent credit was availed in Column 6(a) in terms of section 140(2) of the CGST Act in Trans-

1. For better appreciation of the facts, the Section 140(2) of the CGST Act is reproduced as under:

Section 140(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.

1.5 On conjoint reading of the section 140(2), it is very clear that unavailed Cenvat credit in respect of capital goods, not carried forward in a return under the existing law can be availed through Tran-1, and as per the explanation unavailed CENVAT credit means the amount remains after subtracting the amount of credit already availed in respect of the Capital goods. In the present case, the First Fifty percent credit was availed during (April 2017 to June2017) FY-2017-18 and therefore, the remaining unavailed Fifty percent is availed in Table 6(a) of the Tran-1. Therefore, there is no availment of credit twice in the Trans-1 as alleged in SCN and the balance fifty percent credit of capital goods is correctly claimed.

1.6 As regard to the allegation that Noticee has not submitted any evidences which proves that such credit was not availed in 2016-17 but availed in 2017-18 for the goods received in the year 2016-17. It is submitted that Noticee maintain records electronically in ERP software, When the capital goods are received, GRN is prepared and the quantities are entered in the stock ledgers. The details of quantities are entered in RG23 Part-I register and the invoices wise details of Cenvat credit availed is entered in RG23 Part-II registers. The Copies of RG 23 Part-I & RG 23 Part-II are attached for the year 2016-17. The RG23 Part-I & RG23 Part-II for year 2017-18 (first quarter) is also enclosed. On verification of RG-23 registers for the both the years with the invoice number, Goods Receipt Note (GRN) supplier details and CENVAT credit availed, your Honor will be fully satisfied that the first 50% credit was availed in the year 2017-18 and no credit was availed in the financial year 2016-17 therefore, no CENVAT credit is availed twice. The remaining

balance 50% credit is availed in table 6(a) of Tran-1 in terms of section 140(2) of CGST Act. The copies of invoices and invoice wise statement and copies of RG-23 Part-II and sample GRN copies are annexed and marked as Annexure-D.

1.7 From the above, submissions and the documentary evidences, your Honor will be fully satisfied that the allegation made in the Show Cause Notice are not legal, correct and proper and are contrary to the provisions and so the SCN is not sustainable and required to be dropped.

2. Submission on Sr.No. 2 of the above table, wrongly availed credit of Rs. 5,42,14,604/-

2.1 In para 5.2 of the SCN, it is contented that on verification of both the credit availed on inputs and input services (Excise duty and Service tax) 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 pertains to the period prior to appointed day, As per transitional provisions the input or inputs services should be received after appointed day, and therefore, in the case of input or input services received prior to appointed day on which the credit is not admissible in Trans-1 even if the payment has been made under existing law after appointed day. The taxpayer has availed credit in Trans-1 for Rs.5,42,14,604/- on such invoices of inputs and input services and in case of input or input services received prior to appointed date then the credit is not admissible and wrong availment of credit in Trans-1 which required to be reversed along with interest thereon.

2.2 Noticee under their reply dtd. 29.12.2021 at point No. (iv) has explained that the credit is availed in terms of section 140(5) of CGST Act in Column 7(b) against the Noticee's detailed submissions, in para 6.2 of the SCN, it is alleged that:

"The contention of the Notice is not logical as they have stated that the payment in respect of such invoices has already made prior to the appointed date, but they have accounted for in their books of accounts within thirty days of appointed date. Thus it is proved that the Noticee is focused only on payment made after appointed date within thirty days. However 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 appears in the present case that neither the Noticee has received input or input services after appointed day not they have made the payment in existing law, but in their books of account they have accounted for in the month of July, 2017 which is violation of the provisions of section 140(5) and therefore the Noticee is not entitled for carried forwarded the said credit in Trans-1 and required to be recovered along with interest thereon."

2.3 It is submitted that column 7(b) of Tran-1 pertains to the credit in respect of input & Input services during the transit and as per section 140 (5) of CGST Act. The section 140(5) is reproduced as under:

"section 140(5)- A registered person shall be entitled to take in his electronic credit ledger credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day, but the duty or tax in respect of which has been paid by the supplier under the existing law, within such

time and in such manner as may be prescribed, subject to the condition that the invoice or any other duty paying documents 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."

2.4 From the above section 140(5), it can be seen that provisions under section 140(5), provides for credit on Input or Input services during transit that are received on/after the appointed day on which excise duty/service tax has been paid under the existing law. The registered person can claim its credit subject to the condition that the invoices or other taxpaying documents are recorded in the books of account of the registered person within a period of 30 days from the appointed day.

2.5 As regard to the credit of Rs.5,42,14,604/-. It is submitted that out of the said credit, Credit amounting to Rs.4,42,59,124/- pertains to the imported raw material (i.e. Inputs) such as coke, pet coke and lime stone. The imported raw material is received at Port in bulk and thereafter it is transferred to factory in piece meal. The credit is availed on the raw material which was received in July, 2017. The good receipt note (GRN) is prepared in the month of July, 2017 and accounted for in the books of accounts in the month of July, 2017, well within the thirty days from the appointed date. The raw material was in transit and receipt in the month of July,2017. On these imported raw material at the time of import, the bill of entries was filed with the customs and CVD (equivalent to excise duty & SAD) is paid under the existing law i.e. before 01.07.2017. Therefore, the conditions provided under section 140(5) of the CGST Act stands fulfilled. Therefore, the credit is correctly availed by Noticee in Column 7(b) of Tran-1 in terms of section 140(5) of CGST Act. From this evidence, it is as clear as days light that conditions under section 140(5) is fulfilled and so the credit is availed correctly by showing it in table 7(b) of Trans-1 as provided under section 140(5) of CGST Act. Copies of bill of entries, evidencing the payment of CVD equivalent to excise duty and sample copies of Goods receipt note evidence the receipt of the goods are enclosed and marked as Annexure-E and E-1.

2.6 As regard to the remaining Credit amounting to Rs. 23,622/- It is submitted that credit pertains to Inputs. The invoices against which credit is availed are dated 28.04.17, 17.04.17, 13.04.17, 13.04.2017. from the copies of invoices, it could be seen that the excise duty is paid under these invoices before 01.07.2017, the goods were under transit and are received in the month of July, 2017 and the goods receipt note (GRN) is prepared in the month of July,2017 and the invoices were booked in account in the month of July, 2017. Therefore, the conditions provided under section 140(5) of the CGST Act are fulfilled. From this evidence, it is as clear as days light that conditions under section 140(5) is fulfilled and so the credit is availed correctly by showing it in table 7(b) of Trans-1 as provided under section 140(5) of CGST Act. Therefore, the credit is correctly availed by the Noticee in Table 7(b) of Tran-1 in terms of section 140(5) of CGST Act. Copies of invoices, and the sample copies of Goods receipt note is annexed and

marked as Annexure-E-2.

2.7 As regard to remaining amount of credit amounting to Rs. 78,376/- It is submitted that the credit pertains to Job Work. The facts are that, under the existing law, Noticee is sending the raw material to our job worker M/s. Nirav Lamination and Karan Paper Mills for job work purposes under rule 4(5) (a) of Cenvat Credit Rules. As per the Cenvat credit rules, after the job work is completed, the job work material should receive back from the job worker within 180 days. In case if the goods are not received within 180 days, Noticee is required to reverse the credit originally availed on the balance quantities lying at job worker premises, which is not received. Accordingly, Noticee has reversed the cenvat credit. However, it is also provided under the Cenvat credit rules, that subsequently, when the raw material is received back from the job worker, the re-credit of the amount of credit reversed earlier can be taken. Noticee has also declared the said quantity in the column 9(a) of Tran-1, pertaining to furnishing of details of goods sent to job worker and held in stock on behalf of principal as per section 140 of CGST, Act. The said goods were received after, 1.7.2017. Therefore, Noticee has availed the credit which was earlier reversed, by showing the said credit in table 7(b) of Tran-1 in terms of section 140(5) of CGST Act. Even otherwise, section 142(3) speaks about refund of cenvat credit paid under the existing law on or after the appointed day. Therefore, instead of applying for the refund, Noticee availed the credit by showing the same in the Tran-1 form. Therefore, Noticee has correctly availed the credit under the Tran-1. The copies of job work challan and details of credit are annexed and marked as Annexure-E-3.

2.8 As regard to remaining amount of credit amounting to Rs.98,53,482/- It is submitted that the credit pertains to invoices of Input services. The Invoices are issued by the service provider under the existing law and service tax is paid. The services and the invoices are received by Noticee after 01.07.2017 and recorded in the books of account in the month of July, 2017, i.e. well within the thirty days from the appointed date. Therefore, the condition enumerated under section 140(5) is fulfilled and the credit is claimed in table 7(b) of the Tran-1 correctly and the credit is availed properly. The copies of invoices and invoice wise statement marked as Annexure-E-4.

2.9 From the above submissions and documentary evidence, your honor will be fully satisfied that the allegation made in the Show cause notice are not legal, correct and contrary to the provisions and so the SCN is not sustainable in law and required to be dropped.

3. Submission on Sr. No. 3(iv) of the above table, wrongly availed credit of Rs. 6,52,368/-

3.1 In para 5.3 of the SCN, it is contended that under column 7(b) of Tran-1, it is observed that the taxpayer has availed the credit in respect of invoices issued after appointed date in existing law of central excise and service tax. Such credit availed on the basis of invoices issued after the appointed date 01.07.2017 is not admissible under the transitional provisions of section 140 of the CGST Act, 2017. The taxpayer has availed total credit of Rs.6,52,368/- on such invoices issued after the appointed date in existing law of central excise and service tax, which required to be recovered along with interest thereon.

3.2 Noticee under their reply dtd. 29.12.2021 at point No. (v) has explained that the credit is availed in terms of section 140(5) of CGST Act in Column 7(b) against the Noticee's detailed submissions, in para 6.3 of the SCN, it is alleged that: "The contention of the Noticee is not logical as they have stated that they the credit pertains to the payment of service tax under RCM done after the appointed date. The Board Circular refer by the Noticee is clearly stated that in case of payment of tax under RCM after appointed date, there was option for filing revised ST-3 return. However, the Noticee has not provided evidences for filing revised ST-3 return, but they have availed such credit directly in Tran-1, which is in violation of the provisions of section 140 of the CGST Act, 2017 and therefore, required to be recovered along with interest under the provisions of section 73 of the CGST Act, 2017."

3.3 As regard to the disputed total credit of credit of Rs.6,52,368/-, It is submitted that credit amounting to Rs. 5282/- pertains to Input services. The invoices on which credit is availed is No. 18 dtd 29.07.2017 and invoice No.06 dtd. 22.08.2017 (refer Sr.No.1 & 12 of Annexure-F). The cenvat credit is availed of service tax paid on Input services of banking and other financial services. The service tax is paid under forward charge by the banking company. The services and the invoices were receipt and recorded in the month of July, 2017 that is well within the thirty days from the appointed date. Therefore, the condition enumerated under section 140(5) is fulfilled and the credit is claimed in table 7(b) of the Tran-1 correctly and properly. The copies of invoices and statement of the invoices with details are annexed and marked as Annexure-F.

3.4 As regards to remaining amount of credit of Rs.6,47,086/- It is submitted that credit pertains to the service tax paid under Reverse Charge mechanism (RCM) on inputs services such as (i) goods transport agency service, (ii) Manpower Services, (iii) Security service, (iv) Work contract service,(v) legal services. All the invoices of service provider are prior to 01.07.2017 (refer Sr.No. 2 to 11 & 13 of Annexure-F) and the payment of service tax under RCM is made after 01.07.2017. It is submitted that government vide Notification No.18/2017-Service tax dtd. 22.06.17 has extended the date of filing the ST-3 return for the period April,17 to 30th June,17 and by virtue of said notification, the ST-3 return for the said period can be filed by 15th August, 2017. Further it has been provided that those who have already filed there ST-3 return can file ST-3 revised return for the period April, 2017 to June,17 within a period of forty-five days from the date of submission of the return under Rule 7 of service tax rules, 1994.

3.5 Further, it is submitted that the CBIC has also issued circular No.207/5/2017-service tax dtd.28.09.2017, wherein certain transitional issued arising with respect to payment of service tax after 30th June, 2017 has been clarified. In the said circular, issue raised at para 2.0 and the clarification issued is as under:

"2.0 Reflection of transitional credit arising out of payment of service tax on reverse charge basis after 30th June, 2017 and by 5th/6th July,2017.

2.2 the matter has been examined. In such cases, details of credit arising as a consequence of payment of service tax on reverse charge basis after 30th June, 2017 by 5th/6th July, 2017, the details should be indicated in Part-I of form ST-3 in entries, I3.1.2.6, I3.2.2.6 and I3.3.2.6 inked entries should be made in para H of Form ST-3. In case the return has already been filed by or after the due date, these details should be indicated in the revised

return, the time for filing of which is 45 days from the date of filing of the return."

2.3 It is necessary to give compliant assessee who had filed their ST-3 return by due date or some days later, an immediate and viable window in which a revised return can be filed consequent to the issue of this instruction. Hence all ST-3 returns for the period 01.04.2017 to 30.06.2017, which have been filed upto and inclusive of 31st day of August, 2017, shall be deemed to have been filed on 31.08.2017. This will give all such assessees some more days to file a revised return, if necessitated. Once details of such credit are reflected in the ST-3, the assessee may proceed to fill the details in Form GST-TRAN-1. It may be noted that as on date, GST TRAN-1 can be filed upto 31.10.2017 and can also be revised."

3.7 It is submitted that as per the above discussed Notification and circular, in case of service tax liability under RCM under the existing law, as allowed under the aforesaid instructions, Noticee has discharged the said liability after July, 2017 and filed the revised ST-3 return and shown and availed the said credit in the GST-TRAN-1 return. Only procedural mistake is that inadvertently, Noticee did not show and availed the said credit of service tax paid under RCM in revised ST-3 return, had it claimed in ST-3 return, the said credit would have been claimed as unutilized credit lying in ST-3 return under the existing law in column 5(a) in Tran-1, instead of this we claimed the said credit under Tran-1 in column 7(b). The credit cannot be denied on this procedural mistake in as much as that the credit is otherwise admissible and only issue is that of presentation/showing and claiming the said credit in correct column of Tran-1 form. Therefore, it cannot be said that Noticee has wrongly availed the credit and therefore, the credit availed of service tax paid on input service under RCM in Tran-1 as per the instruction issued by the CBIC is proper and correct. The details of Challan under which the RCM liability was discharge and the statement showing the working are enclosed as Annexure-F.

3.8 From the above submissions and documentary evidence, your honor will be fully satisfied that the allegations made in the Show Cause Notice are not legal, correct and proper and contrary to the provisions made and so the SCN is not sustainable and required to be dropped.

4. Submissions on Sr.No. 3(ii) of the above table, wrongly availed credit of Rs. 6,88,46,954/-

4.1 In para 6.7 of the SCN, it is contended that it appears that the Noticee has availed total credit of Rs.12,39,27,092/- under the provisions of section 140(5) of CGST Act, 2017. On verification of invoice wise details, it appears that the Noticee has availed the credit on invoices of input and input services pertains to the pre-GST i.e., prior to 01.07.2017. It appears from the all invoices some invoices pertains to the period prior to 01.06.17 and credit availed for invoices prior to 01.06.2017 to the tune of Rs.5,42,14,604/- which is discussed in para 6.2 of this notice. Further the wrongly availed credit of amount of Rs.6,52,368/- and Rs.2,13,166/- as discussed in para 6.3 and 6.6 above also included in total credit. However, the remaining amount of Rs.6,88,46,954/- (Rs.12,39,27,092/- - Rs.5,42,14,604/- - Rs.6,52,368/- -
Rs.2,13,166/- pertains to the invoices for the period from 01.06.2017 to 30.06.2017.

Further it is alleged:

"In this regard, the Noticee has not provided the proof that credit has not been availed by them in regular ER or ST return in the month of June,2017 and input or input services received after appointed date. The Noticee has availed such credit only on the basis that these invoices have been accounted for in their books of account after appointed dated 01.07.2017 within 30 days i.e. 31.07.2017. Thus, it appears that there is gross violation of the provisions of this section as it provides that input or input services received after appointed date and payment should be made within 30 days of appointed date. It appears that credit of Rs.6,97,12,488/- for the invoices pertains to the period 01.06.2017 to 30.06.2017, the input or input services received during this period and payment of such invoices made in the month of July, 2017, which proves that the input or input services received prior to appointed date, the credit of such invoices is entitled in ER or ST return and not in the transitional provisions as claimed by the Noticee. It appears that the Noticee has not produced any documentary evidence which proves that the input or input services pertains to the invoices from 01.06.2017 to 30.06.2017 has been received after appointed date i.e., after 01.07.2017 and payment made after July,2017. They availed this credit only on the basis that such invoices were accounted for in their books of accounts within thirty days which in violation of the provisions of section 140(5), and therefore, the credit of Rs.6,97,12,488/- for the invoices pertains to the period 01.06.2017 to 30.06.17 is not admissible to them and required to be recovered along with interest under the provisions of section 73 of the CGST Act."

4.2 It is submitted that the correct amount is Rs. 6,90,59,820/- and not Rs.6,88,46,954/- as shown in the SCN and out of the total credit disputed, credit amounting to Rs.4,31,97,607/- pertains to inputs i.e. imported raw material and indigenous raw material which are received in the factory after 01.07.2017. The goods receipt note (GRN) is prepared in the month of July, 2017 and accounted for in the books of accounts in the month of July, 2017, well within the thirty days from the appointed date. The inputs were removed by the supplier on payment of excise duty under the existing law and under the cover of valid invoices. The goods were in transit and are received in the factory after appointed date. Therefore, the conditions provided under section 140(5) of the CGST Act stands fulfilled. Therefore, the credit is correctly availed by Noticee in table 7(b) of Tran-1 in terms of section 140(5) of CGST Act. Copies of invoices and bill of entries evidencing the payment of Central Excise duty/CVD under the existing law and sample Copies of Good receipt note (GRN) evidencing the receipt of the goods are enclosed and marked as Annexure- G and G-1.

4.3 As regard to remaining amount of credit amounting to Rs.2,58,62,213/- it is submitted that the credit pertains to invoices of Input services. The invoices are issued by the service provider under the existing law and service tax is paid. The services and the invoices are received by the Noticee after 01.7.2017 and recorded in the books of account in the month of July, 2017, i.e., well within the thirty days from the appointed date. Therefore, the conditions enumerated under section 140(5) of CGST Act is fulfilled and the credit is claimed in table 7(b) of Tran-1 correctly and properly. Copies of invoices are available with Noticee but not submitted as are voluminous and shall be produced for verification if required by your Honor. The statement of the invoices with details are annexed and marked

as Annexure-G-2.

4.4 From the above submissions and documentary evidence, your honor will be fully satisfied that the allegations made in the show cause notice are not legal, correct and proper and are contrary to the provisions made and so the SCN is not sustainable in law and required to be dropped.

5. Submission on Sr.No. 4 of the above table, wrongly availed credit of Rs. 94,06,792/-

5.1 In para 5.4 of SCN, it is observed that the CERA Audit has issued Half Margin Memo. No. 69,70,71 dtd.01.04.2021 for verification of Tran-1. On the basis of half margin memo issued by the CERA Audit following proposals are made in the SCN

5.2 In para 6.4 of the SCN, it is contented that regarding the Half Margin No. 69, wherein it was observed that the taxpayer has claimed credit of Rs. 8,57,52,517/- pertaining to Capital goods in table 6(a) of TRAN-1. The statement of Capital goods credit revealed that the taxpayer had claimed the credit of entire amount of capital goods on some invoices, though 50% credit was not availed earlier. Since, the taxpayer had not availed the partial credit earlier, entire credit claimed in table 6(a) to the tune of Rs.94,06,792/- appears to be incorrect.

5.3 Noticee under their reply dtd. 29.12.2021 at point No. 1 (page No. 9) has explained that the credit is availed in terms of section 140(2) of CGST Act in Column 6(a) against the Noticee's detailed submissions, it is alleged that:

"The contention of the Noticee is they have not availed first 50% in existing law and therefore 100% credit was carried forwarded in Tran-1. 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 on CGST Transitional Credit, it is clarified at Sr.No.2 of Table of para2 that column 11 if table 6(a) (140(2) 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 meant to be used by taxpayers who have availed a portion of Cenvat credit on Capital goods through ER or ST return and not intend to avail remaining credit in respect of Capital goods which has not been availed through the ER or ST return."

"The Noticee has stated that they have not availed first 50% in pre-GST regime, however they have not submitted any evidence which prove that credit has not been availed in Pre-GST regime, and furthermore provisions of this section and Guidance Note specifically clarified that the remaining 50% of credit on capital goods is allowed to carried forwarded, and therefore, availment of 100% credit by the said Noticee is against the transitional provisions of section 140 and Guidance Note. 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."

5.4 As regard to the capital goods credit availed for Rs.94,06,792/-. It is submitted that the correct amount is Rs.94,15,486/-, it seems there is punching mistake in the statement prepared and attached with the Show cause notice, you are requested to check and correct at your end. The Capital goods invoices are pertaining to prior to 01.07.2017. the credit is availed in table 6(a) of the Tran-1 in terms of section 140(2) of CGST Act. As per section 140(2) of CGST Act, a registered person is entitled to take, in his electronic credit ledger, credit of unavailed Cenvat credit in respect of capital goods, not carried forwarded in a return furnished under the existing law. Since, Noticee has not availed the first 50% credit in the existing law, therefore, in terms of explanation to section 140(2), which defines "unavailed CENVAT credit" and which 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. Hence, the entire unavailedcenvat credit was availed in Tran-1. In the present case there is no dispute about the receipt and use of the capital goods in manufacture of taxable goods and admissibility of CENVAT credit on the Capital goods under the existing law. It is also not in dispute that supplier has paid the Central Excise duty under the existing Central Excise Act and valid central excise invoices were issued pertaining to the said capital goods. All the invoices were issued prior to 01.07.2017. In terms of section 140 (2) of the CGST Act, credit of 'unavailed CENVAT credit in respect of capital goods, not carried forward in a return under the existing law, can be claimed in Tran-1. Since, in respect of these capital goods, we have not availed the credit in the return filed under the existing central excise Act for the period ending 30.06.2017, we availed the entire cenvat credit. It is important to note that as per explanation to section 140(2) 'unavailed CENVAT credit' means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods under the existing law from the aggregate amount of CENVAT credit. Since, Noticee has not availed the first fifty percent credit, therefore, as per explanation, there is no amount of Cenvat credit already availed to subtract from the aggregate amount of Cenvat credit and so entire amount of aggregate cenvat credit of the excise duty paid and shown in the invoices is available as credit and to be claimed in table 6(a) of Tran-1. Therefore, the entire unavailed Cenvat credit on these capital goods was availed in Table 6(a) of Tran-1 in terms of section 140(2) of CGST Act. The copies of invoices are enclosed and the statement showing the details of credit availed is annexed and marked as Annexure-H.

5.5 From the above submissions and documentary evidences, your honor will be fully satisfied that the allegation made in the Show Cause Notice are not legal, correct and proper and contrary to the provisions made and so the SCN is not sustainable in law and required to be dropped.

6. Submission on Sr.No. 5 of the above table, wrongly availed credit of Rs. 2,13,166/-

6.1 In para 6.6 of the SCN, it is contented that regarding Half Margin No.71, wherein it was found that the taxpayer has claimed the credit of Rs.12,39,27,092/- under table 7(b) of TRAN-1. Scrutiny of statement in table 7(b) of Trans-1 revealed that few invoices were recorded in the book of account after a period of thirty days from the appointed date. No permission for extension for recording invoices in the book if account after thirty days

was sought from the Commissioner. This resulted into incorrect claim of credit of Rs.2,12,166/- which is required to be recovered from the taxpayer.

6.2 Noticee under their reply dtd. 29.12.2021 at point No. 2 (page No. 10) has explained that the credit is availed in terms of section 140(5) of CGST Act in Column 7(b) against the Noticee's detailed submissions, it is alleged that:

"The contention of the Noticee is that they the credit pertains to the payment of service tax under RCM and pertains to re-credit of amount reversed on job work. However as per the transitional provisions the payment of tax should be made within 30 days from the appointed date and in the case of period beyond thirty days, it is required to obtain the extension from the Commissioner on showing sufficient cause, however in present case the Noticee has availed such credit on invoices on invoices accounted for after thirty days from the appointed day and not obtained the extension from the Commissioner for availment of such credit under the provisions of section 140(5), and therefore this credit availed by the Noticee is not entitled to them and required to recovered along with interest thereon under the provisions of section 73 of CGST Act."

6.3 It is submitted that out of the total credit amounting to Rs.2,13,166/-, credit of Rs. 82,176/- pertains to re-credit of amount reversed on account of non-receipt of Job work goods within 180 days. Noticee has already discussed and submitted in the forgoing paragraph on this issue and same may be referred/considered while deciding this issue. Noticee is sending the raw material to Nirav Lamination and Karan paper Mills for Job work purposes. As per the existing Cenvat credit rules, the Job work material should receive back from the job worker within 180 days. In case if the goods are not received within 180 days, Noticee is required to reverse the credit on the quantity lying with the job worker, which is not received. Accordingly, Noticee has reversed the cenvat credit originally availed. However, it is also provided under the cenvat credit rules, that subsequently, when the raw material is received back from the Job worker, the amount already reversed can be re-credited. Noticee has also declared the said quantity in the column 9(a) of Tran-1, details of goods sent to job worker and held in stock on behalf of principal as per section 140 of CGST, Act. The said goods were received after, 1.7.2017. Therefore, Noticee has availed the credit which was earlier reversed, by showing in table 7(b) of Tran-1 in terms of section 140(5) of CGST Act. Therefore, Noticee has correctly availed the credit. The details of credit availed is annexed and marked as Annexure- I and I-1.

6.4 It is submitted that credit amounting to Rs.1,30,990/- pertains to the service tax paid under Reverse Charge mechanism (RCM). All the invoices of service provider are prior to 01.07.2017 and the payment of service tax under RCM is made after 01.07.2017. Noticee has already discussed in foregoing paragraph that the credit of service tax paid under reverse charge mechanism is allowed to be availed in Tran-1 in light of the Notification and circular issued by the CBIC, which are already discussed in the foregoing paragraph. The submissions made in foregoing paragraph on this issue may kindly be referred and considered. The details of the credit availed is annexed and marked as Annexure-I-2.

7. Even otherwise, it is submitted that section 174 of CGST Act, 2017 deals with Repeal and saving. In terms of sub section (2) of section 174, any right, privilege, obligations, or liability acquired, accrued or incurred under

the amended Act or repealed Acts or orders under such repealed or amended Acts are saved. Thus Noticee's liability to pay service tax and excise duty accrued on him during pre-GST regime, continued even after introduction of GST. Conversely, Noticee's right to avail credit of service tax and Central excise duty (CENVAT) paid on input services and inputs and Capital goods also stood protected and un-deniable. It is not the case of the department that cenvat credit or refund thereof were not admissible under the repealed law. It is a settled law that credit under transitional provisions, being a vested right, cannot be taken away on procedural or technical grounds affecting seamless flow of tax credit on all eligible inputs and input services. Keeping this view and principles, the Transitional provisions under section 139, 140, 141, 142 are framed under the CGST Act, to provide for smooth transition of eligible credit from the existing law to the new law. Section 140 of CGST Act, provides different scenarios, wherein the eligible credit on Input, Capital goods and input services can be transition into the new law i.e. GST regime by filing TRAN-1 returns prescribed therein. Further section 142(3) read with section 142(6) of the CGST Act provides for refund of CENVAT credit in terms of existing law and allows cash refund of amount accrued. In the present case, the claim of CENVAT credit is admissible in terms of section 142(3) of the CGST Act. However, instead of refund, we have claimed the credit under the provisions of section 140 of the CGST Act. Therefore, even otherwise claiming credit through TRAN-1 instead of claiming refund in existing law is proper and legal. In support of our views we rely on following recent decisions of tribunal:

(i) 2022 (59) GSTL 63 (T-Chennai) – Circor Flow Technologies India Pvt. Ltd.

(ii) 2022 (58) GSTL 545 (T-Del)- Flexi Capes Polymers Pvt. Ltd.

(iii) Final Order No.50157 to 50159/2022 dtd. 02.02.22- Mithila Drug Pvt. Ltd.

(iv) 2021 (53) GSTL 410 (T-Mum)- NSSL Pvt. Ltd

(v) 2021 (53) GSTL 406 (T-Bang.) – Thorogood Associates India Pvt. Ltd.

8. The ratio of the above decisions is applicable in the present case, in as much as that in the above cited cases, the cenvat credit pf excise duty and service tax paid under RCM under the existing law after implementation of GST, in such cases the cash refund of Cenvat credit is allowed by the tribunals, therefore, these required to considered while deciding the present issue.

9. From the above submissions, your Honor will be fully satisfied that the proposal made in the SCN to reject the unutilized cenvat credit on input, capital goods and input services is wholly illegal, incorrect and contrary to the provisions made under the CGST Act and so the allegation are not sustainable in law and therefore, the SCN is required to be dropped in the interest of justice.

Personal Hearing: -

7. The personal hearing in the matter was fixed on 16.06.2022 and Shri Vikramsingh Jhala, Assistant General Manager of the Noticee appeared and reiterated the written submission given on 23.05.2022 with a request to discuss the grounds with reasoning.

Discussion and Findings: -

8. I take up the Show Cause Notice bearing F. No. GST/15-321/OA/2021dtd.15.02.2022 for adjudication. I have carefully gone through the case records and submissions made by the Noticee in their defence replies and reiterated in personal hearing. The issue to be decided by me is that the Transitional credit of erstwhile Act i.e., Central Excise Act, 1944 and Finance Act, 1994, and Rules made thereunder, availed by the Noticee through TRANS- 1 under Section 140 of Central Goods and Service Tax Act, 2017 (CGST Act, 2017 for short) is admissible or otherwise.

9. Before proceeding with the case, I am duty bound to ensure that principles of natural justice are followed. In the instant case sufficient time period to file their defence reply was extended and opportunity of personal hearing was also accorded, therefore, I am satisfied that principles of natural justice are followed in the case.

10. Now I proceed to the allegation raised in the Show Cause Notice and clarification submitted by the Noticee. The first is with regards to credit of Capital goods availed by the Noticee under column 6(a) of TRAN-1. On verification, it was observed that some invoices pertain to period 2016-17, wherein, first 50% credit availed in 2016-17 and remaining 50% in the month of April-2017, however, the Noticee availed full credit amounting to Rs. 42,21,114/-. If the said Credit availed in full during the relevant period, then there was a wrong availment of credit twice in TRAN-1 and required to be reverse along with interest thereon.

10.1 The Noticee submitted that, the credit of capital goods 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. In the present case the invoices in question pertains to the capital goods received in the financial year 2016-17, the Noticee has not availed the Cenvat credit of first fifty percent in the said financial year in which the capital goods were received. The first Fifty percent credit was availed in the First quarter of the financial year 2017-18 (April,17 to May,17) the date of credit, amount of credit of the first fifty percent credit can be verified from the entries appearing in the Cenvat Credit Account for Capital Goods (as per Rule 9 of Cenvat Credit Rules 2004) register which is maintained in the existing law. Therefore, the Noticee has availed the credit of first Fifty percent as per Rule 4(2)(a) of the Cenvat credit Rules,2004 as amended from time to time, in the year 2017-18, though the invoices pertain to the year 2016-17. The remaining Second fifty percent credit was availed in Column 6(a) in terms of section 140(2) of the CGST Act in Trans-1.

10.2 The transitional credit under column 6(a) of TRAN-1 is governed by Section 140(2) of CGST Act, 2017. Before proceeding the relevant provisions of CENVAT Credit Rules, 2004 and Section 140(2) of CGST Act, 2017 is reproduced below:-

"Rule 4(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 or the final products 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.***"

"Section 140(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."

On plain reading of the above Rule, it is clear that CENVAT credit of capital goods can be taken at any point of time in the given financial year. Further, CENVAT credit of capital goods can be taken in any financial year subject 50% of the credit available and remaining 50% of the credit can be availed in subsequent financial years. The moot question is whether the CENVAT Credit of capital goods availed by the Noticee is eligible under CENVAT Credit Rules, 2004? The Show Cause Notice does not dispute the admissibility of the credit. The only dispute in this regard is credit taken twice. The Noticee submitted that 50% credit was taken in the first quarter i.e., April to June of 2017 and on implementation of GST with effect from 01.07.2017, the remaining credit was transited in GST through Form TRAN-1. The Noticee also submitted the copies of Cenvat Credit Account for Capital Goods (as per Rule 9 of Cenvat Credit Rules 2004) register for the financial year 2017-18. On going through the documentary evidence it is clear that 50% of credit in respect of capital goods were taken in the records maintain by them and remaining credit was taken in TRANS-1 i.e., to say that 100% credit was transited in column 6(a) of TRAN-1, therefore, it can be concluded that credit is not taken twice.

10.3 Moreover, the Explanation to Section 140 of CGST Act, 2017, makes ample clear that unavailed credit means the amount remains after subtracting the credit already taken. The Noticee has availed 50% credit in first quarter of financial year 2017-18 and remaining was transited. The proviso to the Section 140 of CGST Act, 2017 stipulates that only that credit is to be transited which is admissible under existing law and said Act i.e., Central Excise Act, 1944 and CGST Act, 2017 and Rules made thereunder. In the instant case, nowhere it is alleged that the CENVAT Credit in respect to capital goods is not admissible either under CENVAT Credit Rules, 2004 or under Section 17(5) of CGST Act, 2017. The test for admissibility of transitional credit can be made on two pillars

(i) Eligibility of Credit under existing law and Rules made there under

(ii) The credit is not barred by the Section 17(5) of CGST Act, 2017.

In the instant case, the credit taken by the Noticee passes both the above provisions, therefore, I am inclined to allow the credit transited under column 6(a) of the form TRAN-1 with regards to capital goods.

11. With regards to credit taken on inputs and input services at column 7(b) of TRAN-1 under Section 140(5) of CGST Act, 2017, it is alleged in the Show Cause Notice that on verification of both the credit availed on inputs and input services (Excise duty and Service tax) 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 pertains to the period prior to appointed day, As per transitional provisions the input or inputs services should be received after appointed day, and therefore, in the case of input or input services received prior to appointed day on which the credit is not admissible in Trans-1 even if the payment has been made under existing law after appointed day. The taxpayer has availed credit in Trans-1 for Rs.5,42,14,604/- on such invoices of inputs and input services and in case of input or input services received prior to appointed date then the credit is not admissible and wrong availment of credit in Trans-1 which required to be reversed along with interest thereon.

11.1 The Noticee submitted that out of the said credit, credit amounting to Rs.4,42,59,124/- pertains to the imported raw material (i.e., Inputs) such as coke, pet coke and lime stone. The imported raw material is received at Port in bulk and thereafter it is transferred to factory in piece meal. The credit is availed on the raw material which was received in July, 2017 from the port. The good receipt note (GRN) is prepared in the month of July, 2017 and accounted for in the books of accounts in the month of July, 2017, well within the thirty days from the appointed date. The raw material was in transit and receipt in the month of July,2017. On these imported raw material at the time of import, the bill of entries was filed with the customs and CVD (equivalent to excise duty & SAD) is paid under the existing law i.e., before 01.07.2017. Therefore, the conditions provided under section 140(5) of the CGST Act stands fulfilled. Therefore, the credit is correctly availed by the Noticeein Column 7(b) of Tran-1 in terms of section 140(5) of CGST Act. From this evidence, it is clear that conditions under section 140(5) is fulfilled and so the credit is availed correctly by showing it in table 7(b) of Trans-1 as provided under section 140(5) of CGST Act. Copies of bill of entries, evidencing the payment of CVD equivalent to excise duty and sample copies of Goods receipt note, the receipt of the goods as submitted by the Noticee.

11.2 The column 7(b) of the Form TRAN-1 is governed by Section 140(5) of CGST Act, 2017 and same is reproduced below: -

"(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."

The Explanation 2 given at Section 140 of CGST Act, 2017 is reproduced below:

"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) [omitted]

(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."

On-going through the above provisions and the submissions made by the Noticee it is clear that if the inputs and input services are received on or after the appointed day but the duty or tax is paid under the existing law a registered person is entitled to take the credit. The Noticee in their submission stated that credit to the tune of Rs.4,42,59,124/- pertains to raw material i.e., inputs imported by them such as Coke, pet coke and limestone, the inputs imported by them are brought to the factory premises in piecemeal basis and credit of such inputs is taken as and when inputs are received in the factory premises. Rule 4(1) of CENVAT Credit Rules, 2004 is reproduced below :-

"4. Conditions for allowing CENVAT credit.- (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service:"

From above provision, it is clear that credit of inputs is to be taken on receipt of the inputs in the Noticee's factory premises. In support of their submission

the Noticee also submitted the copies of Bill of Entry and duty paying documents. On verification of the documents, it reveals that the duties of the imported inputs were paid by the Noticee while filing Bill of Entry. The duties/taxes, in terms of Customs Act, such as Counter Veiling Duty (CVD) the duty of excise specified in the First and Second Schedule to the Central Excise Tariff Act, 1985 and the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 commonly known as Special Additional duty (SAD) were paid and are eligible for CENVAT Credit. The CENVAT Credit of the duty/taxes paid on the imported inputs and as and when received in the registered premises of the Noticee is eligible for credit in terms of Rule 3 (1) (i) & (ii) of CENVAT Credit Rules, 2004. The condition stipulated under Section 140(5) of CGST Act, 2017 is that the duty paying documents are recorded in the books of accounts within thirty days of appointed day i.e., duty paying documents are to be recorded in the books of account between 1st July, 2017 (the appointed day) till 31stJuly, 2017.

On verification of documents submitted by the Noticee such as Bill of Entry, Goods receipt Notes RG-23 Part-I and Part-II, it reveals that the entries are recorded for the receipt of imported goods in the month of July-2017. Therefore, it can be concluded that the Noticee has adhered to the provisions of Section 140 (5) of CGST Act, 2017 and the Noticee has rightly transited the credit in respect of imported inputs, in column 7(b) of TRAN-1. The credit to the tune of Rs.4,42,59,124/- is held as eligible credit, thus, allowed to be transited.

11.3 With regards to Credit amounting to Rs. 23,622/- it is alleged that the credit is taken on the basis of Invoices issued after the appointed day i.e., 1st July-2017. The Noticee submitted that Credit to the tune of Rs. 23,622/- is taken on the basis of Invoice dated 28.04.2017, 17.04.2017, 13.04.2017, 13.04.2017. The copies of the said Invoices are submitted and on verification it is observed that contention of the Noticee is correct as for the Invoices and duty payment is concerned. The Invoices pertains to prior of the appointed day and thus it is eligible credit both under CENVAT Credit Rules, 2004 and is not a block credit under Section 17(5) of CGST Act, 2017. Thus, credit transited is eligible credit and is allowed to be transited.

11.4 With regards to credit to the tune of Rs. 78,376/-, it is submitted by the Noticee that the credit is with regards to inputs send to Job-worker. However, the goods were not received back within 180 days, the Noticee reversed the said credit. Further, on receipt of the goods from the job-worker, credit was taken in terms of Rule 4(5)(a) of CENVAT Credit Rules, 2004. On scrutiny of the records maintained and copies submitted by the Noticee it reveals that contention of the Noticee is true as outward and Inwards of goods are duly recorded. The Rule 4(5)(a) of CENVAT Credit Rules, 2004, allows the Noticee to take the credit on receipt of the goods for which credit has been reversed earlier. Therefore, I allow the credit to the tune of Rs. 78,376/- to be transited.

11.5 With Regards to credit amounting to Rs.98,53,482/- pertains to credit of input services. The Noticee submitted the documents such as Invoices issued by the service provider and payment along with service tax was paid to

the supplier. On verification of the documents, it reveals that CENVAT Credit of service tax paid on the services such as, GTA, Legal Consultancy Service, Manpower service, which is eligible credit under CENVAT Credit Rules, 2004 and the credit of these services are not blocked credit under Section 17(5) of CGST Act, 2017. It is settled law that once the service tax is paid to the supplier, the recipient of service becomes eligible for credit of service tax paid. It is also observed that few invoices were recorded beyond thirty days of the appointed day. The credit amounting to Rs. 2,13,166/- becomes ineligible as Invoices are recorded beyond thirty days as stipulated in Section 140 (5) of CGST Act, 2017. It is settled law that while availing credit conditions are to be followed mandatorily. It was open for the Noticee to have claim for refund of credit under Section 142 of CGST Act, 2017. It was obligatory on the part of the Noticee to have not transited the credit for the Invoices recorded beyond thirty days of the appointed day. CENVAT Credit is to be claimed as per the timeline given in the statute, Credit becomes ineligible once the timeline is crossed. Thus, I disallow the Credit amounting to Rs. 2,13,166/- for which Invoices are recorded beyond thirty days of appointed day.

12. With regards to amount of credit of Rs.6,47,086/- pertains to the service tax paid under Reverse Charge mechanism (RCM) on inputs services such as (i) goods transport agency service, (ii) Manpower Services, (iii) Security service, (iv) Work contract service, (v) legal services. All the invoices of service provider are prior to 01.07.2017 (refer Sr.No. 2 to 11 & 13 of Annexure-F) and the payment of service tax under RCM is made after 01.07.2017. The Noticee submitted that in case of service tax liability under RCM under the existing law, as allowed under the Circular No.207/5/2017-Service Tax dated 28.09, the Noticee has discharged the said liability after July, 2017 and filed the revised ST-3 return and shown and availed the said credit in the GST-TRAN-1 return. Only procedural mistake is that inadvertently, the Noticee did not show and availed the said credit of service tax paid under RCM in revised ST-3 return, had it claimed in ST-3 return, the said credit would have been claimed as unutilized credit lying in ST-3 return under the existing law in column 5(a) in Tran-1, instead of this we claimed the said credit under Tran-1 in column 7(b). The credit cannot be denied on this procedural mistake in as much as the credit is otherwise admissible and only issue is that of presentation/showing and claiming the said credit in correct column of Tran-1 form. Therefore, it cannot be said that the Noticee has wrongly availed the credit and therefore, the credit availed of service tax paid on input service under RCM in Tran-1 as per the Circular issued by the CBIC is proper and correct.

12.1 Before discussing the issue the relevant portion of the Circular No. 207/5/2017-Service Tax dated 28.09.2017 is reproduced below:-

"2.2 the matter has been examined. In such cases, details of credit arising as a consequence of payment of service tax on reverse charge basis after 30th June, 2017 by 5th/6th July, 2017, the details should be indicated in Part-I of form ST- 3 in entries, I3.1.2.6, I3.2.2.6 and I3.3.2.6 Linked entries should be made in para H of Form ST-3. In case the return has already been filed by or after the due date, these details should be indicated in the revised return, the time for filing of which is 45 days from the date of filing of the return.

2.3 It is necessary to give compliant assessee who had filed their ST-3 return by due date or some days later, an immediate and viable window in which a

revised return can be filed consequent to the issue of this instruction. Hence all ST-3 returns for the period 01.04.2017 to 30.06.2017, which have been filed upto and inclusive of 31st day of August, 2017, shall be deemed to have been filed on 31.08.2017. This will give all such assessees some more days to file a revised return, if necessitated. Once details of such credit are reflected in the ST-3, the assessee may proceed to fill the details in Form GST-TRAN-1. It may be noted that as on date, GST TRAN-1 can be filed upto 31.10.2017 and can also be revised."

The CENVAT Credit of service tax paid on RCM basis, the fact is on the record that the service tax is paid after the appointed day. The government has extended all possible remedies for the smooth transition to the newly implemented GST Law. The circular very clearly mentions that if the service tax is paid on RCM basis, all return filed inclusive of 31st day of August, 2017 shall be deemed to be filed on 31.08.2017, which will give some more days to all assessee to file revised ST-3 Return and also revised GST-TRAN-1 can be filed by showing the service paid at Part-I of form ST-3 in entries, I3.1.2.6, I3.2.2.6 and I3.3.2.6 linked entries should be made in para H of Form ST-3. Admittedly, the Noticee did not availed the benefit extended by the Government and did not make any such entries in the revised ST-3 return or TRAN-1. However, it was open for the Noticee to have filed refund claim under Section 142 of CGST Act, 2017, instead the Noticee transited the credit without such revision to the TRAN-1. It is for now a settled law the CENVAT Credit can be availed only by fulfilling the conditions, as the Noticee was unable to take the credit in the records maintain by them, refund claim can be filed for the credit which is not transited. The Commissioner (Appeals), Ahmedabad, as well as Commissioner (appeals) of other commissionerate has sanctioned the refund claim. This clearly shows that department played the role of trade facilitation for smooth transition of credit and implementation of GST Law, which is the intention of the Government. Having not followed the clear instruction given vide the above circular, CENVAT Credit cannot be transited and I disallow to transit the Credit amounting to Rs. 6,47,086/-.

12.2 The Noticee contended on the ground that the credit cannot be denied on this procedural mistake in as much as that the credit is otherwise admissible and only issue is that of presentation/showing and claiming the said credit in correct column of Tran-1 form. Here it is necessary to distinguish the credit allowed above. In above circumstances, the receipt and/or transaction were duly recorded in the statutory records to be maintained by the Noticee, supported by other documentary evidences such as GRN, Bill of Entry RG-23- Part-I and II etc., while in case of RCM no such records are available on file to substantiate the ground put forth. When the Noticee was very well aware of all the Circulars and legal provisions, it cannot be termed as procedural mistake, but ignorance of law. The Noticee in their written reply at Para 3.7 have admitted that they have not filed or submitted the revised return ST-3 nor did they file or submitted the revised TRAN-1. Without making suitable entries in the statutory records, taking the Credit directly in their TRAN-1, is not admissible to the Noticee. When any duty/taxes are paid but not recorded in the statutory records, filing of refund claim was available to the Noticee, the credit which is not accounted for is nothing but ineligible credit. Therefore, disallowance of the Credit is legal and proper.

13. With regards to Credit amounting to Rs.6,88,46,954/- transited under column 7(b) of TRAN-1, under Section 140(5) of CGST Act, 2017, it is alleged that the Noticee has not provided the proof that credit has not been availed by them in regular ER or ST return in the month of June,2017 and input or input services received after appointed date. The Noticee has availed such credit only on the basis that these invoices have been accounted for in their books of account after appointed dated 01.07.2017 within 30 days i.e., 31.07.2017.

13.1 The Noticee submitted that the correct amount is Rs. 6,90,59,820/- and not Rs.6,88,46,954/- as shown in the SCN and out of the total credit disputed, credit amounting to Rs.4,31,97,607/- pertains to inputs i.e., imported raw material and indigenous raw material which are received in the factory after 01.07.2017. The goods receipt note (GRN) is prepared in the month of July, 2017 and accounted for in the books of accounts in the month of July, 2017, well within the thirty days from the appointed date. The inputs were removed by the supplier on payment of excise duty under the existing law and under the cover of valid invoices. The goods were in transit and are received in the factory after appointed date.

13.2 On recalculating it is found that the correct amount is Rs. 6,90,59,820/-. On verification of the records and documents submitted by the Noticee, it is observed that Credit amounting to Rs. 4,31,97,607/- is with regards to inputs imported and procured indigenously. The credit is taken at column 7(b) of TRAN-1, under Section 140(5) of CGST Act, 2017. The same is discussed at Para 11.5 above and requires no more elaboration and discussion. Therefore, credit amounting to Rs. 4,31,97,607/- is eligible credit and allowed to be transited.

13.3 As regard to remaining amount of credit amounting to Rs.2,58,62,213/- it is submitted that the credit pertains to invoices of Input services. The invoices are issued by the service provider under the existing law and service tax is paid. The services and the invoices are received by the Noticee after 01.7.2017 and recorded in the books of account in the month of July, 2017, i.e., well within the thirty days from the appointed date. On verification of the records, it reveals that the contention of the Noticee is correct. Even the Show Cause Notice at Para 6.7 confirms that the Invoices were duly recorded within the period of thirty days. Further, as the Invoices were recorded within thirty days, it cannot be alleged that inputs or input services were not received or were received after the appointed day. It should be very well collaborated by documentary evidence, which is absent. Thus, the credit cannot be termed as ineligible credit. Therefore, I have no hesitation to hold that the said credit is eligible credit and I allow to transit the credit to the tune of Rs. 2,58,62,213/-.

14. With regards to wrongly availed credit of Rs. 94,06,792/- in respect of Capital goods taken 100% in TRAN-1, it is alleged that the statement of Capital goods credit revealed that the taxpayer had claimed the credit of entire amount of capital goods on some invoices, though 50% credit was not

availed earlier. Since, the Noticee had not availed the partial credit earlier, entire credit claimed in table 6(a) to the tune of Rs.94,06,792/- appears to be incorrect.

14.1 The Noticee's submission is that the correct amount is Rs.94,15,486/-, it seems there is punching mistake in the statement prepared and attached with the Show cause notice. It is also submitted by the Noticee that The Capital goods invoices are pertaining to prior to 01.07.2017. the credit is availed in table 6(a) of the Tran-1 in terms of section 140(2) of CGST Act. As per section 140(2) of CGST Act, a registered person is entitled to take, in his electronic credit ledger, credit of unavailed Cenvat credit in respect of capital goods, not carried forwarded in a return furnished under the existing law. Since, the Noticee has not availed the first 50% credit in the existing law, therefore, in terms of explanation to section 140(2), which defines "unavailed CENVAT credit" and which 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 Noticee was entitled in respect of the said capital goods under the existing law. Hence, the entire unavailed CENVAT credit was availed in Tran-1. In the present case there is no dispute about the receipt and use of the capital goods in manufacture of taxable goods and admissibility of CENVAT credit on the Capital goods under the existing law. It is also not in dispute that supplier has paid the Central Excise duty under the existing Central Excise Act and valid central excise invoices were issued pertaining to the said capital goods. All the invoices were issued prior to 01.07.2017. In terms of section 140 (2) of the CGST Act, credit of 'unavailed CENVAT credit in respect of capital goods, not carried forward in a return under the existing law, can be claimed in Tran-1. Since, in respect of these capital goods, the Noticee has not availed the credit in the return filed under the existing central excise Act for the period ending 30.06.2017, the Noticee availed the entire CENVAT credit. It is important to note that as per explanation to section 140(2) 'unavailed CENVAT credit' means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods under the existing law from the aggregate amount of CENVAT credit. Since, the Noticee has not availed the first fifty percent credit, therefore, as per explanation, there is no amount of Cenvat credit already availed to subtract from the aggregate amount of Cenvat credit and so entire amount of aggregate CENVAT credit of the excise duty paid and shown in the invoices is available as credit and to be claimed in table 6(a) of Tran-1. Therefore, the entire unavailed Cenvat credit on these capital goods was availed in Table 6(a) of Tran-1 in terms of section 140(2) of CGST Act.

14.2 As pointed out by the Noticee re-calculation reveals that credit amounting to Rs. 94,15,486/- instead of Rs. 94,06,792/-. The CENVAT Credit with regards to capital goods and Section 140(2) of CGST Act, 2017 is already discussed at **Para 10.2 above.** The contention made by the Noticee is legal and acceptable. The legal provision that if 50% of Credit of capital goods is not taken, the credit is inadmissible, is not brought on record nor is invoked in the Show Cause Notice. The guidance note issued are general in nature, while adjudicating the case, applicability of legal provisions, on case-to-case basis, is to be ensured. Thus, I allow the credit with regards to capital goods to the tune of Rs.94,15,486/- to be transited.

15. Now discussing the case law cited and relied upon by the Noticee. All the Case cited by the Noticee is with regards to Refund and not for transitional credit. The facts and circumstances are different and clearly distinguishable. Therefore, it may be of no help to the Noticee in the instant case.

16. I find it necessary to quote the views taken by the Hon'ble Courts which is relevant in the instant case.

(i) In case of SKH SHEET METALS COMPONENTS Vs. UNION OF INDIA & ORS, W.P.(C) 13151/2019, The Hon'ble High Court of Delhi observed as under:-

"..transitional provisions and the language of section 140 of the Act in particular, even after amendment, manifests the intention behind the said provision is to save the accrued and vested ITC under the existing law. If the legislature has provided for saving the same by allowing a migration under the new tax regime, we have to interpret the rules keeping this objective in focus. This is the reason courts have held that CENVAT credit which stood accrued to the Petitioner is a vested right and is protected under Article 300A of the Constitution of India and could not be taken away by the Respondents, without authority of law, on frivolous grounds which are untenable."

(ii) In case of M/s. Vikas Elastochem Agencies Private Limited Vs Deputy Commissioner Central Excise & GSTW.P. No. 23107 of 2021, Hon'ble High Court of Madras observed following :-

"The procedure prescribed under the provisions of Central Goods and Service Tax Act, 2017 and the respective State Enactments and the Rules made there under should not come in the legitimate way of transitional credits as such credits were already available for being utilized for discharging the tax liability. These amounts cannot lapse. The difficulty in amending the Tran-1 is on account of the Architecture of the Web Portal which did not permitted the petitioner to make such amendments. The petitioner cannot be found fault of Architecture of the indefeasible and cannot lapse."

(iii) In case of M/S PATRAN STEEL ROLLING MILL Versus ASSISTANT COMMISSIONER OF STATE TAX, UNIT 2, SCA No. 16931 of 2018, Hon'ble High Court observed as under :-

"....the authorities should try to balance the interest of the Government revenue as well as a dealer to ensure that while the interest of the revenue is safeguarded, the dealer is also in a position to continue with his business, because it is only if the dealer continues with the business that he would generate more revenue. The authorities should keep in mind that bringing the business of a dealer to a halt does not in any manner serve the interest of the revenue."

Summarizing the above views taken by different High courts, it can be concluded that legitimate credit in favour of assessee, should not be denied.

Accordingly, in view of the above discussion I pass the following Order

ORDER

I. I allow the credit to the tune of Rs. 13,66,94,746/- (Thirteen Crore sixty six lakh ninty four thousand seven hundred forty six rupees only) to be transited and I disallow the Credit to the tune of Rs. 8,60,252/- (Eight lakh sixy thousand two hundred fifty two rupees only) transited.

II. I order for the recovery of the credit which is disallowed above under Section 73 of CGST Act, 2017.

III. I order for recovery of Interest at the appropriate rate under Section 50 of CGST Act, 2017.

IV. I impose penalty of Rs. 86,025/- (Eight six thousand twenty five rupees only) under Section 73(1) read with Section 122(2)(a) of the CGST Act, 2017.

The Show Cause Notice bearing F.No. GST/15-321/OA/2021 dated 15.02.2022 stands disposed of in the above terms.

24/6/22

(R. GULZAR BEGUM)
Additional Commissioner
Central Excise & CGST,
Ahmedabad North

F.No. GST/15-321/OA/2021 Date 24.06.2022

To
M/s. Nirma Limited, Nirma House,
Ashram Road, Navrangpura,
Ahmedabad – 380009

Copy to:-

1. The Commissioner, CGST & CX, Ahmedabad North.
2.. The Dy. /Assistant Commissioner, DIV-VII, CGST & CX, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, CGST & CX, Ahmedabad North
4. The Superintendent, Systems, CGST & CX, Ahmedabad North
5. Guard File