



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

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निबन्धित पावती डाक द्वारा/By R.P.A.D  
फ़ा.सं./F.No. GST/15-69/OA/2022

DIN- 20240464WT000044804F

आदेश की तारीख/Date of Order: - 25.04.2024

जारी करने की तारीख/Date of Issue :- 25.04.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 07/ADC/LD/GST/2024-25**

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/15-69/OA/2022 dated 27.09.2023 issued to M/s. Otsuka Pharmaceutical India Private Limited, 199, 200, 201, 206 to 210, Village Vasna, Chacharwadi, TA Sanand, Ahmedabad, 382213





## **BRIEF FACTS OF THE CASE**

M/s Otsuka Pharmaceutical India Private Limited, 199, 200, 201, 206 TO 210, Village Vasna, Chacharwadi, TA Sanand, Ahmedabad, 382213 (hereinafter referred to as the 'Taxpayer' for the sake of brevity) are engaged in the business of manufacturing of medicaments (CH 3004) which falls under the purview of Central Goods & Service Tax Act, 2017 (herein after referred to as "CGST Act 2017") and availing the benefit of Input Tax Credits under the Central Goods & Service Tax Rules, 2017 (herein after referred to as "CGST Rules, 2017"). & they were registered with Central Excise under ECC No. AAFCC0602GEM001 and Service Tax with STC No. AAFCC0602GSD002 during the erstwhile Pre-GST regime & are now registered under GST regime with GST No. 24AAFCC0602G1ZD.

2. Whereas, an audit of the said taxpayer was conducted for the period from April-2016 to March-2017. As per directions issued by the CBIC (Chairman) vide D.O.F. No. 267/67/2017-CX.8 dated 01.12.2017; TRAN-1 verification was carried out by the audit party. During the course of TRAN-1 verification, it was noticed by the audit party that a balance of Rs. 7,25,42,639/- reflected in their TRAN-1 which includes the CENVAT credit of Rs. 1,26,94,483/- in respect of the finished goods (i.e. the excise duty paid by the taxpayer while clearing the finished goods from their factory to their warehouse/depot) resulting which FAR No. 2283/2017-18 dated 25.07.2018 issued by the Assistant Commissioner, CGST, Audit, Circle-IV, Ahmedabad.

3. Whereas, the taxpayer has availed Cenvat credit on input items used in the above said finished goods. The taxpayer intended to avail excise duty paid by them (amounting to Rs. 1,26,94,483/-) while clearing the finished goods from their factory/manufacturing place situated at Village Vasna, Chacharwadi, TA Sanand, Ahmedabad -382213 to their warehouse/depot at Kheda FG Warehouse, Sai Siddhi warehousing and Logis Park, C Warehouse(Gala No.1 to 10) Opp. Hindustan Lever Ware House, Kheda.

4. Whereas, there is no provision for availing such credit of the excise duty paid on the finished goods lying in warehouse/depot under Section 140 of the CGST Act, 2017. Accordingly, such credit of the excise duty paid on the finished goods shall not be allowed to them under the said Section and the same needs to be paid/reversed along with applicable interest and penalty. The relevant provision of Section 140 of CGST Act, 2017 reproduced is 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 <sup>1</sup>[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 <sup>2</sup>[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 <sup>2</sup>[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 <sup>4</sup>[goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] 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 (1 of 1944) or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994 (32 of 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 <sup>5</sup>[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 subsection.

(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 <sup>6</sup>[goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] 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 <sup>7</sup>[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.

5. During test check of TRAN-1 records in the case of M/s Otsuka Pharmaceutical India Private limited, it was noticed that the taxpayer had carried forward transitional credits accumulated in respect of inputs and inputs contained in finished/semi finished goods amounting Rs. 3,15,21,170/- (including excise duty paid by the taxpayer while clearing the finished goods from their factory to their warehouse/depot is Rs. 1,26,94,482/-) in table 7(a).

As per the TRAN-1 statement, the transitional credit claimed in table 7(a) of TRAN-1 as under;

(i) Cenvat Credit on excise duty paid by the taxpayer while clearing the finished goods from their factory to their warehouse/depot is as Rs. 1,26,94,482/-.



(ii) Cenvat Credit on stock of inputs and inputs in finished/semi finished goods is Rs. 1,88,26,688/-.

6. In view of the said observation/discrepancies noticed, the Range Superintendent, AR-V, Division-IV, Ahmedabad-North vide letter F.No. AR-V/Tran-1/Otsuka/2018 dated 30.10.2018 & 05.04.2019, and letter F.No. AR-V/Div-IV/FAR-1042/2020-21/135 dated 02.03.2022 had requested the taxpayer to submit the compliance. In response, the taxpayer made their submission vide reply dated 20.12.2018 & 09.09.2022 wherein they stated that the credit accumulated in respect of 'excise duty paid by the assessee while clearing the finished goods from their factor to their warehouse/depot' of Rs.1,26,94,482/- was availed in accordance with the provision of Section 140(3) of CGST Act, 2017.

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

Sr. No.	Total credit availed in Tran-1	Total credit availed under Table/column No. 7(a) of Tran-1	Wrongly availed credit (excise duty paid on the finished goods lying in warehouse/depot) under Table/column No. 7(a) of Tran-1
1	7,28,52,782/-	3,15,21,170/-	1,26,94,482/-
	TOTAL		1,26,94,482/-

8. From the foregoing paras, it appeared that M/s. Otsuka Pharmaceutical India Private Limited, had intentionally availed un-authorized and in-admissible credit amounting to Rs. 1,26,94,482/- as transitional credit. From Para supra(s), it also appeared that the Noticee has contravened the provisions of Section 140 and 142 of the CGST Act, 2017. Therefore, the wrongly availed/transited credit of Rs. 1,26,94,482/- appeared to be recoverable from them under Section 74(1) of the CGST Act, 2017 along with interest under Section 50(3) of the CGST Act, 2017.

9. From the above observation, a Form DRC-01A vide DIN No.20230964WT0000444F64 dated 08.09.2023 either for payment of ascertained tax or filing of representation if any, was issued to the taxpayer. In response, the taxpayer filed their representation vide letter dated 21.09.2023 received on 22.09.2023 wherein they reiterated their previous submissions dated 20.12.2018 & 09.09.2022 and has not accepted the said contention as discussed supra.

10. Therefore, the wrongly availed/transited credit of Rs. 1,26,94,482/- appeared to be recoverable from them under Section 74(1) of the CGST Act, 2017 along with applicable interest under Section 50(3) of the CGST Act, 2017. Further, the taxpayer have rendered themselves liable for penal action under Sections 74(1) of CGST Act, 2017 read with Section 122(2) of the CGST Act, 2017 for availing un-authorized and in-admissible/ineligible Cenvat credit in their TRAN-1 statement.



11. Therefore, A Show Cause Notice No.- GST/15-69/OA/2022 dated 27.09.2023 issued to M/s Otsuka Pharmaceutical India Private Limited, 199, 200, 201, 206 TO 210, Village Vasna, Chacharwadi, TA Sañand, Ahmedabad, 382213 as to why:-

- (i) Input Tax Credit of Rs. 1,26,94,482/- (Rupees One Crore Twenty Six lakhs Ninety Four Thousands Four Hundred and Eighty Two Only) as determined hereinabove should not be demanded and recovered under Provisions of Section 74 (1) of CGST Act, 2017;
- (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 (3) of CGST Act, 2017;
- (iii) Penalty on the amount mentioned at Sr. No. (i) above should not be charged and recovered under the provisions of Section 74 read with Section 122(2) of CGST Act, 2017;

### **DEFENCE REPLY**

12. The said assessee vide their letter dated 18.12.2023 submitted their reply to SCN wherein they stated that:-

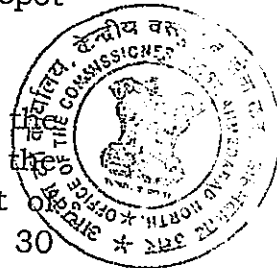
- (i) It is pertinent to note the provisions as contained in Section 140 of the CGST Act, 2017. Section 140 of the CGST Act, 2017, seeks to provide transitional provisions for the carry forward of certain credits and benefits from the pre-GST regime to the GST regime. The introduction of GST in India marked a significant shift in the indirect tax system prevalent for decades, and Section 140 was included to address the transition of taxpayers from the earlier tax regime to the GST framework. One key aspect covered by Section 140 is transitional credit. Transitional credit refers to the credit of tax that a taxpayer can claim in respect of the taxes paid on inputs, input services etc. held in stock on the transition date (the date when GST was implemented, i.e., July 1, 2017). This credit was allowed as a means to prevent double taxation and to ensure a smooth transition to the new tax system. It is pertinent to note here that the Government has time again reiterated that one of the important reasons to bring GST was to overcome the non-fungibility of credit under the different laws and ensure seamless flow of credit in the entire supply chain of all products.
- (ii) Under Section 140(1), the transitional credit of the amount of CENVAT credit can be carried forward in the Electronic Credit Ledger (hereinafter referred to as the "ECL") subject to the conditions as stipulated therein. Similarly, under Section 140(2) transitional credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, can be carried forward in ECL subject to the conditions as stipulated therein. Further, apart from Section 140 (1) and 140 (2), the GST Act under Section 140 (3), provides for a residuary clause for availing transitional credit in the ECL for cases which are not covered under the circumstances mentioned under Sections 140(1) and 140(2).



- (iii) Under Section 140 (3), a depot of a manufacturer, shall be entitled to take, in his ECL, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock subject to the conditions stipulated therein. In the present case, the Noticee Company, on manufacturing the goods, had to remove the goods from their place of manufacturing to their depot / warehouse and in terms of Rule 4 of the Central Excise Rules, 2002, no excisable goods on which any duty is payable shall be removed without payment of duty from any place where they are produced or manufactured and thus, the Noticee Company made payment of the applicable excise duty on the goods removed from the factory / place of manufacture to their depot / warehouse on the valuation of the goods according to Rule 7 of the Central Excise Valuation (Determination Of Price Of Excisable Goods) Rules, 2000, which is as under:

*"RULE 7. Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are no sold at or about the same time, at the time nearest to the time of removal of goods under assessment."*

- (iv) Thus, under the Excise regime, it was necessary to make payment of the excise duty before removal of the goods from the place of the manufacture and if the excisable goods were not sold by the manufacturer at the time and place of removal but were transferred to a depot, from where the excisable goods were to be sold after their clearance from the place of removal, then such duty was to be paid at the valuation stipulated under Rule 7.
- (v) Now the credit of this excise duty paid cannot be availed either under Section 140 (1) [dealing with carry forward of closing balance of credit in the returns filed under erstwhile regime] or Section 140 (2) [dealing with carrying forward of unavailed credit in respect of Capital Goods]. Such credit, therefore, gets covered under Section 140 (3) as it stipulates that the depot of a manufacturer shall be entitled to take in his ECL the credit of the duties in respect of inputs held in stock, inputs contained in semi-finished / finished goods and therefore, the Noticee Company has rightly availed the transitional credit under Section 140 (3) of the duties paid inputs held in stock, inputs contained in semi-finished / finished goods lying / stored at the depot of the Noticee Company.
- (vi) From a bare perusal of Section 140(3) read with Section 2(59) of the CGST Act, 2017, it can suitably be inferred that a depot of the manufacturer will be entitled to transition the input tax credit eligible duties on goods held in stock on the appointed day i.e., 30



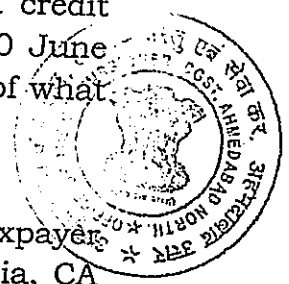


June 2017. Further, as per the definition of inputs under the CGST Act, the term "inputs" means any goods other than capital goods and therefore, it can be understood without an iota of doubt that inputs not only includes raw materials and semi-finished goods but also finished goods. The said proposition can further be corroborated by the 'GST e-Flyers - Transitional Provisions under GST' as issued by the Central Board of Indirect Taxes and Customs (hereinafter referred to as "CBIC"). Point A(c) of the said flyer provides that a registered taxable person, other than the manufacturer or service provider, may have duty paid goods in his stock on the appointed day i.e., 30 June 2017. GST would be payable on all supplies of goods or services made after the appointed day. This clearly shows the intention of the Government which is not collect tax twice on the same goods. Hence, in such cases, it has been provided that the credit of the duty / tax paid earlier would be admissible as credit and such credit can be taken as under:

- (i) Credit shall be taken on the basis of invoice evidencing payment of duty of excise or VAT.
  - (ii) Such invoices should be less than one-year old.
  - (iii) Declare the stock of duty paid goods within the prescribed time on the common portal.
- (vii) The said e-flyer amply clarifies the intention of Government to not collect tax twice on same goods, rather allow credit of eligible duties to be carried forward to the GST regime by the registered person who possess the document / invoice evidencing the payment of eligible duties. The said e-flyer has been hosted on the CBIC website and the same has been enclosed herewith as 'Exhibit 2' for ready reference.
- (viii) Further, as mentioned above, in order to avail transitional credit under Section 140 (3) there are certain conditions to be fulfilled / complied with. It is submitted that the Noticee Company has fulfilled all the said conditions while availing transitional credit under Section 140 (3). The goods lying at the depot of the Noticee Company were stored for the purpose of, or intended for, making taxable supplies from the depot. The Company has made payment of the excise duty while removing the goods from its place of manufacture vide challans evidencing payment of duty under the existing law. The Noticee Company has already submitted sample documentary evidences in support of the said claim vide reply letters dated 20.12.2018 and 09.03.2020 before the proper officer. The same were also submitted before the audit authorities during the audit proceedings of the captioned FAR no. 2283/2017-18. However, there were no objections regarding the compliance with the conditions prescribed under Section 140(3).
- (ix) It is further submitted that a depot of a manufacturer is not undertaking any manufacturing and therefore, the duty paid final goods stored at such depot would have to be considered as inputs held in stock as contemplated under Section 140(3) read with Section 2(59) of the CGST Act, 2017 and therefore, such a depot of a manufacturer is entitled to transition the eligible credit of goods under Section 140 (3) of the CGST Act, 2017.



- (x) The Hon'ble Supreme Court in Commissioner of Income Tax, Bangalore Vs. J.H. Gotla, Yadagiri, reported in (1985) 4 SCC 343, held that even in taxation, if strict literal construction leads to absurdity, construction which results in equity rather than injustice, should be preferred. In the present case, the Noticee Company had already discharged payment of duty while clearing goods from the place of manufacture to their depot, therefore, the Noticee Company must be allowed to claim the same as input credit, otherwise non allowance of same will result into cascading effect of the duty paid by the Noticee Company under the Excise regime which is contrary to the very object of the introduction of the GST law. Further, in Kunal Kumar Tiwari Alias Kunal Kumar Vs. State of Bihar and Another, reported in (2018) 16 SCC 74, the Hon'ble Apex Court held that an interpretation which advances the purpose or object underlying the Act should be preferred. One of the main objective of introducing GST Act was to remove the cascading effect of indirect taxes on a single transaction. Therefore, in order to achieve this objective even while transitioning from the erstwhile regime to GST, the transition provisions were introduced to allow setting off for prior taxes that are related to the same transactions in the form of the input tax credit and therefore, under GST, the tax is applicable only on the net value added during each stage of the supply chain.
- (xi) Pursuant to the various communications / correspondences with the department, the Noticee Company was in receipt of Form GST DRC - 01A dated 8 September 2023, in response to which detailed submissions were filed on the same lines as above. Thus, it is evident from the above set of facts that the department has time and again issued letters to make payment of the credit carried forward without demonstrating as to how the carrying forward of such credit is not admissible under Section 140 (3). The Department has mechanically, and with a pre-determined mind, issued all the communications including the impugned SCN alleging that carrying forward of the credit is not admissible without dealing with the explanation / reply given by the Noticee Company in light of Section 140 (3). Thus, the SCN fails to give any appropriate reason, except stating non-eligibility, for reversal of credit and inflicting penalty and interest under Section 74 to the Noticee Company.
- (xii) Accordingly, in view of what is stated hereinabove, as the conditions prescribed under Section 140(3) have been complied with, the Noticee Company is legally eligible and has rightly claimed the CENVAT credit of Rs. 1,26,94,482/-, relating to goods lying in stock as on 30 June 2017, in TRAN-1 and the SCN deserves to be dropped in light of what is stated hereinabove.



### **PERSONNEL HEARING**

13. In the instant case, Personnel Hearing was granted to the said taxpayer on 09.02.2024. Shri Priyank Lodha, Advocate and Shri Tapas Ruparelia, CA and authorised signatory appeared on behalf of the said taxpayer. They reiterated their written submissions dated 18.12.2023. He further requested

time for submission of additional written submission. He further requested to decide the SCN on merits.

#### **ADDITIONAL SUBMISSION**

14. M/s Otsuka Pharmaceutical India Private Limited vide their letter dated 12.02.2024 and 09.04.2024 submitted their additional reply to the SCN wherein they stated that:-

- (i) The credits of excise duty credit to the Electronic Credit ledger through transition mechanism as provided under the GST Act do not become the Input Tax Credit as defined u/s 2(62). Since, the transitional credit is not an Input Tax Credit, it does not fall under any of the conditions provided under Section 74 of the CGST Act, 2017. Therefore, in the absence of an enabling provision for transitional credit, Section 74 cannot be invoked. Thus, the proceedings ~ initiated u/s 74 of the CGST Act, 2017 are without the authority of law and thus the show cause notice is without jurisdiction and deserves to be set-aside on this ground only.
- (ii) They further submitted that that if the transitional credit carried forward in TRAN-1 is not allowed it will create cascading effect of tax. The denial of carry forward of tax paid on stock on the appointed day would lead to double taxation as well as have a cascading effect of tax because the GST will again have to be paid on the value of the goods as well as the Central Excise duty already suffered on the stock. The same is, therefore, arbitrary and irrational.
- (iii) They further submitted that during F.Y. 2017-18, duty paid finished goods were transported to several warehouse/depots by the company namely Kheda FG W/H, C&F Ahmedabad-Vijay Agency, C&F S.M. Medico Distributors, C&F Varun Enterprises, C&F Gaytari Sales and C&F S. Mathuradas and Co. and in the relevant F.Y. 2017-18, they have all above warehouse/depot addresses registered in Additional Places of Business. In support of their claim, they submitted Leave and License agreement/C& F Agent's Agreement, Licence issued by Food and Drugs Control Administration and other documents.

#### **DISCUSSION AND FINDINGS**

15. In the instant case, I have carefully gone through the Show Cause Notice, reply filed by the said taxpayer, facts of the case on record, copies of invoices and other submissions made by the said taxpayer. I find that in Show Cause Notice, it was alleged that the said taxpayer had wrongly availed CENVAT credit of Rs. 1,26,94,483/- of the excise duty paid on the finished goods lying in warehouse/depot under Section 140 of the CGST Act, 2017 in Tran-1 as there was no provision of availing such credit of excise duty. Details of which are as under:-



Sr. No.	Total credit availed in Tran-1	Total credit availed under Table/column No. 7(a) of Tran-1	Wrongly availed credit (excise duty paid on the finished goods lying in warehouse/depot) under Table/column No. 7(a) of Tran-1
1	7,28,52,782/-	3,15,21,170/-	1,26,94,482/-
	TOTAL		1,26,94,482/-

16. However, the said taxpayer has denied said allegation and submitted that they have complied conditions prescribed under Section 140(3) and they are legally eligible and has rightly claimed the CENVAT credit of Rs. 1,26,94,482/- relating to goods lying in stock as on 30 June 2017 in TRAN-1.

17. In view of the above, I find that issue to be decided in the present case is:

- Whether the Input Tax Credit of Rs. 1,26,94,482/- taken by the said taxpayer under Column 7(a) in the Tran-1, availed under sub section (3) of Section 140 of CGST Act 2017 is admissible or otherwise.

18. I find that said taxpayer having GSTIN 24AAFCC0602G1ZD are engaged in the business of manufacturing of medicaments (CH 3004) which falls under the purview of CGST Act 2017 and availing the benefit of Input Tax Credits under CGST Rules, 2017. I find that Section 140 of the CGST Act, 2017, seeks to provide transitional provisions for the carry forward of certain credits and benefits from the pre-GST regime to the GST regime. For sake of brevity, Section 140 of CGST ACT 2017 is reproduced below:-

**(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 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 (1 of 1944) or provision of taxable as well as exempted services under Chapter V of



the Finance Act, 1994 (32 of 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 <sup>5</sup>[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 subsection.

(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 <sup>6</sup>[goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:-

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

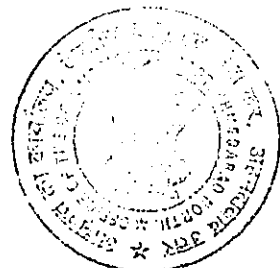
(ii) the said registered person is not paying tax under section 10;

(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 <sup>7</sup>[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.*

18. I find that Section 140(1) permits a registered person to claim the CENVAT Credit carried forward in the last return under the existing law in the Electronic Credit Ledger subject to the conditions as stipulated therein. Similarly, under Section 140(2) transitional credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, can be carried forward in ECL subject to the conditions as stipulated therein. Further, I find that Section 140(3) provides for a certain category of person to take credit of the tax paid on inputs held in stock as on 01.07.2017, subject to certain condition as stipulated therein. As per Section 140(3) of the CGST Act 2017 "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 the some conditions".

19. I find that said taxpayer has submitted that a depot of the manufacturer is entitled to transition the input tax credit of eligible duties on goods held in stock on the appointed day i.e., 30 June 2017 under Section 140 (3) of CGST Act 2017. In the present case, I find that the Noticee Company, on manufacturing the goods, had to remove the goods from their place of manufacturing to their depot / warehouse and in terms of Rule 4 of the Central Excise Rules, 2002, no excisable goods on which any duty is payable shall be removed without payment of duty from any place where they are produced or manufactured and thus, the said taxpayer made payment of the applicable excise duty on the goods removed from the factory / place of manufacture to their depot / warehouse.

20. Ongoing through records available on records and Section 140 (3) of CGST Act 2017, I find that a depot of the manufacturer is entitled to transit the input tax credit of eligible duties on goods held in stock on the appointed day i.e., 30 June 2017 subject to the some conditions. I find that M/s Otsuka Pharmaceutical India Private Limited is a manufacturer and following 6 places were their depot when GST Act came in force :-

- (i) Kheda FG W/H, Gala No, 1-10, Sai Siddhi Warehousing and Logistics Park, ahead of Coca Cola Plant, Opp. Hindustan Lever Warehouse, Haryala, Kheda, Ahmedabad.
- (ii) C&F Ahmedabad-Vijay Agency, 67-68, Shreeji Bapa estate, Opp Jaipur Golden Transport, Sarkhej, Ahmedabad 382210.
- (iii) C& F S.M. Medico Distributors, 2076/1, Opp. Ramdevpark Society, Undera Koyali Road, Undhera, Vadodara-391330.
- (iv) C& F Varun Enterprise, Plot No.- 105, SB Pura, Palanpur Ahmedabad Highway, Palanpur-385001.



(v) C& F Gayatri Sales. Plot No. 55, Survey No.- 111/1, 111/2, Rudra Transport nagar, Mahakaleshwar Society, NH Mo. 8b, Anadpar. Navagam, Rajkot-360005.

(vi) C& F S. Mathuradas and Co., House No.-245, Guru Nagar, Opp. Jalaram Mandair, Saroli, Surat 395010.

21. In support of their claim, the said taxpayer has produced Leave and License agreement/C& F Agent's Agreement, License issued by Food and Drugs Control Administration for each depot, copy of GST registration dated 07.07.2018. In this regard, ongoing through GST registration of the said taxpayer, I find that all said 6 depots are registered as Additional Places of Business of the taxpayer. Further, I have gone through License issued by the Foods & drugs Control Administration and find that licenses are issued to sell, stock, or exhibit (or offer) for sale or distribute by wholesale on the premises situated at these 6(six) depot. Further, as per Section 140 (3) of CGST Act 2017, depot of manufacture is eligible for Tran-I credit on stock lying at depots. Thus, I find that said taxpayer is eligible for credit under Section 140 (3) of the duties paid inputs held in stock, inputs contained in semi-finished / finished goods lying / stored at the these 6(six) depot on fulfillment of certain conditions given in Section 140 (3) of CGST Act 2017. For said condition, the said taxpayer has submitted Annexure containing details of finished goods as on 30.06.2017 lying at 6 depots, copy of GST invoices, Delivery Challan cum invoice( excise). On going through these documents, I find that said taxpayer has fulfilled the condition given in Section 140 (3) of CGST Act 2017.

22. In view of the above, I conclude that the said taxpayer has correctly availed Cenvat credit amounting to Rs.1,26,94,482/- in their TRAN 1 in table 7(a) under Section 140 (3) of CGST Act 2017. Further, I find that as the demand itself is not sustainable, the question of charging interest under section 50(3) of CGST Act, 2017 or imposing penalty under the provisions of Section 74 read with Section 122 (2) of CGST Act, 2017 does not arise.

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

**ORDER**

(i) I hereby order to drop proceedings initiated for demand and recovery of ITC of Rs.1,26,94,482/- (Rupees One Crore Twenty Six lakhs Ninety Four Thousands Four Hundred and Eighty Two Only) along with interest and penalty against M/s Otsuka Pharmaceutical India Private Limited vide SCN No. GST/15-69/OA/2022 dated 27.09.2023

24. Accordingly the Show Cause Notice No. GST/15-69/OA/2022 dated 27.09.2023 is disposed off in above terms.



(Lokesh Damor)  
Additional Commissioner,  
Central GST & CE,  
Ahmedabad North  
Dated 25.04.2024

F.NO. GST/15-69/OA/2022



By RPAD/MAIL

To,

24AAFCC0602G1ZD

M/s Otsuka Pharmaceutical India Private Limited,

199, 200, 201, 206 TO 210,

Village Vasna, Chacharwadi,

TA Sanand, Ahmedabad, 382213

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Div- IV Ahmedabad North.
3. The Superintendent, Range-V, Division-IV, Central GST & Central Excise, Ahmedabad North
- ✓ 4. The Supdt.(System), CGST & C.E. Ahmedabad North for uploading the order on website.
5. Guard File.

