प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केंद्रीय जीएसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST , Commissionerate- Ahmedabad South,
अपराध और अधिनिर्णय खंड, छठी मंजिल, अम्बावाड़ी, GST
भवन, अहमदाबाद ३८००१५.
6th Floor,O&A Section,GST Bhavan, Ambawadi 380015

निवन्धित पावती डाक द्वारा/ By REGISTERED POST A.D. **DIN No. 20220464WS000011691D**

फा /.सं .**F.No.** VI-CGST/4-38/Gujarat Gas/O&A/20-21

आदेश की तारीख/**Date of Order**: 28-04-2022

जारी करने की तारीख/**Date of Issue**: 28-04-2022

द्वारा पारित / Passed by: Shri Nalin Bilochan , JOINT COMMISSIONER

****

मूल आदेश सं./Order-In-Original No. 01/CGST/Ahmedabad South/JC/NB/2022-23

****

यह प्रति उस व्यक्ति (यों) को, जिसके (जिनके) लिएयह आदेश जारी किया गया है, उसके(उनके) व्यक्तिगत उपयोग के लिए नि:शुल्क प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है,तो वह इस आदेश के विरुद्ध आयुक्त(अपील), केन्द्रीय जीएसटी, केन्द्रीय जीएसटी भवन, आंबावाड़ी, अहमदावाद–15 को प्रारूप GST APL-01 में अपील कर सकता है। उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वाराप्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए। इसपर रुपए 2.00/- केवल कान्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this order in Form **GST APL-01** to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00/- only.

उक्त अपील सीजीएसटी/ एसजीएसटी नियम, 2017 के नियम 108 के प्रावधानों के अनुसार फॉर्म संख्या **GST APL-01** में दायर की जानी चाहिए।

The Appeal should be filed in form No. **GST APL-01** in accordance with provisions of Rule 108 of the CGST/SGST Rules, 2017.

निर्णयकी दो प्रतियाँ (उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए जिसके विरुद्ध अपील कीगई है) अथवा उक्त आदेश की अन्य प्रति जिसपर रु 2.00/- का न्यायालय शुल्क टिकट अवश्य लगाहोना चाहिए।

Copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court feestamp of Rs.2.00/-.

उप-धारा (1) के तहत कोई अपील नहीं भरी जाएगी, जब तक कि अपीलकर्ता ने भुगतान नहीं किया है-

(अ) पूर्ण रूप से, कर, व्याज, जुर्माना, शुल्क और दंड की राशि का ऐसा हिस्सा, जो आक्षेपित आदेश से उत्पन्न होता है, जैसा कि उसके द्वारा स्वीकार किया गया है; और

(व) उक्त आदेश से उत्पन्न विवाद में कर की शेष राशि के दस प्रतिशत के बराबर राशि, [अधिकतम पच्चीस करोड़ रुपये के अधीन], जिसके संबंध में अपील दायर की गई है
[वशर्ते कि धारा 129 की उप-धारा (3) के तहत एक आदेश के खिलाफ कोई अपील दायर नहीं की जाएगी, जब तक कि अपीलकर्ता द्वारा पच्चीस प्रतिशत जुर्माना के बराबर राशि का भुगतान नहीं किया गया हो]

No appeal shall be filled under sub section (1), unless the appellant has paid-

(a) In full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as in admitted by him; and

(b) A sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, [subject to a maximum of twenty-five crore rupees,] in relation to which the appeal has been filed
[Provided that no appeal shall be filed against an ordered under sub-section (3) of section 129, unless a sum equal to twenty-five percent of penalty has been paid by the appellant]

संदर्भ/Reference : कारण बताओ सूचना फा.सं. /F. No. VI-CGST/4-38/Gujarat Gas/O&A/20-21 dated 15.09.2021 issued to M/s. Gujarat Gas Limited, GSFC House, 4th Floor, Opp. Drive-in Cinema, B/h. Reliance Mart, Bodakdev, Ahmedabad-380054.

BRIEF FACTS OF THE CASE

M/s Gujarat Gas Limited, (hereinafter referred to as "M/s GGL" or 'noticee') situated at 4th Floor, GSFC House, Opp. Drive-in-Cinema, Behind Reliance Mart, SKUM School Road, Bodakdev, Ahmedabad 380054 is registered with the Central Goods and Service Tax Department, Ahmedabad South and having registration GSTIN No. 24AAECG8093Q1ZW with effect from 01.07.2017. Accordingly, M/s GGL had undertaken to comply with the conditions/ provisions as prescribed under Central Goods and Service tax Act, 2017 (hereinafter to referred to as CGST Act), Integrated Goods and Service tax Act, 2017 (hereinafter to referred to as IGST Act) and Gujarat State Goods and Service tax Act, 2017 (hereinafter to referred to as SGST Act) and rules as made their under. Since the provision under CGST Act and SGST Act are same except for certain provisions, unless the specific mentioned is made to such dissimilar provisions, reference to CGST Act would also mean reference to SGST Act. Further, reference to such similar provisions under CGST Act/SGST Act would mention under the GST Act.

2. The said registration is for the supply of services like Manpower recruitment/supply agency service; Transport of goods by road/goods transport agency service; Transport of goods through pipeline or other conduit; Sponsorship service provided to body corporate or firm including sports sponsorships; Rent a cab scheme operator service; Works contract service; Legal consultancy service; Other taxable service-other than the 119 listed; Business Support service; Security/detective agency service; Online information and database access service and/or retrieval service through computer network; Banking and other Financial Services; Scientific and technical consultancy services; Commercial Training or Coaching; Maintenance or Repair Service; Erection, Commissioning and Installation Service; Business Auxiliary Service; Renting of Immovable Property Service, Information Technology Software Service; Supply of Tangible Goods Service. The said taxable person is also engaged in the business of Gas distribution including sale, purchase, supply, distribution, transportation, trading in Natural Gas, CNG, PNG through pipelines, trucks or other mode of transportation at the premises at (1) GH 2 & GH 3 Circle, GH Road, Sector-5, Gandhinagar and 87-88, Mahyavansi Mohalla, Adajan Gam, Adajan, Surat.

3. Prior to 01.7.2017, M/s GGL was registered under the Central Excise, Service Tax Department and VAT department (falling under State jurisdiction) for the manufacturing of goods viz. CNG, PNG etc, and supply of various services (Centralized registration) which is as under :

Sr. No.	Name of the taxable person	Address	Registered as manufacturer or supply of service	Registration No.	Registered with
01	Gujarat Gas Limited	GH-2 & GH-3 Circle, GH Road, Sector-5, Gandhinagar	Manufacturer	AAECG8093QEM001	Range-III, Division Gandhinagar, Ahmedabad-III Commissionerate (old)
02	Gujarat Gas Limited	87-88. Mahyavansi Mohalla, Adajan Gam, Adajan, Surat.	Manufacturer	AAECG8093QEM002	Range-II, Dvision-II, Surat-II Commissionerate
03	Gujarat Gas Limited	Block No.15, Udyog Bhavan, Sector-11, Gandhinagar	Supply of Service (Centralized registration for more than one premise.	AAECG8093QSD001	Range-II, Division-Gandhinagar, (New), Gandhinagar Commissionerate (New)

4. M/s GGL was earlier registered under the jurisdiction of the Commissioner of Service Tax, and Central Excise Gandhinagar. Consequent to the issue of

Notification No.12/2017-Central Excise (NT) to 14/2017-Central Excise (NT) all dated 09.06.2017, appointing the officer of various ranks as Central Excise officers and reallocating the jurisdiction of the Central Excise officers and Trade Notice No.01/2017 dated 16.06.17 issued by the Chief Commissioner, Central Excise & Service Tax, Ahmedabad Zone, the taxable person is now registered under the jurisdiction of the Commissioner, Central Goods and Service Tax, Ahmedabad South.

5. During the course of audit of the records/information available with the Range-I office of Division -VI along with the records/Documents submitted by M/s Gujarat Gas Limited by the officers of Indian Audit & Accounts Department (LAR No. 121/19-20/OW-170 dated 20.12.2019, it was observed that M/s GGL has taken transitional credit of Rs.1,53,00,140/- under Section 142(11) in Tran-1 return. The said credit of Rs. 1,53,00,140/- purportedly belonged to advance Service tax paid before appointed day. However, the details of "proportion of supply on which ST was paid before the appointed day but the supply of services was made after appointed day" is not available on records. The details were sought from M/s GGL but the same was not submitted by them.

6. On scrutiny of ST-3 returns, it was observed that M/s GGL has paid Service tax amounting to Rs.1,25,88,637/- on the amount received in advance towards services for which bills/invoices/challans or any other documents were not issued for the period April-2015 to June-2017. Therefore, the aforesaid amount of Rs 1,25,88,637/- did not appear to be admissible as transitional credit. Apart from the above, the taxable person has taken transitional credit of a further amount of Rs 27,11,503/- for which no Service tax was paid and no documentary evidence has been submitted. In terms of Section 142(11) of CGST Act, 2017, only that part of Service tax paid which is related to the portion of supply for which tax was paid before the appointed date but the supply of service is made after appointed day is eligible as transitional credit through TRAN-1 return. Therefore, it appeared that M/s GGL has availed ineligible transitional credit, amounting to Rs. 1,53,00,140/-, under Section 142(11) in respect of advance Service tax paid for the period April, 2015 to June, 2017.

7. Section 142(11) of the Central Goods and Services Tax Act, 2017 ('CGST Act') provides for miscellaneous transitional provisions for availing input tax credit, available with the supplier under any existing law, before the appointed day. The relevant text of Section 142(11)(c) of the CGST Act reads as under:

"(c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed".

8. From the above, it appeared that the taxable person shall be entitled to take credit of service tax paid under existing law to the extent of supplies made after the appointed day. Therefore, it appears that M/s GGL has taken ineligible transitional credit amounting to Rs. 1,53,00,140/- in contravention of Section 142(11)(c) of CGST Act, 2017, in respect of advance service tax paid for which no supply has been made after appointed day and hence not eligible to carry forward the credit amount of Rs.1,53,00,140/- in TRAN-1.

9. It was also noticed that M/s GGL is engaged in the manufacture of Gas and business of Gas distribution including sale, purchase, supply, transportation, trading in Natural Gas, CNG, PNG through pipelines, trucks or other mode of transportations for which, in the pre-GST regime, the taxable person was having

Central Excise and Service Tax registrations as mentioned in para no. 2 above. However, after implementation of GST, M/s GGL is still having registration under Central Excise because the product Natural GAS is outside the levy of GST. Therefore, the product manufactured by M/s GGL did not attract GST and, therefore, required to pay Central excise/VAT on the product manufactured. M/s GGL is also having GST registration No.24AAECG8093Q1ZW and have filed TRAN-1 for taking transitional credit. Details of the transitional credit taken are as under:

TRAN 1 Column NO.	Amount of Credit Taken(Rs.)	Under Section of CGST ACT	Remarks
5(a)	1,73,53,351	140(1)	Rs.9,12,683/- in respect of Service Tax registration under existing law and Rs.1,64,40,668/- in respect of central excise registration under existing law.
6(a)	1,39,58,387	140(2)	Out of Rs.1,39,58,387/- credit Rs.56,60,863/-(**) was in respect central excise registration under existing law.

( ) details of un availed credit of capital goods as under :-**

Un availed credit 2017-18 on capital goods for Central Excise registration (Gandhinagar)	AAECG8093QEM001	Rs.22,87,737
Un availed credit 2017-18 on capital goods for Central Excise registration (Surat)	AAECG8093QEM002	Rs.33,73,126
	Total	Rs.56,60,863

10. It appeared that as per transitional credit provisions under Section 140 of the CGST Act, 2017, Cenvat credit of the input/input services/capital goods can be taken as transitional Credit in TRAN-1, only if the credit is admissible as input tax credit under the CGST Act, 2017. In the instant case, the products i.e. CNG, PNG manufactured by M/s GGL do not attract GST. Therefore, it appeared that, any Cenvat Credit of the input/input services/ capital goods related to the manufacture of these goods does not qualify as input tax credit under CGST Act, 2017. However, M/s GGL has taken credit in TRAN-1 in respect of those input/input services/capital goods which pertain to manufacturing of goods (CNG, PNG), which did not attract GST levy. All such credit taken in the TRAN-1 did not appear to be in accordance with the transitional credit provisions contained in Section 140(1) and 140(2) of the CGST Act, 2017. Details of inadmissible TRAN-1 credit are as under:

TRAN 1 Column NO.	Amount of Credit Taken(Rs.)	Under Section of CGST ACT	Remarks
5(a)	1,64,40,668	140(1)	Rs.1,64,40,668/- in respect of central excise registration under existing law.
6(a)	56,60,863	140(2)	Un-availed Credit 2017-18 on capital goods for both Central excise registrations
Total	**2,21,01,531**		

11. Therefore, the credit of Rs.2,21,01,531/- taken in TRAN-1 in contravention of provisions of Section 140(1) and 140(2) of CGST Act 2017, as discussed above, appeared to be recoverable alongwith applicable interest under CGST Act,2017.

12. As per Section 140(1), the transitional mechanism for carrying forward the credit pending with the erstwhile registered persons to the GST regime and details of the Section 140(1) of the CGST Act 2017 are reproduced herewith:-

"140. (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—

(i) where the said amount of credit is not admissible as input tax credit under this Act; or

(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or

(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

(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 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.

13. From the above definition, it appeared that Section 140(1) provided for carry forwarding of the credit balance in a return filed under the earlier law in the electronic credit ledger of the registered person. However since the product natural gas manufactured and sold by M/s GGL is not in the ambit of existing GST law, it appeared that M/s GGL is not eligible for carrying forward the credit balance lying with them under the erstwhile law to their electronic credit ledger through TRAN-1.

14. M/s GGL has carried forward the closing balance of Credit amounting to Rs. 1,64,40,668/- as reflecting in the Excise return filed for the period June, 2017, to the TRAN-l as transitional credit. Therefore, it appeared that M/s GGL has contravened the provisions of Section 140(1) of CGST Act, 2017 read with Rule 117 of CGST Rules, 2017. Similarly, Section 140(2) of CGST Act, 2017 allows taking credit of closing balance of un-availed Cenvat credit of Capital goods. However, in the instant case, the credit of capital goods pertained to manufacturing of PNG/CNG which does not attract GST levy. Hence, it appeared that, the credit carried forward in TRAN-1 by M/s GGL in respect of capital goods amounting to Rs. 56,60,863/- is not admissible to them and hence contravened the provisions of Section 140(2) of CGST Act, 2017 read with Rule 117 of CGST Rules, 2017.

15. Whereas, the Government has, from the very beginning, put in place mechanism of trust-based compliance on the part of manufacturers/ supplier of goods/ output service providers/ taxpayers and accordingly, measures such as self-assessment etc., based on mutual trust and confidence are in place. Further, a manufacturer/ supplier of goods/ service provider/ taxpayer is not required to maintain any statutory or separate records under the provisions of the CGST-Act and Rules made there under, as considerable amount of trust is placed on them and private records maintained by them, for their normal business purposes, are accepted, practically for all the purposes. All these operate on the basis of expectation of honesty, truthfulness and due diligence on the part of the taxable person. Therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on them. From the evidences it appeared that M/s GGL has knowingly availed ITC credit in electronic credit ledger in contravention of Section 140 (1), Section 140 (2) and Section 142 (11) of CGST Act 2017 and Rule 121 of CGST Rules, 2017 and wrongly utilized towards the payment of GST. The deliberate contravention of CGST-Act is utter disregard to the requirements of law and breach of trust deposed on them and is certainly not in tune with Government's efforts in the direction to create a voluntary tax compliance regime.

16. From the foregoing paras, it is appeared that M/s GGL has carried forward the unauthorized and inadmissible credit amounting to **Rs.3,74,01,671/-** as transitional credit to TRAN-1 and the same is recoverable under Section 74(1) of CGST Act, 2017 read with Rule 121 of CGST Rules, 2017. It also appeared that M/s GGL is also liable to pay interest thereon under Section 50 (1) CGST Act, 2017 and a penalty under the provisions Section 74(1) of CGST Act, 2017 read with 122(1) (b) of CGST Act, 2017 or the rules made there under.

17. Further, it appeared that M/s GGL was fully aware about the fact that they were availing and utilizing the ITC which was not available to them legally under the CGST Act, 2017 and in spite of knowing the facts; they chose not to pay the said applicable dues related to GST. This appeared to have done merely to escape from the eyes of the department with intent to evade the payment of dues related to GST under the CGST Act, 2017. This fact of non-payment of dues related to GST would have remained unnoticed, if the audit Officers had not raised these issues. From the evidence, it appeared that the said taxable person had carried forward Credit amount to **Rs.3,74,01,671/-**, in TRAN-1 in contravention of the provisions of Section 140 (1), Section 140 (2) and Section 142 (11) of CGST Act 2017 and Rule 121 of CGST Rules, 2017 with an intent to evade payment of tax, and thereby rendered themselves liable for penal action as per the provisions of Section 74(1) of CGST Act, 2017 read with Section 122 (1)(b) of CGST Act, 2017.

18. On verifying the records, it appeared that the said taxable person has filed GSTR-9 for the year 2017-18 on 24.08.2019.

19. Therefore, M/s Gujarat Gas Limited, situated at 4th Floor, GSFC House, Opp. Drive-in-Cinema, Behind Reliance Mart, SKUM School Road, Bodakdev, Ahmedabad 380054 were called upon to Show Cause to the Joint Commissioner, Central Goods & Services Tax, Ahmedabad-South having his office at 6th Floor, GST Bhavan, Near Panjra Pole, Ambawadi, Ahmedabad as to why:

(i) The Transitional credit of **Rs.1,53,00,140/-** wrongly taken in TRAN-1 under Section 142(11) of the CGST Act, 2017 should not be disallowed and recovered from them, under the provisions of Section 74(1) of CGST Act 2017 read with Rule 121 of the CGST Rules, 2017.

(ii) The Transitional credit of **Rs.1,64,40,668/-** taken in TRAN-1 in contraventions of Section 140(1) of the CGST Act, 2017 should not be disallowed and recovered from them under the provisions of Section 74(1) of CGST Act 2017 read with Rule 121 of the CGST Rules, 2017.

(iii) The Transitional credit of **Rs. 56,60,863/-** taken in TRAN-1 under Section 140(2) of the CGST Act, 2017 should not be disallowed and recovered from them under the provisions of Section 74(1) of CGST Act 2017 read with Rule 121 of the CGST Rules, 2017.

(iv) Interest at the applicable rate should not be charged and recovered from them under Section 50 (1) of the CGST Act 2017 on the demand of (1) to (3) above;

(v) Penalty should not be imposed on them under the provisions of Section 74(1) read with Section 122 (2)(b) of CGST Act, 2017 on the demand of (1) to (3) above.

21. As per Section 74(8) of the CGST Act, 2017 "where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and penalty equivalent to twenty five percent of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

DEFENSE SUBMISSION

22.1 M/s GGL has filed their reply to show cause notice vide letter dated 28.09.2021 wherein they, *inter alia,* contended that show cuase notice issued only on the basis of audit objection without proper inquiry and against the verification of TRAN-1 under taken by the department is not sustainable. They have relied on the case laws of *Indian Plastics Ltd-1988 (34) ELT.434(T), Petrofils CoOperative Ltd-1992 (59) ELT.144 (T).*

22.2 M/s GGL contended that pre-show cause notice consultation has been made mandatory for promoting voluntary compliance and to reduce the necessity of issuing show cause notice and the department has lost sight of the intended purpose of pre-show cause notice consultation and issued show cause notice which would act against the spirit of Circular No.1053/2/2017-CX dated 10.03.2017.

22.3 Regarding the proposal to disallow and recover transitional credit of Rs.1,53,00,140/-, M/s GGL submitted that the ground taken for disallowing transitional credit is misconceived and beyond the provisions of Section 142(11)(c) of CGST Act in as much no condition that invoice should be issue in respect of amount received in advance. They contended that there is no possibility that supply of service not made. The noticee contended that under clause (c) of Sub-section (11) of Section 142, supply of service is not condition but it stipulates the proportion/share of credit admissible. They have submitted a statement Annexure-B, under which sample accounting entries were provided to prove that services were rendered by them.

22.4 In respect of transitional credit of Rs.1,64,40,668/-, the noticee submitted that said credit is disputed merely on the ground that the product manufactured by them is not covered under ambit of GST law. In this regard the noticee submitted that provisions of Section 140(1) of CGST Act do not stipulate condition that all the products and services of taxable person should be covered under CGST Act for carrying forward credit lying in cenvat credit rules. Secondly, the noticee submitted that, the department has wrongly construed that CNG is not covered under ambit of GST law. They contended that CNG manufactured by them is covered under ambit of law as per Section 9 of CGST Act.

22.5 The noticee submitted that restriction of eligibility to carry forward cenvat credit has been laid down for a person who opts to pay tax under Section 10, that is a person registered with GST opts to pay tax under composition levy. Since the noticee has not opted to pay tax under composition levy, they contended, they are

entitled to take credit carried forward. Sub-section (1) of Section 140 does not bar a registered person to carry forward the cenvat credit other than a person opting to pay tax under Section 10. Further, the noticee contended that, Section 140(1) does not stipulate that a registered person paying Central Excise duty is not entitled to carry forward cenvat credit. They submitted that CNG is excisable goods but supply of service is covered under GST law. As supplied of goods or services or both are covered under the ambit of GST law, they are entitled to carry forward cenvat credit.

22.6 The noticee submitted that on plain reading of proviso (i) of Section 140(1) of CGST Act it would be seen that two vital phrases have been used to disallow the credit viz. 'said amount of credit' and 'admissible as input tax credit'. As such amount of credit earned on payment of various taxes has been referred as 'said amount of credit'. The noticee further submitted that since they have availed cenvat credit on input services under rule 3(1) of Cenvat Credit Rules in respect of service tax paid under Finance Act, 1994, same is admissible as input tax credit under CGST Act.

22.7 The noticee further submitted that as per clarification issued by letter D.O. F.No.267/8/2018-CX.8 dated 14.03.2018 credit earned by various units is transferred to one registered unit is transferrable to new registration. They submitted that it is settled principle in respect of credit scheme that there is no one to one correlation and cross utilization of credit and credit accumulated by the service provider or manufacturer on the input services availed as well as input is available for payment of excise duty or service tax. They relied upon Circular No.37/88 dated 08.08.1988 and case law of *Pyrotech Workspace Solutions Pvt. Ltd-2016 (43) STR.299 (Tri-Del).*

22.8 The noticee submitted if the view of the department is accepted then a registered person has to continue his old business and he is not allowed to change the business to remain eligible to carry forward cenvat credit. They submitted that in the circumstances when central tax on supply of CNG is notified, noticee would be entitled to carry forward cenvat credit and the stand of the department would lead to anarchy. Relying upon the case of *Eicher Motors-1999 (106) ELT.3,* the noticee argued that, when noticee who acts on the basis of statutory scheme/rule and certain right have accrued to it then such noticee cannot be deprived of accrued right. They have also relied upon the case of *Tata Engineers and Locomotive Co. Ltd-2003 (159) ELT.129 (Bom), Dai Ichi Karkaria Ltd-1999 (112) ELT.353 (SC), Omkar Textile Mills Pvt Ltd-2010 (262) ELT.115 (Guj).* The noticee submitted that there could not be an intention of rule making authorities to disentitle the right of credit to a taxable person while framing transitional provisions. They relied upon the case of *Advance Surfactants India Ltd-2017 (358) ELT.53 (Guj).* They submitted that Hon'ble High Court of Gujarat in the case of *Filco Trade Centre Pvt. Ltd-2018 (17) GSTL.3 (Guj)* struck down clause (iv) of sub-section (3) of Section 140 of GST Act as same being unconstitutional.

22.9 In respect of transitional credit of Rs.56,60,863/-, the noticee submitted that the said credit transferred to TRAN-1 in respect of unavailed cenvat credit on capital goods, not carried forward in the return, they rely upon the submissions made in respect of cenvat credit of Rs.1,64,40,668/-.

22.10 With regard to the proposition in the show cause notice to impose penalty, the noticee submitted that on scrutiny of TRAN-1, the officers did not find any discrepancy when they verified the same and thus the ingredients of Section 74(1) of CGST Act is absent for imposing penalty. They contended that provisions of Section 74(1) or 12292)(b) of CGST Act 2017 can be invoked when input tax credit has been wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts to evade tax, which is absent in their case. The noticee also submitted that they being State Government undertaking, the allegation of input ax credit availed by reason of fraud, or any willful misstatement or suppression of fact to evade tax cannot be made against them.

They relied upon the case of *Nalco-2016 (353) ELT.1005 (Tri-Kolkata) and Indian Petrochemicals Corporation Ltd-2009 (237) ELT.317 (Tri-Ahmd).*

PERSONAL HEARING

23. Personal hearing was held on 25.03.2022 when Shri P.G. Mehta, Advocate along with two officers of M/s Gujarat Gas appeared before me. He submitted a written submission and reiterated the points as submitted in writing. The written submissions reiterated the submissions already made in their defense reply dated 28.09.2021.

DISCUSSION AND FINDINGS

24.1 I have carefully gone through the facts of the case on record and the submissions made by the noticee. On recapitulating, I find that there are two issues involved in the present show cause notice related to TRAN-1 filed by the noticee. The first issue is that the noticee has taken transitional credit of Rs.1,53,00,140/- under Section 142(11) in Tran-1 return. The said credit purportedly belonged to Service tax paid on the advance received by them for providing taxable service. The second issue is that the noticee has carried forward the closing balance of Credit of inputs/input services/capital goods, used in manufacture of excisable goods, as reflecting in the Excise return filed for the period June, 2017, to the TRAN-l as transitional credit.

24.2 Before going to the merits, I wish to address the submission of M/s GGL that pre-show cause notice consultation has been made mandatory for promoting voluntary compliance and to reduce the necessity of issuing show cause notice. In this regard, I find that, M/s GGL was first informed about the audit objection vide letter dated 18.09.2020 by the concerned Range Officer and their clarification was obtained. Thus, it is evident that before issue of SCN they were provided with an opportunity to explain their case and, therefore, the requirement of pre-SCN consultation is fulfilled to such an extent. Moreover, I find that granting pre-show cause notice consultation is not mandatory under rule 142 of CGST Act 2017. Sub-Rule (1A) of Rule 142 ibid stipulates as under:

> *(1A) The proper officer may, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01A**.*

From the plain reading of the above provision, I am of the considered view that it is at the discretion of proper officer to issue DRC-1A as the rule has used the words 'the proper officer may'. Since the M/s GGL was communicated about the objection of the audit about improper availment of transitional credit by the concerned Range Officer, the requirement of giving information to the person chargeable with tax is stand fulfilled.

25.1 With regard to the demand of Rs.1,53,00,140/-, I find that the noticee has taken transitional credit of Rs.1,53,00,140/- under Section 142(11) in Tran-1 return. Section 142(11)(c) of CGST Act 2017 read as under:

> *(11)(a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;*
>
> *(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994 (32 of 1994);*

(c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994 (32 of 1994), tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

From the plain reading of the above provision of law, it transpires that a taxable person is entitled to take credit of VAT or Service Tax paid under the respective law **only to the extent of supplies made after the appointed day.** The appointed day, is the date from which the CGST/SGST Act came into effect i.e. the 1st day of July 2017.

25.2 In the instant case, I observe, the noticee has taken the entire amount of service tax paid by them on advance receipt of value in relation to provision of services like maintenance and repair and installation service. From the perusal of the Annexure-A to the defense reply, I find that the noticee has taken credit of service tax paid from 2011 onwards. In other words, they have taken transitional credit on service tax paid on whatever advances received by them without considering whether the service for which advance received was provided before the appointed day. The contention of the noticee for availing such credit is that under clause (c) of Sub-section (11) of Section 142, supply of service is not condition but it stipulates the proportion/share of credit admissible. They have submitted a statement Annexure-B, under which sample accounting entries were provided to prove that services were rendered by them.

25.3 In order to analyse the meaning and the intention of the legislation, it will be prudent to discuss Section 142(10) of CGST Act 2017. The said provision is read as under:

(10) Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

From the plain reading of the above provision of law, it is evident that every supply of goods made or service effected on or after the appointed day shall be liable to tax under GST Act. As service tax was required to be paid when payments are received in advance, there might be situations where service tax is paid, but service is not provided before 1st July 2017. Since service is provided after 1st July 2017, the supplier of service is required to pay GST as per Section 142(10) of the CGST Act 2017 leading to a situation where both Service tax and GST is being paid for a single service. In order to address such situation, the legislation has made the provision, under Section 142(11), for availing credit of service tax paid on such services. However, Section 142(11) does not provide for availing entire amount of service tax paid on such services; it provides for taking credit to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed. The legislature has carefully drafted the provision for allowing credit only to the extent of service provided after the appointed day, because as per section 142(11)(b) no GST is required to be paid to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994 (32 of 1994). The rationale behind making such provision is that service tax is required to be paid either at the time of issue of invoice and, in case the payment is received in advance, at the time of receipt of advance. Rule 3 of Point of Taxation Rules 2011 read as under:

RULE [3. Determination of point of taxation. *- For the purposes of these rules, unless otherwise provided, 'point of taxation' shall be,-*

(a) the time when the invoice for the service [provided or agreed to be provided] is issued :

*[**Provided** that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994, the point of taxation shall be the date of completion of provision of the service.]*

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment :

*[**Provided** that for the purposes of clauses (a) and (b), -*

(i) in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service;

(ii) wherever the provider of taxable service receives a payment up to rupees one thousand in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined in accordance with the provisions of clause (a).]

***Explanation** - For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.].*

25.4 As per the above provisions of law as it stood at the relevant time, a service provider was required to pay service tax when any advance is received as in the present situation. The service tax paid on advance receipt is adjusted when the invoice is issued after providing service. The receipt of advance, for which no bills/invoices/challans or any other documents have been issued, is reflected at Sl.No. B2.2 of ST-3 return to be filed by the noticee. The amount received in advance is adjusted in Gross amount when invoice is issued at Sl. No. B2.1 of ST-3 return. Sl.No.B2.1 and B2.2 are as under:

B1.1	Gross amount (excluding amounts received in advance, amounts taxable on receipt basis, for which bills/invoices/ challans or any other document may not have been issued) for which bills/invoices/challans or any other documents are issued relating to service provided or to be provided (including export of service and exempted service)	
B1.2	Amount received in advance for services for which bills/ invoices/challans or any other documents have not been issued	

25.5 M/s GGL, I observe, in their letter dated 22.10.2020 addressed to the Superintendent, CGST, Range-I, Division-I, Ahmedabad South has explained the treatment of advances received by them and payment of service tax thereof while replying to the objection raised in LAR No.121/19-20 dated 20.12.2019. Relevant text of the clarification is reproduced below in verbatim.

"C. Further, kindly note that the amount of Rs.1,25,88,637/-, mentioned by your good self as service tax on advances paid by us during the period from May, 2015 to June 2017 as per the service tax returns are net of Service tax on advances received by us and advances adjusted against the actual invoices issued for the work done. An illustrative break up service tax on advances received and advances adjusted for the period from Oct-16 to Jun-17 is attached herewith as Annexure-4 for your kind perusal"

25.6 Annexure-4 of the said letter is as below:

Details of Advances Turnover and S.Tax thereof

		Oct-15	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Total	Apr-17	May-17	Jun-17	Total	Total (Oct-16 To Jun-17)
Advances received	A	1,59,65,690	1,20,57,113	1,45,81,333	1,25,98,093	2,73,07,021	1,93,87,475	10,18,96,724	1,61,32,758	1,43,25,712	2,07,34,752	5,11,93,222	15,30,89,947
Advances adjusted	B	-1,07,46,681	-1,23,19,790	-2,11,46,703	-2,89,86,872	-1,53,06,890	-2,47,84,509	-11,32,91,445	-1,13,17,882	-1,42,14,973	-2,73,66,564	-5,28,99,418	
Net Advances Turnover	C= A-B	52,19,009	-2,62,677	-65,65,370	-1,63,88,780	1,20,00,131	-53,97,035	-1,13,94,721	48,14,876	1,10,739	-66,31,812	-17,06,196	
S.Tax on Adv received	D= A*15%	23,94,854	18,08,567	21,87,200	18,89,714	40,96,053	29,08,121	1,52,84,509	24,19,914	21,48,857	31,10,213	76,78,983	2,29,63,492

Disclosure In ST-3

		Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Total	Apr-17	May-17	Jun-17	Total
Gross Turnover		3,54,14,887	3,43,30,236	3,10,73,948	2,81,77,699	4,72,81,113	5,29,98,966	22,92,76,849	3,34,37,489	1,89,35,589	5,11,24,681	10,34,97,759
Advances		52,19,009	-	-	-	1,20,00,131	-	1,72,19,140	48,14,876	1,10,739	-	49,25,616
Total Turnover		4,06,33,896	3,43,30,236	3,10,73,948	2,81,77,699	5,92,81,244	5,29,98,966	24,64,95,989	3,82,52,365	1,90,46,329	5,11,24,681	10,84,23,375

From the above illustration given by the noticee itself, it is evident that they have adjusted the advances received while issuing the invoices. It is conspicuously present in the Annexure-4 mentioned above that the net advance turnover amount after adjusting the advance receipt is in negative at the end of June 2017. The net advance turnover for June 2017 is (-) Rs.66,31,812/-, which means the noticee has adjusted the advance and issued invoice after providing taxable service. In other words, service is provided by June 2017 itself for the advances received before 30th June 2017.

25.7 As per Section 142(11) of the Central Goods and Services Tax Act, 2017, the taxable person shall be entitled to take credit of service tax paid under existing law to the extent of supplies made after the appointed day. Therefore, it is evident that M/s GGL has taken ineligible transitional credit amounting to Rs. 1,53,00,140/- even though no supply has been made after appointed day. Section 142(11)(c) provided for taking credit of service tax paid under existing law to the extent of supplies made after the appointed day in the manner as prescribed. The manner for taking credit under Section 142(11(c) is prescribed under rule 118 of CGST Rules 2017 which is reproduced as under:

> *RULE 118. Declaration to be made under clause (c) of sub-section (11) of section 142. — Every person to whom the provision of clause (c) of sub-section (11) of section 142 applies, shall within [the period specified in rule 117 or such further period as extended by the Commissioner], submit a declaration electronically in* ***FORM GST TRAN-1* furnishing the proportion of supply on which Value Added Tax or service tax has been paid before the appointed day but the supply is made after the appointed day, and the Input Tax Credit admissible thereon.***

25.8 It is evident from the above rule that the noticee is required to furnish the proportion of supply on which VAT or Service Tax has been paid before 1st July 2017 but supply is made after the appointed day, and the input tax credit admissible. Thus the law, as provided under Section 142(11)(c) of CGST Act 2017 read with Rule 118 of CGST Rule 2017, is unambiguous and crystal clear that the credit admissible is only for the proportion of supply made after the appointed day, but service tax has been paid before the said date.

28.9 The noticee, in the present case, was asked to provide the proportion of supply made after the appointed day for which service tax was paid before the appointed day. The noticee, on the other hand, has incongruously taken a stand that for availing such credit under clause (c) of Sub-section (11) of Section 142, supply of service is not condition. As I already observed in earlier part of this order, the noticee has taken credit of service tax paid on advance receipt in respect of such payments made from the year 2011 onwards. It is hard to believe that the noticee has provided the service after 30.06.2017 for which advance received as early as in the year 2011. The illustration provided by the noticee as per Annexure-4, as discussed above, proved beyond doubt that they have provided the service by the end of June 2017 itself for which advances were received. If the contention of the noticee is to be accepted, it would lead to a precarious situation that, for each and every payment of service tax made on advance receipts and adjusted in services already provided, the said amount can be taken as credit. Thus the noticee will be taking credit of service tax in respect of the services already provided, contrary to the provisions of Section 142(11)(c) of CGST Act 2017 read with Rule 118 of CGST Rule 2017.

25.10 In view of the above, I have no hesitation in holding that the noticee has taken transitional credit amounting to Rs. 1,53,00,140/- in contravention of Section 142(11)(c) of CGST Act 2017 read with rule 118 of CGST Rules 2017 and therefore, the demand is sustainable.

26.1 The second issue to be decided is whether the noticee is eligible to carry forward the closing balance of Credit of inputs/input services/capital goods, used in manufacture of excisable goods, as reflecting in the Excise return filed for the

period June, 2017, to the TRAN-1 as transitional credit. The show cause notice to deny the credit carried forward by the noticee has been issued on the premises that the said inputs, input services and capital goods are used in relation to manufacture of CNG which is out of purview of GST under GST Act 2017. Per contra, the noticee argued that there is no one to one correlation and cross utilization of credit and credit accumulated by the service provider or manufacturer on the input services availed as well as input is available for payment of excise duty or service tax.

26.2 In this regard, I find that, transitional arrangement for input tax credit of eligible duties carried forward in the return under the existing law has been made under Section 140 of the CGST Act 2017 which read as under:

> ***SECTION 140. Transitional arrangements for input tax credit.*** *— (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.*

26.3 From the perusal of the above provision of law it is evident that a registered person is eligible to carry forward the amount of CENVAT available in balance at the end of June 2017. But proviso to Section 140 (1) has made a condition for carry forwarding the credit according to which the credit shall not be allowed to be carried forward if the said amount of credit is not admissible under CGST Act. Now let me look into the provision of law that prescribes the eligibility and conditions for taking input tax credit. Section 16 of the CGST Act provides as under:

> ***SECTION 16. Eligibility and conditions for taking input tax credit.*** *— (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*
>
> *(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —*
>
> *(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*

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

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

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

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

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

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

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

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

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

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

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or [* *] debit note pertains or furnishing of the relevant annual return, whichever is earlier :*

*[**Provided** that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]*

26.4 As per the above, a registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. In the present case, I find that, the noticee is registered under CGST Act for the business of supply of various services like repair and maintenance, installation service etc. Besides the noticee is engaged in the manufacture of Natural Gas for which, in the pre-GST regime, the taxable person was having Central Excise and Service Tax registrations. After implementation of GST, the noticee is still having registration under Central Excise because the product Natural Gas is outside the levy of GST. Admittedly, the credits carried forward by the noticee under Section 140(1) and 140(2) were in respect of inputs, input service and capital goods used in manufacture of Natural Gas and its distribution. Thus, the said credits carried forward are not in relation to furtherance of business for which the noticee is

registered under GST Act. The noticee, I observe, has not denied the allegation made in the show cause notice that these credits were in relation to manufacture of Natural Gas. Therefore, it can be concluded that the noticee is not eligible for availing input tax credit on those inputs/input services/capital goods used in manufacture of Natural Gas on which no GST leviable. As per Section 17 of CGST Act where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business. In this case, the noticee has used the inputs, services and capital goods on which CENVAT credit availed and carried forward in ER-1 return, for manufacture of Natural Gas on which no GST is levied.

26.5 The noticee has submitted that CNG is excisable goods but supply of service is covered under GST law. As supplied of goods or services or both are covered under the ambit of GST law, they are entitled to carry forward cenvat credit. In this regard, I find that, as per Section 9 of CGST Act, the central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council. Section 9 of CGST Act reads as under:

> ***SECTION 9. Levy and collection.*** *— (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*
>
> *(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.*

26.6 Till date GST Council has not recommended to levy GST on natural gas and no notification to this effect has been issued. Thus, the noticee has failed to prove that he is eligible for input tax credit as the burden to prove the eligibility is on the noticee as provided under Section 155 of the CGST Act 2017 which reads as under:

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

When the noticee has failed to discharge the burden to prove the eligibility, the contention of the noticee is not acceptable and, therefore, I hold that the noticee is not eligible to carry forward the CENVAT credit of inputs, input service and capital goods used in manufacture of Natural Gas. Thus the credit of Transitional credit of **Rs.1,64,40,668/-** taken in TRAN-1 under Section 140(1) and Transitional credit of **Rs. 56,60,863/-** taken in TRAN-1 under Section 140(2) of the CGST Act, 2017 are to be disallowed and recovered from them under the provisions of Section 74(1) of CGST Act 2017 read with Rule 121 of the CGST Rules, 2017.

26.7 I also find that the noticee was fully aware about the fact that they were availing and utilizing the ITC which was not available to them legally under the CGST Act, 2017. This appeared to have done with intent to evade the payment of dues related to GST under the CGST Act, 2017. This fact of non-payment of dues related to GST would have remained unnoticed, if the audit Officers had not raised these issues. Since the noticee has carried forward Credit amount to **Rs.3,74,01,671/-**, in TRAN-1 in contravention of the provisions of Section 140 (1), Section 140 (2) and Section 142 (11) of CGST Act 2017 and Rule 121 of CGST Rules, 2017 with an intent to evade payment of tax, they have rendered

themselves liable for penal action as per the provisions of Section 74(1) of CGST Act, 2017 read with Section 122 (1)(b) of CGST Act, 2017.

27. In view of the above, I pass the following order:

ORDER

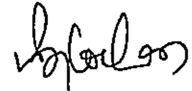
(i) I disallow Transitional credit of **Rs.1,53,00,140/-** taken in TRAN-1 under Section 142(11) of the CGST Act, 2017 and order to be recovered from them, under the provisions of Section 74(1) of CGST Act 2017 read with Rule 121 of the CGST Rules, 2017.

(ii) I disallow Transitional credit of **Rs.1,64,40,668/-** taken in TRAN-1 under Section 140(1) of the CGST Act, 2017 and order to be recovered from them, under the provisions of Section 74(1) of CGST Act 2017 read with Rule 121 of the CGST Rules, 2017

(iii) I disallow Transitional credit of **Rs. 56,60,863/-** taken in TRAN-1 under Section 140(2) of the CGST Act, 2017 and order to be recovered from them, under the provisions of Section 74(1) of CGST Act 2017 read with Rule 121 of the CGST Rules, 2017

(iv) I confirm the demand of interest at the applicable rate under Section 50 (1) of the CGST Act 2017 on the demand of (i) to (iii) above;

(v) I impose penalty of **Rs.3,74,01,671/-**, under the provisions of Section 74(1) read with Section 122 (2)(b) of CGST Act, 2017. However, **in view of Section 74(11)** if the amount confirmed and interest thereon is paid **within period of thirty days from the date of receipt of this Order, the penalty shall be fifty percent** of the said amount, subject to the condition that the amount of **such reduced penalty is also paid within the said period of thirty days.**



(Nalin Bilochan)
Joint Commissioner,
CGST, Ahmedabad South.

F No VI-CGST/4-38/Gujarat Gas/O&A/20-21. Date: 28.04.2022
By Speed Post AD

M/s Gujarat Gas Limited,
4th Floor, GSFC House, Skum School Road,
B/h Reliance Mart, Opp. Drive in Cinema,
Ahmedabad 380054

Copy to :

1) The Principal Commissioner, CGST, Ahmedabad South.
2) The Deputy Commissioner, Central GST, Div-VI (Vastrapur), Ahmedabad South.
3) The Asstt. Commissioner, Central Tax, TAR Section, HQ, Ahmedabad South
4) The Superintendent, Range-I, CGST, Div-VI (Vastrapur), Ahmedabad South.
5) The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website.
6) Guard file.