



OFFICE OF THE COMMISSIONER OF C. G. S. T.,
AHMEDABAD – SOUTH.

प्रधान आयुक्त का कार्यालय, के. व. से. क., अहमदाबाद दक्षिण
G. S. T. BHAVAN, AMBAWADI, AHMEDABAD – 380 015
व. से. क. भवन, आम्बावाड़ी, अहमदाबाद – ३८० ०१५

F. No. : VI-CGST/4-21/ O&A/Nestle/21-22
DIN no. : 20221164WS0000139158

आदेश की तारीख: Date of Order : 11.11.2022
जारी करने की तारीख: Date of Issue : 11.11.2022

द्वारा पारित / Passed by: **Shri Marut Tripathi, JOINT COMMISSIONER**

मूल आदेश सं./Order-In-Original No.29/CGST/Ahmd-South/JC/MT/22-23

यह प्रति उस व्यक्ति (यों) को, जिसके (जिनके) लिए यह आदेश जारी किया गया है, उसके (उनके) व्यक्तिगत उपयोग के लिए निःशुल्क 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, आम्बावाड़ी, अहमदाबाद-15 को प्रारूप इ.ए.-1 में अपील कर सकता है। उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए। इसपर रुपए 2.00/- केवल का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this order in Form E.A.1 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 दो प्रतियों में प्रारूप सं. इ.ए.-1/S.T.-4 में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001 के नियम 3 के उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए। इसके साथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. E.A.-1/S.T.-4 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be accompanied with the following:

उक्त अपील की प्रति।

Copy of the aforesaid appeal.

निर्णय की दो प्रतियाँ (उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए जिसके विरुद्ध अपील की गई है) अथवा उक्त आदेश की अन्य प्रति जिसपर रु 2.00/- का न्यायालय शुल्क टिकट अवश्य लगा होना 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 fee stamp of Rs. 2.00/-.

इस आदेश के विरुद्ध आयुक्त (अपील) में शुल्क के 7.5% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

संदर्भ/Reference : कारण बताओ सूचना फा.सं. F No VI-CGST/4-21/ O&A/Nestle/21-22, issued to M/s Nestle India Limited, E-1, Corporate Warehouse Hub, Opp. Alfa Hotel, Aslali, Ahmedabad 382427

BRIEF FACTS OF THE CASE

M/s. NESTLE INDIA LIMITED, situated at E-1, Corporate Warehouse Hub, Opp. Alfa Hotel, ASLALI, Ahmedabad, Gujarat, 382427 (hereinafter referred to as the "Tax Payer") are engaged in supply of various goods viz. under HSN 17049020, 19011090, 19023010, 19053211, 21011120 and at present they hold GSTIN 24AAACN0757G1ZR. The said tax payer filed Tran-1 on 27.12.2017 under Section 140 of the CGST Act, 2017 and has taken transitional credit of central taxes in their electronic credit ledger as under:-

(Table 1)			Amount in Rs.
Sl No.	Table of Tran-1	Provision of CGST Act, 2017	Amount claimed
1	7A of 7(a)	140(3)	1,12,64,900
2	7B of 7(a)	140(3) read with Rule 117(4)	12,88,852
3	7(b)	140(5)	9,15,236
Total			1,34,68,988

2. Section 16 of the CGST Act 2017, prescribes eligibility/admissibility and conditions for taking input tax credit. The sub section (1) and (2) of the Section 16 are read as under:-

(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;

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

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

3. From the TRAN-1 form filed by the taxpayer, it is found that they have claimed TRAN-1 credit in table 7A and 7B of table 7(a) and 7(b) of TRAN-1 form as mentioned above. Accordingly, in order to verify their TRAN-1 credit claim, they were requested vide letters dated 03.05.2018 to submit the following documents for the purpose of verification of correctness of TRAN-1 credit

availed by them:

1. ER-1 returns from October, 2016 to June, 2017 on the basis of which credit is taken in table 5(a).
2. Invoices on the basis of which credit is taken in table 6(a).
3. Credit Transfer of Documents/invoices/other documents in respect of credit is taken in 7A of table 7(a).
4. Procurement documents on the basis of which credit is taken in entry 7B of table 7(a).
5. VAT returns for October, 2016 to June, 2017.
6. Copy of TRAN-1 and TRAN-2 form.
7. Statement of purchases made during period from 1st Oct, 2016 to 30th June, 2017 in the prescribed format.

The taxpayer in their reply dated 22.06.2018 submitted copies of sales tax return for the month of October-2016 to June-2017, working sheet of tran-1 credit, copy of electronic credit ledger and copy of letter dated 21.03.2018. However, they did not submit necessary documents, as requested vide office letter dated 03.05.2018.

Another letter dated 26.06.2018 was issued to them requesting to submit reply of discrepancies noticed in their letter dated 22.06.2018 and to submit necessary documents/records for verification of their claim of Input tax credit in Tran-1 form. In absence of any submission, a summon dated 27.11.2018 was issued with a direction to be appeared in person on 11.12.2018. The tax payer vide their letter dated 23.11.2018 submitted documents for credit claimed in entry 7A of table 7(a) and invoice wise details for credit claimed in entry 7(b) and requested for convenient time for verification of bills against which they have claimed credit. Further the tax payer were requested vide letter dated 17.02.2020 and dated 17.03.2020 to submit original invoices for verification of Tran-1 credit. Further, as per Rule 117(4)(a)(i) of the CGST Rules, 2017, only registered person who was not registered under the Central Excise/ Service Tax is allowed to avail input tax credit on the goods held in stock on the appointed day and declared under entry No. 7B of the table 7(a) of Tran-1 form. Further as per Sub rule 4(b)(ii) of Rule 117(4) of the CGST Rules, 2017, "the document for procurement of such goods is available with the registered person." However no documents were submitted by tax payer. The credit availed in their electronic credit ledger of Rs.14,78,015/- by filing of Tran-2 returns for the months of July-2017 to October-2017 appears to be inadmissible. In absence of documents the credit appears to be inadmissible due to the contradiction of provisions of section 140(3) of CGST Act, 2017 read with Rule 117(4) of the CGST Rules, 2017.

In view of above, total inadmissible credit as as under:-

(Table 2)

Amount in Rs.

Sl No.	Table of Tran-1	Provision of CGST Act, 2017	Amount claimed
1	7A of 7(a)	140(3)	1,12,64,900
2	7B of 7(a)	140(3) read with Rule 117(4)	12,88,852
3	7(b)	140(5)	9,15,236
4	Tran-2	140(3) read with Rule 117(4)	14,78,015
Total			1,49,47,003

4. It appeared that taxable person did not submit all the relevant documents called for, for verifying admissibility of transitional credit claimed by them. In the absence of the requisite documents, it was not possible to ascertain admissibility of transitional credit claimed by them. Therefore, they were issued an intimation letter dated 08.09.2021 in Form GST DRC 01A, of tax ascertained as being payable under Section 73(5)/74(5) of the CGST Act, 2017 read with Rule 142(1A) of the CGST Rules, 2017 to file any submission in this matter. However the tax payer did not submit any reply.

5. As the taxpayer has failed to submit all the required documents, admissibility or genuineness of the credit taken could not be verified. Therefore, it appeared that the transitional credit amounting to Rs 1,49,47,003/- availed by them as input tax Credit in their electronic ledger, is not admissible as per aforesaid section 140(3) of CGST Act,2017 read with Rule 117(4) of the CGST Rules,2017, and therefore, the same is requires to be recovered from them under the provisions of Section 74(1) of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017 along with applicable interest under Section 50 (1) of the CGST Act, 2017.

6. It further appeared that by not providing the documents called for, the Taxpayer has intentionally suppressed the information from the department. Thus, the taxable person appears to have violated the provisions of Section 140 of the CGST Act, 2017 and rendered themselves liable for penal action under the provisions of Section 74 of the CGST Act, 2017.

7. It appeared that in terms of the provisions of Section 155 of the CGST Act, 2017, the onus to prove admissibility of the credit availed lies on the taxable person. In view of the above position of law, the burden to prove admissibility of the credit availed under Tran-I rests on the taxable person and by not replying to the letter of the Range Officer and intimation under Form GST DRC 01A, the taxable person have not discharged the said burden.

8. The government has, from the very beginning, placed complete trust on the taxable person so far as tax is concerned and accordingly, measures like Self-assessment, based on mutual trust and confidence are in place. From the evidence, it appears that the said taxable person had deliberately taken transitional credit of Central Excise/Service Tax, amounting to Rs 1,49,47,003/- in their electronic Credit ledger without the necessary duty paying documents and there is suppression of facts involved. Therefore, the tax credit taken is required to be recovered invoking Section 74(1) of CGST Act, 2017 and they are also required to be imposed a penalty of equal amount of duty credit under said Section 74(1).

9. Therefore, a show cause notice F.No. CGST/4-21/O&A/Nestle/21-22 dated 29.03.2022 was issued to M/s. NESTLE INDIA LIMITED, by which they were called upon to show cause to the Additional Commissioner, Central Goods & Services Tax, having his office at 1STFLOOR, GST BHAVAN, NR. POLYTECHNIC, AMBAVADI, AHMEDABAD-380015 as to why:

- 1) The transitional credit of input tax amounting to Rs. 1,49,47,003/- Rupees One Crore Fourty Nine Lakhs Fourty Seven Thousand Three Only) wrongly claimed to carry forward under Section 140 of the CGST Act, 2017 and utilized by them, should not be demanded and recovered from them, under the provisions of Section 74(1) of the CGST Act read with the provisions of Rule 121 of the CGST Rules;
- 2) Interest should not be charged and recovered from them under the provisions of Section 50 of the CGST Act; and
- 3) Penalty should not be imposed on them under the provisions of Section 74 of the CGST Act on the grounds discussed herein above.

10. It was further informed that in terms of **sub section (8) of Section 74** of 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 a penalty equivalent to twenty-five per cent 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

11. The tax payer submitted their defense reply vide letter dated 26.04.2022 wherein they submitted that in respect of Tran-1 Credit the requisite documents in relation to the transitional credit are available with the company and can be produced for verification. They have submitted details of closing stock alongwith copies of excisable invoices in **Annexure-1** for verification.

Regarding presumptive credit as per section 140(3) of the CGST Act, 2017. The taxpayer claimed that GSTN portal automatically incorrectly

considered duty amount of Rs.12,88,852/- in electronic credit ledger upon filing of Tran -1 details like quantity ,Value and eligible duty pertaining to closing stock on which presumptive credit was to be availed. They further stated that it was forced to utilize the presumptive ITC of CGST before utilizing the Cash payment on the GSTN portal. They further claimed that ITC of Rs.12,88,852/- was available as closing balance till January-2019. They have already reversed the ITC of Rs.12,88,852/-. They enclosed a copy of electronic credit ledger from July-2017 to March 2019 in **Annexure-2**.

11B The tax payer stated that they have claimed Tran-2 credit of Rs.14,78,015/- on the basis of sales invoices. They have submitted sales invoices in **Annexure-3** for verification purpose.

11C. Regarding ITC of Rs.9,15,236/- claimed in Tran-1, they have stated that Tran-1 credit under the provisions of Section 140(5) of the CGST Act, 2017 was claimed against the invoices of input/input service which were received on or after the appointed day but the duty or tax was paid in existing law by the supplier. They have submitted details of closing stock alongwith copies of excisable invoices in **Annexure-4** for verification.

11D. Regarding the proposal to charge interest under Section 50(1) of the CGST Act, the tax payer submitted that since they were having all the documents based on which credit claimed, there is no question of any interest liability.

11E. In respect of the proposal to impose penalty under Section 74 (1) of the CGST Act, the tax payer submitted that there is no suppression of facts with intention to evade payment of tax and hence penalty is not imposable on them.

PERSONAL HEARING

12. Personal hearing was held in virtual mode on 29.07.2022 when Shri Gaurav Khanna (Associate General Counsel), Mrs. Shweta Goel (Senior Tax Manager) and Shri Sushant S. Parad (Manager) appeared for the party and stated that their written submission should be taken on record. Further Transitional Credit is availed as per law and party requested to consider case on merits. Further the party stated that in case of documents are required for verification of transaction claim, the same can be reproduced again before this office.

DISCUSSION & FINDING

13. I have carefully gone through the facts of the case on record and the submissions made by the noticee. On recapitulating, I find that the issue

involved in the present show cause notice, is related to admissibility of credit taken in TRAN-1 filed by the noticee. The issue is that the noticee has taken transitional credit of Rs. 1,49,47,003/- under Section 140(3) and Section 140(5) of CGST Act,2017, read with rule 117(4) of CGST, Rules, 2017 in Tran-1 return.

13.A Further the taxpayer have submitted that the impugned DRC-01 cum show cause notice has wrongly invoked the provision of Section 74(1) of the CGST Act 2017. As they had imported goods and paid Customs duty and were in possession of all documents evidencing payment of duty and claimed credit in TRAN-1 accordingly.

Section 74(1) of the CGST Act provides as under:

Section 74(1) Where it appear to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any willful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest and payable thereon under section 50 and a penalty equivalent to the specified in the notice.

Looking further in Section 74; as per explanation 2.- --- For the purpose of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to be declare in the return, statement, report or any other documents furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for in writing by the proper officer.

13B. In the instant case, I observe that, the noticee has taken TRAN-1 credit of Rs. Rs. 1,49,47,003/- into their ITC ledger as CGST credit on 27.12.2017, on basis of invoices/duty paying documents. As per Section 140(3) condition (iii) read with Section 16(2) and Rule 117(4)(b)(ii) a registered person must possess the duty paying documents/documents for procurement of goods. It appeared that taxable person did not submit the relevant documents called for by proper officer, for verifying admissibility of transitional credit claimed by them. Therefore the non furnishing of information on being asked for in writing by the proper officer appears to amount to suppression of information. The submission of the tax payer that show cause notice has wrongly invoked the provision of Section 74(1) of the CGST Act 2017 is not sustainable.

13C. Now with regard to the demand of Rs. 1,49,47,003/- I find that the noticee has taken transitional credit of Rs. 1,49,47,003/- under Section 140(3)

and Section 140(5) in Tran-1 return. As per Section 140, the transitional mechanism for carrying forward the credit pending with the erstwhile registered persons or who was not liable to be registered under the existing law, to the GST regime. The details of the Section 140(3) and Section 140(5) of the CGST Act 2017 and sub rule 4 of rule 117 of the CGST, Rules, 2017 are reproduced herewith:-

"140 (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 work contract services and was availing of the benefit of notification No. 26/2012-Service Tax, dated 20th June, 2012 or the first stage dealer or a second stage dealer or a registered importer or a depot of 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 the services is not eligible for any abatement under this Act:

Provided that where a registered person other than manufacturer or supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty under the existing law in respect of such inputs, then, such registered person shall, subject to such conditions, limitations and safeguard 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.

"140(5) A registered person shall be entitled to take in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input

services received on or after the appointed day but the duty or tax in respect of which has been paid by supplier under the [existing law within such time and in such manner as may be prescribed], subject to the condition that the invoice or any other duty or tax paying documents of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

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

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

" Rule 117(4)(a)(i) A registered person who was not registered under the existing law shall, in accordance with the proviso to sub section (3) of section 140, be allowed to avail of input tax credit on goods (on which the duty of central excise or, as the case may be, additional duties of customs under sub section(1) of section 3 of Customs Tariff Act,1975, is leveiable) held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of central excise duty.

(ii) The input tax credit referred to in sub-clause (i) shall be allowed at the rate of sixty percent.on such goods which attract Central Tax at the rate of Nine percent.or more and forty per cent.for other goods of central tax applicable on supply of such goods after appointed date and shall be credited after the central tax payable on such supply has been paid :

Provided that where the integrated tax is paid on such goods, the amount of credit shall be allowed at the rate thirty percent.and twenty percent respectively of the said tax;

(iii) The scheme shall be available for six tax periods from the appointed date.

(b) The Central tax shall be availed subject to satisfying the following conditions, namely :-

(i) Such goods were not unconditionally exempt from the whole of duty of excise specified in first Schedule to the Central Excise Tariff Act,1985 or were not nil rated in the said schedule;

(ii) the document for procurement of such goods is available with the registered person;

(iii) -----

(iv) -----

(vi) -----

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

Section 16 of the CGST Act provides as under:

SECTION 16. Eligibility and conditions for taking input tax credit. — (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

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

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

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

(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.]

13E. From the perusal of the above provision of law it is evident that under provision of Section 140 (3)(iii), Section 140(5) of CGST Act,2017 read with Rule 117(4)(b)(ii) of CGST Rules,2017, and Section 16 of the CGST Act,2017 a registered person, 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 on the appointed day, subject to possession of invoice or other prescribed documents evidencing payment of duty/procurement of goods under the existing law in respect of such inputs.

Further under provision of Section 16 (2)(a) a registered person shall, be entitled to take credit of input tax subject to conditions that 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.

13F. In the instant case, I observe, the noticee has taken TRAN-1 credit of Rs. 1,49,47,003/- into their ITC ledger as CGST credit. The entire credit was taken on basis of invoice. It appeared that taxable person did not submit the relevant documents initially when called for, to verify admissibility of transitional credit claimed by them. In the absence of the requisite documents, it was not possible to ascertain admissibility of transitional credit claimed by them.

The law, as provided under Section 140 of CGST Act 2017 read with section 16 of CGST Act 2017, are unambiguous and crystal clear that the credit admissible is only when the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty/procurement of goods under the existing law in respect of such inputs.

13G. During the course of personal hearing on 29.07.2022, M/s. NESTLE INDIA LIMITED have submitted documents as per Annexure-1, Annexure-2, Annexure-3 and Annexure-4 for verification of their Transitional credit.

13H. The jurisdictional Officer is the competent authority to examine/ verify the correctness /admissibility of documents submitted for taking credit. I observe, that if the taxpayer had provided all the documents for verification. Then the jurisdictional Officer could have verified the same to ascertain admissibility of the input tax credit. However the taxpayer have submitted all the documents as mentioned above, during the personal hearing held on 29.07.2022.

13I. In order to ascertain admissibility of credit mentioning in the Tran-1, the document submitted by the taxpayer were sent for verification to the Jurisdictional Deputy Commissioner, Central Tax, Div.-IV, Ahmedabad South on dt.03.08.2022. I find that the verification of document to ascertain admissibility of the credit was verified by the Deputy Commissioner, Central Excise Div.-IV, Ahmedabad South vide letter no.CGST/WS04/TRAN-1/ 2021-22 dated 18.10.2022 and reported item wise verification.

i) During verification of claim of transitional credit of Rs. 1,12,64,900/-, excess ITC amounting to Rs.5,32,336/- is availed on below mentioned stock which pertains to goods in transit as the same is received after appointed date,i.e.30.06.2017. Further, such stock is already claimed under table 7(b) therefore same is duplication of credit claimed and hence inadmissible. Accordingly out of total TRAN-1 credit claim of Rs.1,12,64,900/- only Rs.1,07,32,564/- is found admissible.

Item-wise verification findings:

1) Claim of Rs. 1,12,64,900/- claimed under 7A of table 7a:

Amount in Rs.									Remarks
Excise Inv No	Doc. date	Material	Material Description	HSN	BED	Qty	Assessable Value	BED	
70	6/29/2017	39100593	Magnesium Stearate INS470	39239090	13%	500	86,500	10,813	Such stock pertains to goods in transit, as same is received after 30.06.2017. Same is already covered under their claim under table 7(b), therefore, same may be seen as duplication, hence total amount of Rs. 5,32,336/- is found inadmissible.
70	6/29/2017	39100593	Magnesium Stearate INS470	39239090	13%	500	86,500	10,813	
70	6/29/2017	39100593	Magnesium Stearate INS470	39239090	5%	500	97,313	4,866	
70	6/29/2017	39100593	Magnesium Stearate INS470	39239090	5%	500	97,313	4,866	
20	6/28/2017	43805066	Shrink Sleeve PVC POLO Natural 28x6g PR	39201019	5%	40,000	11,480	574	
2	6/18/2017	43721596	Shrink Sleeve PVC POLO 60x17.16gm	39201019	5%	80,000	30,960	1,548	
4156	6/30/2017	43502179	Foil Alu Reel Fed Nucrel Coated 54mm	76071995	13%	187	66,371	8,296	
4156	6/30/2017	43502179	Foil Alu Reel Fed Nucrel Coated 54mm	76071995	13%	400	141,872	17,734	
4156	6/30/2017	43502179	Foil Alu Reel Fed Nucrel Coated 54mm	76071995	13%	693	245,815	30,727	
3671	6/30/2017	43771484	Film MetPET12micron MB ECLAIR 3.2g MxdF	39231090	13%	124	39,780	4,972	
3624	6/29/2017	43502179	Foil Alu Reel Fed Nucrel Coated 54mm	76071995	13%	63	22,370	2,796	
3624	6/30/2017	43502179	Foil Alu Reel Fed Nucrel Coated 54mm	76071995	13%	711	252,231	31,529	

3374	6/25/2017	43771484	Film MetlPET12micron MB ECLAIR 3.2g MxdF	39231090	13%	1,764	564,834	70,604
1875	6/30/2017	43804499	Jar PET Neck Dia 100mm weight 65gm MxdF	39231090	13%	18,900	243,621	30,453
1874	6/29/2017	43804499	Jar PET Neck Dia 100mm weight 65gm MxdF	39231090	13%	21,900	282,291	35,286
1830	6/27/2017	43804499	Jar PET Neck Dia 100mm weight 65gm MxdF	39231090	13%	18,705	241,107	30,138
1829	6/27/2017	43773560	Jar PET Neck Diameter 83mm weight 62gram	39231090	13%	3,465	38,427	4,803
1713	6/30/2017	43771489	Pouch PET/PE MILKYBARE CLAIR 100x3.2gMxdF	39231090	13%	46,400	83,520	10,440
171231406	6/24/2017	41082737	Flavor Essential Oil Mint YFL 2716 180kg	33021010	13%	497	1,273,314	159,164
SI-683	6/30/2017	43794525	Film MetlPET12micron MB Eclair 3.2gramNR	39231090	12%	378	84,887	10,611
SI-682	6/30/2017	43771480	Film MetlPET12micronCARA MELECLR 3.4gNRF	39231090	13%	96	21,289	2,661
SI-681	6/30/2017	43579622	Paper LDPE Coated 26mm Width	48211020	13%	40	3,174	397
4096/26862	6/30/2017	43756122	Sugar White Coarse DryMix 50kg	17011190	2%	25,950	948,473	18,425
4095/26861	6/30/2017	43756122	Sugar White Coarse DryMix 50kg	17011190	2%	21,000	774,900	14,910
4094/26860	6/30/2017	43756122	Sugar White Coarse DryMix 50kg	17011190	2%	21,000	767,550	14,910
Total								532,336

(ii) verification report of claim of transitional credit of Rs. 12,88,852/- claimed under 7B of table 7a (through TRAN-1), are as under :

2) Claim of Rs. 12,88,852/- claimed under 7B of table 7a (through TRAN-1):

Noticee has submitted that credit of Rs. 12,88,852/- was incorrectly credited to their e-credit ledger and same was available till Jan-2019 when they reversed back the said credit in GSTR-3B of Jan'2019.

Same is verified and it is found that they received aforesaid credit on 23.08.2017 in their e-credit ledger and the taxpayer reversed the said credit in GSTR-3B of Jan'19 filed on 19.02.2019. However, their claim that such credit being available in e-credit ledger as closing balance till Jan'2019, is found wrong because as per e-credit ledger of said period (July'17 to Jan'2019) they had utilised the entire credit on 28.08.2017 as closing balance was NIL on 28.08.2017. Further, under IGST head, closing balance was NIL on 12.10.2017.

Therefore, though the taxpayer has reversed the said credit in Jan'2019, but they had utilised the same towards duty payment. Therefore they are liable to pay interest for the period from 28.08.2017 to 19.02.2019 under Section 50 of the CGST Act, 2017 to for utilization of aforesaid ineligible credit.

(iii) verification report of claim of transitional credit of of Rs. 9,15,236/- claimed under 7(b), are as under:-

3) Claim of Rs. 9,15,236/- claimed under table 7(b):

						Amount in Rs.
GSTIN of supplier	Invoice Number	Invoice Date	Description	Value	Eligible Duties	Remarks
24ALXPP1538L1ZG	2	18-06-2017		30,960	1,548	Invoices pertain to GST regime, therefore, in violation of conditions prescribed under Section 140(5) of the CGST Act, 2017 which prescribes for duty payment by the supplier under 'existing law'.
24ALXPP1538L1ZG	20	28-06-2017	sales return	11,480	574	
Total					2,122	

For the aforesaid two invoices, it is found that the said invoices were raised in GST regime unlike the conditions under Section 140(5) of the CGST Act, 2017 which mandates that such taxes/duties should be paid under **the existing law**. Therefore, credit of Rs. 2,122/- is inadmissible to them out of the total claim of Rs. 9,15,236/- and only Rs. 9,13,114/- is found admissible.

(iv) verification report of claim of transitional credit of Rs. 14,78,015/- availing by filing TRAN-2 returns, are as under :

Their TRAN-2 claim of Rs. 14,78,015/- is verified in terms with their submission dated 26.04.2022 and 20.09.2022 and same is found in order and therefore admissible.

The summary of verification report regarding admissibility are as under:-

Summary:

Sl No.	Category	Amount claimed	remarks	Amount in Rs.
				Admissible claim
1	7A of 7(a)	1,12,64,900	Credit claim of Rs. 532,336/- is found inadmissible out of total claim of Rs. 1,12,64,900/-	10,732,564
2	7B of 7(a)	12,88,852	Credit wrongly availed amounting to Rs. 1,288,852/- is already reversed but payment of interest for period 28.08.2017 to 19.02.2019 for wrong utilization is pending.	NIL (availed credit is already reversed but interest liability is pending)
3	7(b)	9,15,236	Credit claim of Rs. 2,122/- is found inadmissible out of total claim of Rs. 9,15,236/-	913,114
4	Tran-2	14,78,015	Credit claim of Rs. 14,78,015/- is found admissible.	1,478,015

13J. It appears that as per verification report submitted by Deputy Commissioner, Central Excise Div.-IV, Ahmedabad South, taxable person has excess ITC amounting to Rs.5,32,336/- is availed on stock which pertain to goods in transit as the same is received after appointed date,i.e.30.06.2017. Further, such stock is already claimed under table 7(b) therefore same is duplication of credit claim and hence inadmissible. On going through the credit of Rs.9,15,236/- claimed under Section 140(5) of The CGST Act,2017. it is found that credit of Rs.2122/- was claimed on invoice under GST regime. Therefore in violation of conditions prescribed under section 140(5) of The CGST Act,2017 which prescribes for duty payment by the supplier under 'existing law'. Therefore credit of Rs.2122/- is inadmissible out of total claim of Rs.915236/- and only Rs.913114/- is found admissible.

13K. In respect of demand of Rs.12,88,852/- where credit is availed in respect of goods declared under 7B of table 7(a) of Tran-1 due to non submission of procurement documents as prescribes under Rule 117(4)(b)(ii) of The CGST Rules,2017. As per verification report submitted by Deputy Commissioner, Central Excise Div.-IV, Ahmedabad South, taxable person has received credit of Rs.12,88,852/- on 23.08.2017 in their electronic credit register and same were utilized on 28.08.2017 as closing balance was NIL on 28.08.2017. Further, under the IGST head, closing balance was NIL on 12.10.2017. Therefore it appears that the tax payer has not only wrongly availed credit of Rs.12,88,852/- but also utilized the entire credit amount for payment of tax. The taxpayer has reversed the credit of Rs.12,88,852/- in GSTR-3B of January-2019 filed on 19.02.2019. Therefore the tax payer is liable to pay interest for the period from 28.08.2017 to 19.02.2019 under section 50 of the CGST Act,2017 for utilization of ineligible credit of Rs.12,88,852/-.

13L. 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 claim of ITC amounting to Rs.5,34,458/- of the noticee is not acceptable and, therefore, I hold that the noticee is not eligible to carry forward the CENVAT credit of inputs, where he could not prove the eligibility of the credit. Thus the credit of Transitional credit of Rs.5,34,458/- taken in TRAN-1 under Section 140 are to be disallowed and required 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.

13M. I rely upon the verification report submitted by the Deputy Commissioner, Central Excise Div.-IV, Ahmedabad South, I conclude that ITC amounting to Rs.5,34,458/- is inadmissible and ITC amounting to Rs.1,31,23,693 is admissible. As the tax payer has already reversed ITC of Rs.12,88,852/- in GSTR-3B of January-2019 filed on 19.02.2019, the same may be appropriated against the demand. I found that the tax payer is liable to pay interest for the period from 28.08.2017 to 19.02.2019 under section 50 of the CGST Act, 2017 for utilization of ineligible credit of Rs.12,88,852/-.

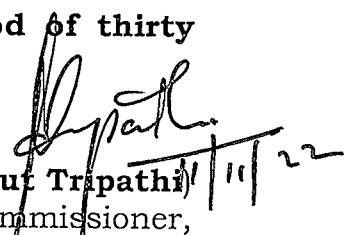
13N. I also find that the noticee was fully aware about the fact that they were availing and utilizing the ITC which was not available to them legally under the CGST Act, 2017. This appeared to have done with intent to evade the payment of dues related to GST under the CGST Act, 2017. This fact of non-payment of dues related to GST would have remained unnoticed, if the Officers had not raised these issues. Since the noticee has carried forward Credit amount to Rs.5,34,458/-, in TRAN-1 in contravention of the provisions of Section 140, 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 (2)(b) of CGST Act, 2017.

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

ORDER

- (i) I disallow Transitional credit of Rs.5,34,458/- out of Total amount of Rs. 1,49,47,003/- taken in TRAN-1 and TRAN-2 under Section 140(3) and Section 140(5) 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 confirm the demand of interest at the applicable rate under Section 50 of the CGST Act 2017 on the demand of (i) above;
- (iii) I confirm the demand of interest for the period from 28.08.2017 to 19.02.2019 under section 50 of the CGST Act, 2017 for utilization of ineligible credit of Rs.12,88,852/-.
- (iv) I impose penalty of Rs.5,34,458/-, 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.**


(Marut Tripathi)
Joint Commissioner,
CGST, Ahmedabad South.

F No VI-CGST/4-21/ O&A/Nestle/21-22

Date: 11.11.2022

By Speed Post AD

DIN: 20221164WS0000139158

M/s Nestle India Limited,
E-1, Corporate Warehouse Hub,,
Opp. Alfa Hotel, Aslali,
Ahmedabad 382427

Copy to :

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