



प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केंद्रीय जीएसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST , Commissionerate- Ahmedabad South,
छठी मंजिल, अम्बावाड़ी अहमदाबाद ३८००१५.
6th Floor, GST Bhavan, 380015



फा.सं. CGST/4-70/O&A/Anil/2022-23

DIN:- 20230164WS0000010374

आदेश की तारीख: Date of Order: 04/01/2023
जारी करने की तारीख: Date of Issue: 04/01/2023

द्वारा पारित /Passed by: Shri T.G.Rathod , Additional Commissioner

मूल आदेश सं./Order-In-Original No.: 69/CGST/Ahmd-South/ADC/ TGR/2022-23

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 ।

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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 ,अहमदाबाद- 15को 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 -/2.00केवल का न्यायालय शुल्क टिकट लगा होना चाहिए ।

Any person deeming himself aggrieved by this Order may appeal against this order in Form **S.T.4** 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-में दाखिल की जानी चाहिए । उसपर केन्द्रीय उत्पाद शुल्क)अपील (नियमावली 2001 ,के नियम 3के उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए । इसकेसाथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. S.T-4 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 108 of the CGST Rules 2017. It shall be accompanied with the following:

उक्त अ की प्रति ।

Copy of the aforesaid order.

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 -/2.00का 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 बताओं सूचना फा.सं./Show Cause Notice F.No. CGST/WS0604/
TRAN-1/Tran Verification/ P-1/3/2019-20 dated 10/09/2021 issued to M/s. Anil
Maneklal Shah,604, Anil Organics, Shree Balaji Heights,Near IDBI Bank, Off.
C.G.Road, Ahmedabad-380 006.

BRIEF FACTS OF THE CASE:-

M/s. Anil Maneklal Shah, 201-Sudarshan Complex, Near Mithakali under bridge, Navrangpura, Ahmedabad-380 009 (hereinafter referred to as the said "Tax Payer") are engaged in the manufacture/providing service of 'Wholesale Business,Others'. They were registered with the Central Excise and Service Tax Department having Service Tax Registration No. AEAPS2639PEI002 and at present holding GSTIN 24AEAPS2639P1Z3 The said Tax Payer filed TRAN-1 on 20-12-17 and had taken transitional credit of Central Excise/Service Tax amounting to Rs. 1,96,22,630/- in their electronic Credit ledger under Section 140 of the CGST Act, 2017.

2. Section 140 of the CGST Act, 2017 allows a registered person to take 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 subject to the conditions specified therein. The Explanations 1 & 2, below the said Section defines "eligible duties" the credit of which can be carried forward.

Further, the provision to section 140 of the CGST Act read as under; 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 the Act.

(a) Section 16 of the CGST Act, 2017 prescribed 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,— 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;

3. In terms of the above provision the tax payers were required to possess and produce the documents for verification, whenever called for by the Department. In absence of the same admissibility of the credit cannot be established.

4. Whereas in order to ascertain/verify the admissibility of the transitional credit availed, the Tax Payer was requested to submit the documents based on which they have availed the said transitional credit in TRAN-1 vide letter F.No. CGST/WS0604/TRAN VERIFICATOIN/P-1/3/2019-20 dated 03.01.2020 subsequent to which reminders/email were issued for said information. However, in-spite of repeated request the taxpayer has not submitted the required documents for verifying the admissibility of transitional credit claimed by them. In absence of the required documents, this office is not in a position to arrive at the admissibility of transactional credit claimed by them. Thereafter, an intimation dated 03.09.2021 (Form GST DRC 01A) of tax ascertained being payable under Section 73(5)/74(5) of the CGST Act,2017 read with Rule 142(1A) of the CGST Rules, 2017 was issued to the taxpayer.

5. Whereas the Taxpayer has failed to submit the required documents, admissibility of geniuses of the credit could not be verified. Hence it appears that the transitional credit amounting to Rs. 1,96,22,630/- availed by them is not admissible to them and the same requires to be recovered from them under the provisions of Section 73(1) of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017 along with applicable interest under Section 50 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 Taxpayer appeared to have violated the provisions of Section 140 of the CGST Act, 2017 and has rendered themselves liable for a penal action under the provisions of Section 122 (1) (xvii) of CGST Act, 2017.

7. It further appeared that the onus to prove admissibility of the credit availed lies on the taxable person in terms of the Section 155 of the CGST Act, 2017. The taxpayer by not replying to the letter and later on to the intimation issued under Form GST DRC 01A dated 03/09/2021 by not producing the documents before the jurisdiction Range Officer for verifying the genuineness of the credit claimed by them have not discharged the burden to provide the eligibility for claiming the input tax credit as laid down under Section 155 of the CGST Act, 2017.

8. Therefore show cause notice F.No. CGST/WS0604/ Tran-1/Tran Verification/P-1/3/2019-20 dated 10/09/2021 was issued to the taxpayer M/s. Anil Maneklal Shah, 201-Sudarshan Complex, Near Mithakali under bridge, Navrangpura, Ahmedabad-380 009 by Assistant Commissioner, CGST Division-VI, Ahmedabad South as to why :-

- 1) The transitional credit of input tax amounting to Rs.1,96,22,630/- (Rupees One Crore Ninety Six Lac Twenty Two Thousand Six Hundred Thirty Only) wrongly carried forward and utilized by them, should not be demanded and recovered from them, under the provisions of Section 73(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 122 (1) (xvii) of the CGST Act on the grounds discussed herein above.

9. A corrigendum to the show cause notice F.No. CGST/WS0604/Tran-1/Tran Verification/P-1/8/2019-20 dated

10/09/2021 was issued under F.No.V/WS06/O&A/SCN-230/2021-22 dated 18/08/2022 by the Assistant Commissioner, CGST Division-VI, Ahmedabad South having his office at 3rd Floor, APM Mall, Seema Hall Road, Ahmedabad making the show cause notice answerable to the Joint Commissioner, Central Goods & Services Tax, Ahmedabad having his office at 6th Floor, Central GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015.

DEFENSE SUBMISSION :-

10.1 The tax-payer vide reply dated 23/09/2021 addressed to the jurisdictional Assistant Commissioner has stated that they have already submitted the required documents to verify the admissibility of transitional input credit on 08/09/2021 and submitted copy of the said letter dated 07/09/2021. The taxpayer in their reply stated that they had communicated regarding shifting of their office premises to new address and they also enclosed a copy of GST registration certificate wherein the new office address is mentioned and requested to update the office address accordingly. The taxpayer further stated that the documents required for verification of the admissibility of transitional credit in TRAN-1 has been furnished by them on 08/09/2021 and requested to grant them opportunity of being hear before taking any adverse view.

10.2 The tax-payer vide reply dated 06/10/2022 has stated that they have submitted the reply to the show cause notice on 23/09/2021 to the jurisdictional Assistant Commissioner and submitted copy of the said submission. The taxpayer further stated that they have already submitted detailed statement of two sets of TRAN-1 credit alongwith respective proof to the jurisdictional Assistant Commissioner on 07/09/2021 before receiving the show cause notice. The taxpayer reiterated the earlier submission regarding change of address and requested to grant personal hearing before taking any adverse view. The taxpayer vide letter dated 17/10/2022 resubmitted two sets of TRAN-1 alongwith all supporting documents.

PERSONAL HEARING :-

11. The taxpayer was offered personal hearing on 09/11/2022 wherein Shri Naitik Mehta, Chartered Accountant and Shri Kaushik Mansukhlal Shah, Manager appeared on behalf of the taxpayer before the undersigned. During the personal hearing they reiterated the submissions already made in their defense reply dated 17/10/2022 and submitted that the documentary evidence for eligibility regarding the Cenvat Credit (Transitional) has been submitted vide said letter and they are eligible for the same and prayed for allowing the same. They also submitted GST TRAN-1 filed on 20/12/2017 for reference.

DISCUSSION AND FINDINGS:-

12. I have carefully gone through the facts of the case on record and the submissions made by the tax-payer. 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 tax-payer. The tax-payer has taken transitional credit of **Rs. 1,96,22,630/-** under Section 140(1), Section 140 (4)(a) and Section 140(9) in Tran-1 return. Out of the said amount of Rs.1,96,22,630/-, the input tax credit of Rs.1,78,52,396/- purportedly belongs to the amount of CVD and SAD in respect of the stock held as on 30/06/2017 of the goods imported vide **61** Bills of Entry (BoE) which was claimed as TRAN-1 credit. The input tax credit of the remaining amount of Rs.17,37,632/- belongs to the amount of Central Excise duty in respect of the stock held as on 30/06/2017 against the purchase made from domestic market vide 70 invoices.

12.1 Before going into the merits of the case, I take up the submissions made by the taxpayer vide letter dated 06/10/2022, 17/10/2022 and the submissions made during the course of personal hearing on 09/11/2022. I find that the taxpayer has provided the documents on which they have claimed the ITC that has been carried forward in the TRAN-1. The taxpayer has submitted stock statement for Cenvat credit in TRAN-1 of import goods in respect of 61 bills of entry as on 30/06/2017 involving credit of Rs.1,78,52,396/- and have submitted copies of all the 61

Bills of entry on which they have taken the ITC. They have also submitted copies of all the 70 invoices of purchase made from domestic market involving credit of Rs.17,37,632/-. In the present case on hand, I observe that the taxpayer had taken TRAN-1 credit of Rs.1,78,52,396/- on the basis of 61 Bills of entry and credit of Rs.17,37,632/- in respect of 70 invoices against the purchase made from domestic market. As per Section 140(3) condition (iii) readwith Section 16(2), a registered person must possess the duty paying documents for the ITC which has been carried forward by them. In the present case on hand, I observe that the taxpayer had taken TRAN-1 credit of Rs.1,09,52,229/- on the basis of 22 Bills of entry and 102 invoices against the purchase made from domestic market. As per Section 140(3) condition (iii) readwith Section 16(2), a registered person must possess the duty paying documents for the ITC which has been carried forward by them.

12.2 The show cause notice for demand of Rs. **1,96,22,630/-** was issued under Section 73 of the CGST Act,2017 mainly on the grounds that the taxpayer had not submitted the documents in order to verify the genuineness of the ITC carried forward in TRAN-1. Section 140 of the CGST Act contains elaborate provisions relating to transitional arrangements for ITC. This section provides for a registered person, other than composition taxpayer, to carry forward closing balance of input tax credit under Central Excise and Service Tax Act as CGST and input credit under State VAT Acts as SGST, subject to specified conditions. A registered person, not liable to be registered under the pre-GST law, or who was dealing with exempted goods / services or a first / second stage dealer or a registered importer or a depot of a manufacturer, is also entitled to carry forward credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock. The important conditions prescribed for this are that the said registered person should be in possession of invoice or other prescribed documents, evidencing payment of duty under the existing law in respect of such inputs, which were issued not earlier

than twelve months immediately preceding the appointed day (viz. 1 July 2017). The details of Section 140 of the CGST Act 2017 are reproduced hereunder:-

"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.

(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.

The provisions of law that determines eligibility and conditions for taking input tax credit are as per Section 16 of the CGST Act, 2017. 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.]

12.3 From the perusal of Section 140 of the CGST Act, 2017 it is evident that a registered person should be in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs which were issued not earlier than twelve months immediately preceding the appointed day (viz. 1 July 2017).

Further under the provisions 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 taxpaying documents as may be prescribed.

12.4 In the instant case, I observe that the tax-payer has taken TRAN-1 credit of Rs. 1,96,22,630/- under Section 140(1), Section 140(4)(a) and Section 140(9) of the CGST Act, 2017 in table 5(a) of TRAN-1. The description of entry 5(a) is shown as “Amount of Cenvat credit carried forward to electronic credit ledger as central tax (Section 140(1), Section 140(4)(a) and Section 140(9)”. The entire credit was taken on the basis of 61 (Sixty One) Bills of Entry (BoE) and 70 (Seventy) invoices of domestic purchase. It appeared that the taxable person did not submit the relevant documents initially when called for to verify the 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 the taxpayer.

12.5 I observe that the taxpayer in their letter dated 08/10/2021 addressed to the Assistant Commissioner, Division-VI, Ahmedabad South have submitted their defense submission to the show cause notice dated 17/10/2022 wherein they have submitted a worksheet of 61 (Sixty One) Bills of Entry (BoE) along with amount of CVD and SAD claimed as TRAN-1 credit. They have also submitted copies of all the 61 (Sixty One) Bills of Entry on which they have claimed the ITC. I also observe that they have submitted a worksheet of 70 invoices of domestic purchase on which they have claimed the ITC. They have also submitted copies of all the 70 (Seventy) invoices on which they have claimed the ITC.

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

13.1 The jurisdictional Officer is the competent authority to examine/ verify the correctness /admissibility of documents submitted for taking credit. I observe that the taxpayer had

provided all the documents to the Jurisdictional Assistant Commissioner, CGST Division-VI, Ahmedabad South alongwith their written submissions dated 08/10/2021 when the matter regarding verification of TRAN-1 was taken up. The jurisdictional Officer could have verified the same to ascertain admissibility of the input tax credit which was not done in the present case.

13.2 In order to ascertain the admissibility of credit mentioned in the Tran-1, the documents submitted by the taxpayer were sent for verification to the Jurisdictional Assistant Commissioner, CGST Divison-VI, Ahmedabad South on 26/09/2022. The Assistant Commissioner, CGST Division-VI, Ahmedabad vide letter issued from F.No. CGST/WS06/O&A/Misc/2021-22 dated 25/11/2022 has submitted the verification report regarding the eligibility/correctness of credit availed in Tran-1. The relevant portion of the verification report submitted by the Assistant Commissioner, CGST Division-VI, Ahmedabad is reproduced hereunder:

“The taxpayer has claimed credit in Tran-1 in table 5(a) for Rs.1,96,22,630/-. The table 5(a) is for amount of Cenvat credit carried forward to electronic credit ledger as central tax [Section 140(1) and Section 140(4)(a) and Section 140(9)]. As per the reply of the Taxpayer and documents submitted by him, it is noticed that his claim pertains to the inputs held in stock as on 30.06.2017. It appears that he should have claimed the ITC in Table 7(a) of Tran-1 but he has claimed in table 5(a). Since, the ITC claim in table 5(a) is for closing balance of the eligible Cenvat Credit of the Returns of June,2017 and the above taxpayer has not filed any returns showing the closing balance of Cenvat credit as on 30.06.2017, the ITC claimed should be disallowed. However, findings in respect of the copies of invoices, bill of entries and list of stocks as held on 30.06.2017 have been verified and the findings are as under :

- i) List of input stocks held on 30.06.2017 on the basis of local purchase having Excise tax invoices: On going through the copy of invoices***

and list of input stocks as on 30.06.17 provided by the taxpayer, it is noticed that there are some invoices having tax amount of Rs.1,32,788/- are of more than one year as on 30.06.2017, ITC claim of which are not allowed as per Section 140(3)(iv) of CGST Act,2017. Hence the eligible amount as per this list is Rs.17,65,263/- but he claimed Rs.17,37,632/- which is below the credit available as per stocks held.

- ii) List of inputs stocks held on 30.06.2017 on the basis of Bills of Entries: On going through the copies of Bill of entries and list of input stocks as on 30.06.17 for the cenvat amount of Rs.1,78,52,396/- provided by the taxpayer, but he claimed in Tran-1 as Rs.1,78,84,998/- which is in excess of Rs.32602/-. Further, it is also noticed that there is one Bill of entry having cenvat amount of Rs.51,183/- is of more than one year as on 30.06.2017, ITC claim of which is not allowed as per Section 140(3)(iv) of CGST Act, 2017. Accordingly, the taxpayer has claimed excess amount of Rs.83,785/- (Rs.32,602/- + Rs.51,183/-) in Tran-1 as compared to the list of stocks given by him.”*

13.3 In view of the above discussion and findings, perusal of the show cause notice, submissions made by the taxpayer, supporting documents and the verification report submitted by the jurisdictional Assistant Commissioner, CGST Division-VI, Ahmedabad South, I conclude that the ITC amounting to Rs. Rs.1,96,22,630/- has been incorrectly carried forward in TRAN-1 under table 5(a) of GST TRAN-1. Table 5(a) of GST TRAN-1 is for the amount of Cenvat credit carried forward to the electronic credit ledger as central tax [Section 140(1) and Section 140(4)(a) and Section 140(9)]. The ITC claimed in table 5(a) is for closing balance of the eligible Cenvat Credit of the returns of June,2017 whereas the taxpayer has not filed any returns showing the closing balance of Cenvat credit as on 30.06.2017. This coupled with the claiming of excess and clearly ineligible credit of Rs.83,785/- leads me to conclude that the ITC amounting to Rs.1,96,22,630/- claimed in TRAN-1 is not eligible.

13.4 The show cause notice has proposed to demand and recover the transitional credit of input tax amounting to Rs.1,96,22,630/- wrongly carried forward and utilized by them under the provisions of Section 73(1) of the CGST Act read with the provisions of Rule 121 of the CGST Rules. Accordingly the transitional credit which has been wrongly carried forward and utilized by them is required to be recovered from the tax-payer in terms of Section 73(9) of the CGST Act,2017 as under:

“73(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.”

Accordingly, the transitional credit of input tax amounting to Rs.1,96,22,630/- is to be ordered to be recovered under the provisions of Section 73(9) alongwith interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher.

13.5 The show cause notice has also proposed to impose penalty under the provisions of Section 122 (1) (xvii) of the CGST Act,2017. In this context, I find that penalty is already proposed to be imposed under Section 73(9) of the CGST Act, 2017. Hence no penalty can be imposed upon the taxpayer under the provisions of Section 122 (1) (xvii) of the CGST Act,2017 in terms of Section 75(13) of the CGST Act,2017. Section 75(13) of the CGST Act,2017 reads as under:

“Section 75 (13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.”


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

ORDER

- (i)** I disallow the Transitional credit of Rs.1,96,22,630/- (Rupees One crore ninety six lakhs twenty two thousand

six hundred thirty only) claimed in Table-5(a) of FORM GST TRAN-1 under Section 140(1) of the CGST Act,2017 and order to recover the same from them under Section 73(9) of the CGST Act,2017;

- (ii) I confirm the demand of interest under Section 50 of the CGST Act,2017 in respect of the demand at (i) above;
- (iii) I impose penalty of Rs.19,62,263/- (Rupees Nineteen lakhs sixty two thousand two hundred sixty three only) under Section 73(9) of the CGST Act,2017;
- (iv) I refrain from imposing any penalty under Section 122(1) (xvii) read with Section 75(13) of the CGST Act,2017 for the reasons discussed supra.


(T.G.Rathod)
Additional Commissioner
CGST-Ahmedabad South

DIN-20230164WS0000010374

By Registered Post A.D./Email

F.No. CGST/4-70/O&A/Anil/202-23

Dated : 04.01.2023

To,
Shri Anil Maneklal Shah,
Anil Organics,
604/605, Shree Balaji Heights
Near Tanishq Showroom
Off C.G.Road, Ahmedabad-380 006.

Copy to :

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