



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



फा.सं. **STC/4-73/O&A/Clarion/22-23**

**DIN-20230164WS000016281C**

आदेश की तारीख: Date of Order: 09/01/2023  
जारी करने की तारीख: Date of Issue: 09/01/2023

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

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मूल आदेश सं./Order-In-Original No.: 70/CGST/Ahmd-South/ADC/ TGR/2022-23

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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 ,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. F.No. **CGST/WS0604/TRAN-1/Tran Verification/P-1/49/2019-20 dated 10/09/2021 issued to M/s. Clarion India Pvt Ltd,A/809, Ground Floor, Fair Deal House, Opp. Jain Dairy, Swastik Cross Road,Navrangpura,Ahmedabad-380009**

**Brief facts of the case :-**

M/s. Clarion India Private Limited, Situated at A/809, Ground Floor, Fair Deal House, Opp. Jain Dairy, Swastik Cross Road, Navapura Sanand, Ahmedabad-380009 (hereinafter referred to as the said "Tax Payer") are engaged in the manufacture/providing service of 'Factory / Manufacturing, Office / Sale Office'. They were registered with the Central Excise and Service Tax Department having Service Tax Registration No. AAFCC2722DSD001 and at present holding GSTIN 24AAFCC2722D1ZA. The said Tax Payer filed TRAN-1 on 23-08-2017 and has taken transitional credit of Central Excise/Service Tax amounting to Rs. 1,22,11,621/- 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.

**3.** 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.

**4.** 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;

5. 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.

6. 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-1/49/2019-20 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. Then after, 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.

7. 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 of Central Excise/Service Tax amounting to Rs. 1,22,11,621/- 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.

8. It further appears that by not providing the documents called for, the Taxpayer has intentionally suppressed the information from the department. Thus, the Taxpayer appears 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.

9. Further, according to provision made under section 155 of the CGST Act, 2017, onus to prove admissibility of the credit availed lies on the assessee. Text of the said Section is reproduced as under.

*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.*

In view of the above, the burden to prove the admissibility of the credit availed under Tran-I rest with the Tax Payer which they have not fulfilled by not providing the required documents for verification.

10. M/s. Clarion India Private Limited was therefore called upon to show cause to the Assistant Commissioner, Central Goods & Services Tax, Division-VI, having his office at 3<sup>rd</sup> Floor, Central GST Bhavan, APM Mall, Seema Hall Road, Ahmedabad as to why:

1) The transitional credit of Central Excise/Service Tax amounting to Rs. 1,22,11,621/- (Rupees One Crore Twenty Two Lac Eleven Thousand Six Hundred Twenty One 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.

11. A corrigendum to the show cause notice F.No. CGST/WS0604/ TRAN-1/ Tran Verification/P-1/49/2019-20 dated 10/09/2021 was issued under F.No.V/WS06/O&A/SCN-228/2021-22 dated 18/08/2022 by the Assistant Commissioner, CGST Division-VI, Ahmedabad South having his office at 3<sup>rd</sup> 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 6<sup>th</sup> Floor, Central GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015.

## **12. DEFENSE SUBMISSION**

12.1 The tax payer has submitted their defense reply vide letter dated 24.09.2021 wherein they submitted that they had availed input tax credit through Tran -1 on basis of ER-1 return. They have also submitted copy of ER-1 return for the month of June-2017 along with their reply.

## **13. PERSONAL HEARING:-**

13.1 Personal hearing was held in virtual mode on 22.09.2022 wherein Shri Jignesh Patel, Manager, appeared for the taxpayer. He reiterated the submissions made vide their letter dated 24.09.2021. He also submitted that same closing balance in ER-1 has been carried forward by them and hence they are eligible for the ITC in Tran-1.

## **14. DISCUSSION & FINDINGS:-**

14.1 I have carefully gone through the facts of the case on record and the submissions made by the . 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 taxpayer . The issue is that the Tax-payer has taken transitional credit of Central Excise/Service Tax amounting to Rs. 1,22,11,621/- under Section 140 of the CGST Act 2017 read with rule 117 of CGST Rules 2017.

**14.2** Now with regard to the demand of Rs. 1,22,11,621/-, I find that the noticee has declared/taken transitional credit of Central Excise/Service Tax amounting to Rs. 1,22,11,621/-. 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 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.*

(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 20<sup>th</sup> 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.

(4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) or provision of taxable as well as exempted goods under Chapter V of the Finance Act, 1994 (32 of 1994), but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,--

(a) the amount of CENVAT credit carried forward in return furnished under the existing law by him in accordance with the provisions of sub section (1); and

(b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with provisions of sub section (3).

**14.3** 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.]

**14.4** From the perusal of the above provision of law it is evident that under provision of Section 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.*

**14.5** In the instant case, I find that the tax-payer has taken transitional credit of Central Excise/ Service Tax amounting to Rs. 1,22,11,621/- under Section 140(1) of the CGST Act 2017 read with rule 117 of CGST Rules 2017. The taxpayer has filed Form GST TRAN-1 on 10.07.2017 and the same is reflected in their electronic credit ledger as CGST credit. The entire credit was carried forward in the return relating to the period ending with the day immediately preceding the appointed day (June-2017). 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.

**14.6** During the course of personal hearing on 22.09.2022, M/s. Clarion India Private Limited, Shri Jignesh Patel, Manager, appeared for the Tax-payer. He reiterated the submissions made vide their letter

dated 24.09.2021, wherein they have submitted copy of ER-1 return for the month of June-2017.

**14.7** 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 has provided all the documents for verification before issuance of the SCN, the jurisdictional Officer could have verified the same to ascertain admissibility of the input tax credit. However the taxpayer has submitted the documents during the personal hearing held on 21.09.2021.

**14.8** In order to ascertain admissibility of credit mentioned in the Tran-1, the document submitted by the taxpayer were sent for verification to the Jurisdictional Deputy/Assistant Commissioner, Div.-VI, CGST, Ahmedabad South on 26.09.2022. I find that the verification of document to ascertain admissibility of the credit was verified by the Assistant Commissioner, Central Excise Div.-VI, Ahmedabad South vide letter F.No. CGST/WS06/ O&A/2021-22 dated 19.10.2022. He reported that the said ITC availed by the taxpayer in the TRAN-1 was same as closing balance of Cenvat Credit as on 30.06.2017 in ER-1 return. Hence, ITC availed by the taxpayer in TRAN-1 found correct. The verification report dated 19/10/2022 in respect of the Noticee for the eligibility of TRAN-1 amounting to Rs.1,22,11,621/- is reproduced hereunder:-

***“ The said ITC availed by the taxpayer in the TRAN-1 was same as closing balance of cenvat credit as on 30.06.2017 in ER-1 return. Hence, ITC availed by the taxpayer in TRAN-1 found correct.”***

**14.9** 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. 1,22,11,621/- (Rupees One**

**Crore Twenty Two Lakhs Eleven Thousand Six Hundred Twenty One Only)** has been correctly carried forward in TRAN-1 by the taxpayer and the same is admissible to them.

15. In view of the above discussion and findings, I pass the following Order:

**ORDER**

I vacate the entire proceedings against M/s. Clarion India Private Limited, Situated at A/809, Ground Floor, Fair Deal House, Opp. Jain Dairy, Swastik Cross Road, Navapura Sanand, Ahmedabad-380009, initiated vide show cause notice F. No. CGST/WS0604/TRAN-1/Tran Verification/P-1/49/2019-20 dated 10.09.2021.

  
(T.G.Rathod)

**Additional Commissioner  
Central GST, Ahmedabad South**

**DIN-20230164WS000016281C**

**By Registered Post A.D./Email**

**F.No. CGST/4-73/O&A/Clarion/22-23**

**Date : 09/01/2023**

**To,  
M/s. Clarion India Private Limited,  
A/809,Ground Floor,Fair Deal House,  
Opp. Jain Dairy, Swastik Cross Road,  
Navapura, Sanand,Ahmedabad-380009.**

**Copy to:**

- (1) The Commissioner, CGST, Ahmedabad South
- (2) The Assistant Commissioner, CGST, Division-VI, Ahmedabad South
- (3) The Assistant Commissioner (TAR), CGST, Ahmedabad South
- (4) The Superintendent, Range-IV, Central Excise & CGST, Division-VI, Ahmedabad South
- (5) The Superintendent (System), CGST, Ahmedabad South.
- (6) Guard File