



प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केंद्रीय जीएसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST, Commissionerate- Ahmedabad South,
अपराध और अधिनिर्णय खंड, छठी मंजिल, अम्बावाड़ी, GST
भवन, अहमदाबाद ३८००१५.



6th Floor, O&A Section, GST Bhavan, Ambawadi 380015

निबन्धित पावती डाक द्वारा/ By REGISTERED POST A.D.

फा. स./F. No. : -CGST/04-23/O&A/Parle/21-22

DIN No. : 20230164WS0000015302 आदेश की तारीख/Date of Order : 20-01-2023
जारी करने की तारीख/Date of Issue : 20-01-2023

द्वारा पारित / Passed by: Shri Marut Tripathi, ADDITIONAL COMMISSIONER

मूल आदेश सं./Order-In-Original No. 77/CGST/Ahmedabad South/ADC/MT/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।

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-15 को प्रारूप GST APL-01 में अपील कर सकता है। उक्त अपील पक्षकार पर आदेश तामील होने अथवा उसे डाक द्वारा प्राप्त करने की तारीख से तीन माह के भीतर दाखिल की जानी चाहिए। इसपर रुपये 2.00/- केवल कान्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this order in Form GST APL-01 to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within three Months 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. GST APL-01 में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001 के नियम 3 के उपबंधों के अनुसार अपीलकर्ताओं द्वारा हस्ताक्षर किए जाने चाहिए। इसके साथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. GST APL-01 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 आदेश की प्रति।

Copy of the aforesaid order.

निर्णयकी 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 feestamp 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. CGST/04-23/O&A/Parle/21-22 dated 29.03.2022 issued to M/s. Parle Biscuits Pvt. Ltd., Plot No.875 358/A, Prachi Forwarding Agency, Opp. Screennotex Enginnering Pvt. Ltd., Paldi-Kankaj Gam, Dhokla Road, Aslali, Ahmedabad, Gujarat, 382425.

1. BRIEF FACTS OF THE CASE

1.1 M/s. PARLE BISCUITS PRIVATE LIMITED, situated at PLOT NO.875 358/A, PRACHI FORWARDING AGENCY, OPP SCREENOTEX ENGINEERING PVT LTD, PALDI-KANKAJ GAM,DHOLKA ROAD, ASLALI, Ahmedabad, Gujarat, 382425 (hereinafter referred to as the said "Tax Payer") dealing in goods of HSN 19059020, 17049020, 18069010, 21069099, 19059010. Earlier, they were registered with Central Excise Department. At present they hold GSTIN 24AAACP0485D1ZU. 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)	99,21,674
2	7(b)	140(5)	6,35,320
Total			1,05,56,994

1.2 Section 16 of the CGST Act, 2017 prescribes for the eligibility and conditions for taking input tax credit. The sub sections (1) and (2) of Section 16 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 taxpaying documents as may be prescribed;

(aa)

(b)

In terms of the above provision, tax payers are 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, and

in absence of the same eligibility/admissibility of the credit cannot be established.

1.3 From the TRAN-1 form filed by the taxpayer, it is found that they have claimed the credit under 7A of table 7(a) and table 7(b) of TRAN-1 form as mentioned above. Accordingly, they were requested vide letter dated 03.05.2018 to clarify and submit the documents in support of their claim in order to ascertain and verify admissibility of the transitional credit claimed by The Superintendent, Range-IV, Division-IV, CGST, Ahmedabad South for information and necessary action. them to submit the following documents for the purpose of verification of The Superintendent, Range-IV, Division-IV, CGST, Ahmedabad South for information and necessary action. 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.

1.4 Another letter dated 20.11.2018 was issued to them to submit documents for verification of TRAN-1. In absence of any submission requested vide aforesaid letters, the taxpayer was issued a summon dated 03.12.2018 and was directed to appear in person on 11.12.2018. The taxpayer vide their letter dated nil, submitted closing stock statement and goods in transit statement under which credit has been availed through Tran-1. Also, submitted VAT return for the period Oct-2016 to June-2017 and requested to grant them 15 to 20 days to collate the data and supporting documents for submission. They were issued another letters dated 20.01.2020, 06.02.2020 and 09.03.2020 requesting to submit all the relevant documents as requested vide various official communications, supra. Further, the said taxpayer vide letter dated 23.07.2021 were communicated that they requested to grant 15 to 20 days to submit supporting documents but till date, the same have not been submitted.

1.5 Whereas, 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, admissibility of transactional credit claimed by them could not be verified. Then after, an intimation dated 08.09.2021 (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 to file any submissions by them in this regard by 10.09.2021.

1.6 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. 99,21,674/- and Rs. 6,35,320/- credit under 7A of table 7(a) and table 7(b) of TRAN-1 form as mentioned above total amounting to Rs. 1,05,56,994/- availed by them is not admissible to them and the same 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 of the CGST Act, 2017.

1.7 It further appears 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.

1.8 It would be relevant here to mention 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. Text of the said Section is reproduced 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.

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.

1.9 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 2,94,42,874/- 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). The sub section (1) of Section 74 is reproduced below:

Determination SECTION 74. of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts. — (1) Where it appears 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 wilful 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 payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

1.10 Now, therefore, M/s. PARLE BISCUITS PRIVATE LIMITED is hereby 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. 1,05,56,994/- (Rupees One Crore Five Lakh Fifty Six Thousand Nine Hundred Ninety Four Only) wrongly carried forward 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.

1.11 It is 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.

2 DEFENSE SUBMISSION

2.1 The tax payer submitted their reply vide letter dated 27.07.2022 requested to provide one month time for submission of documents. Further vide their additional submission dated 25.08.2022 they have requested to give one more month time as they were in process of collecting information for submission in the matter.

3. PERSONAL HEARING

3.1 The tax payer had been given opportunity to be heard in person on 29.07.2022, 26.08.2022 and on 23.09.2022. Shri Gopal Krishna Laddha, Charter Accountant, and Shri Dharmik Vyas appeared for the taxpayer on 23.09.2022 and submitted invoice wise statements alongwith sample invoice, The Taxpayer has promised to submit copies of remaining invoice within one month. The taxpayer have submitted their supporting documents on 01.11.2022.

4. DISCUSSION & FINDING

4.1. I have carefully gone through the facts of the case on record and the submissions made by the Tax Payer. 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 Tax Payer. The issue is that the Tax Payer has taken transitional credit of **Rs.1,05,56,994/-** 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.

4.2 In the instant case, it is on record that has filed TRAN-1 on 27.12.2017 under Section 140 of the CGST Act, 2017 and has taken transitional credit of Central Taxes amounting to **Rs.1,05,56,994/-** in their electronic Credit ledger which includes **Rs. 99,21,764/-** as Cenvat Credit Carried forward under Section 140(3), of the CGST Act, 2017 [Entry 7A in table 7(a) of Tran-1] and **Rs. 6,35,320/-** under Section 140(5) of the CGST Act, 2017 [Entry 7B in table 7(a) of Tran-1] on basis of invoices/duty paying documents. As per Section 140(3) condition (iii) and Section 140(5) of the CGST Act, 2017 read with Section 16(2) and Rule 117(4)(b)(ii) of CGST Rules, 2017, 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.

4.3 Further, 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.

4.4 Now with regard to the demand of **Rs.1,05,56,994/-** I find that the Tax Payer has taken transitional credit of **Rs.1,05,56,994/-** under Section 140(3) and Section 140(5) of the CGST Act 2017 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) -----

4.5 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.]

4.6. From the perusal of the above provision of law it is evident that under provision of Section 140 (3), 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.

4.7. In the instant case, I observe that the Tax Payer has taken TRAN-1 credit of **Rs.1,05,56,994/-** 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.

4.8. 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.

4.9. During the course of personal hearing on 23.09.2022 and vide letter dated 01.11.2022 the notice has submitted file of invoices.

4.10. 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 23.09.2022.

4.11. 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 dated 02.11.2022. 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 10.01.2023 and reported item wise verification. The same is reproduced herewith

Item-wise verification findings:

1) Verification of Claim of Rs. 99,21,674/- claimed under 7A of table 7a:

Upon verification of aforesaid transitional credit availed under 7A, transitional credit amounting to Rs. 95,01,053/- is found admissible. Whereas credit amounting to Rs. 4,20,621/- is found inadmissible which may be summarized as below:

Table 1

Sr No.	Category	Inadmissible Credit (in Rs.)	Enclosure
1	7A-credit claimed over enhanced assessable value (AV is more than actual AV in the invoice)	69318.51	As per Annexure A
2	7A-credit claimed over quantity which is over and above of the total qty available in invoice	191182.88	As per Annexure B
3	7A-Credit not admissible due to lack of supporting documents	146209.2	As per Annexure C
4	7A-goods received not in Gujarat	13910	As per Annexure D
Total inadmissible claim under table-7A		4,20,621	

Therefore, an excess credit of input tax amounting to Rs. 4,20,621/- is availed by them, as mentioned above. Accordingly, out of total TRAN-1 credit claim of Rs. 99,21,674/- only Rs. 95,01,053/- is found admissible.

2) Verification of Claim of Rs. 6,35,320/- claimed under table 7b:**Table 2**

Sr No.	Category	Inadmissible Credit (in Rs.)	Enclosure
1	<i>Credit claim in duplication which is already availed under table 7A</i>	67694.4	<i>As per Annexure D</i>
	Total inadmissible claim under table -7b	67694.4	

Therefore, an excess credit of input tax amounting to Rs. 67,694/- is availed by them, as mentioned above. Accordingly, out of total TRAN-1 credit claim of Rs. 6,35,320/- only Rs. 5,67,626/- is found admissible.

Annexure A (credit claimed over enhanced assessable value (AV is more than actual AV in the invoice))

Annexure-A: Credit claimed over enhanced assessable value (AV more than actual AV in the invoice)											
Excise Invoice No.	Invoice date	Material description	Stock position		Assessable Value		Excess qty	Credit claimed	Credit available	Excess Credit taken	Remarks
			as per invoice	As per stock ledger	As per invoice	As per stock ledger					
1051	13.06.2017	K21 Happy Happy Cake Tutti Fruity 60gx60	673	671	648	900	NA	36234	26088.48	10145.52	Credit claimed over excess assessable value.
1051	13.06.2017	K10 HH Cake Tutti Fruity 100g X 36 P	400	217	522.36	720	NA	9374.4	6801.1272	2573.2728	Credit claimed over excess assessable value.
1051	13.06.2017	K20 Happy Happy Cake Vanilla 60g x 60p	110	110	648	900	NA	5940	4276.8	1663.2	Credit claimed over excess assessable value.
1051	13.06.2017	K9 HH Cake Vanilla 100g X 36 P	290	101	522.36	720	NA	4363.2	3165.5016	1197.6984	Credit claimed over excess assessable value.
1017	28.04.2017	K10 HH Cake Tutti Fruity 100g X 36 P	150	4	547.76	720	NA	172.8	131.4624	41.3376	Credit claimed over excess assessable value.
1027	10.05.2017	K20 Happy Happy Cake Vanilla 60g x 60p	300	14	647.14	900	NA	756	543.5976	212.4024	Credit claimed over excess assessable value.
1027	10.05.2017	K21 Happy Happy Cake Tutti Fruity 60gx60	399	38	647.14	900	NA	2052	1475.4792	576.5208	Credit claimed over excess assessable value.
1030	17.06.2017	K22 Happy Happy Cake Chocolate 60gx60p	1009	685	659.21	900	NA	36990	27093.531	9896.469	Credit claimed over excess assessable value.
1031	16.05.2017	K21 Happy Happy Cake Tutti Fruity 60gx60	300	195	647.14	900	NA	10530	7571.538	2958.462	Credit claimed over excess assessable value.
1031	16.05.2017	K9 HH Cake Vanilla 100g X 36 P	66	5	521.48	720	NA	216	156.444	59.556	Credit claimed over excess assessable value.
1033	18.05.2017	K10 HH Cake Tutti Fruity 100g X 36 P	38	28	521.48	720	NA	1209.6	876.0864	333.5136	Credit claimed over excess assessable value.
1033	18.05.2017	K20 Happy Happy Cake Vanilla 60g x 60p	384	279	647.14	900	NA	15066	10833.1236	4232.8764	Credit claimed over excess assessable value.
1033	18.05.2017	K21 Happy Happy Cake Tutti Fruity 60gx60	330	326	647.14	900	NA	17604	12658.0584	4945.9416	Credit claimed over excess assessable value.
1033	18.05.2017	K9 HH Cake Vanilla 100g X 36 P	300	18	521.48	720	NA	777.6	563.1984	214.4016	Credit claimed over excess assessable value.
1037	23.05.2017	K20 Happy Happy Cake Vanilla 60g x 60p	600	538	647.14	900	NA	29052	20689.6792	8162.3208	Credit claimed over excess assessable value.
1037	23.05.2017	K21 Happy Happy Cake Tutti Fruity 60gx60	533	417	647.14	900	NA	72518	16191.4428	6326.5572	Credit claimed over excess assessable value.
1045	03.06.2017	K20 Happy Happy Cake Vanilla 60g x 60p	779	745	647.14	900	NA	40230	28927.158	11302.842	Credit claimed over excess assessable value.
1046	03.06.2017	K21 Happy Happy Cake Tutti Fruity 60gx60	320	295	647.14	900	NA	15930	11454.378	4475.622	Credit claimed over excess assessable value.
Total										69318.514	

Annexure B (Credit claimed over quantity which is over and above of the total qty available in invoice)

Annexure B: Credit claimed over quantity which is over and above of the total qty available in invoice											
Excise Invoice No.	Invoice date	Material description	Stock position		Assessable Value		Excess qty	Credit claimed	Credit available	Excess Credit taken	Remarks
			as per invoice	As per stock ledger	As per invoice	As per stock ledger					
1011	12.04.2017	T271 Melody Choco 1.173K+46.9g X 12 J	0	12	NA	2520	12	3780	0	3780	Credit claimed over excess qty or no such goods are available as per invoice.
1024	11.05.2017	C115 Spicy Kaccha MG 600+40g X 12 J	20	35	1260	1260	15	2646	1512	1134	Credit claimed over excess qty or no such goods are available as per invoice.
1035	22.05.2017	T288 Eclair Toff 1.662k+66.48g X 4 J	50	69	840	840	19	3477.6	2520	957.6	Credit claimed over excess qty or no such goods are available as per invoice.
1052	20.06.2017	T195 Eclair Toff 277g X 24 PB	220	328	840	840	108	16531.2	11088	5443.2	Credit claimed over excess qty or no such goods are available as per invoice.
1052	20.06.2017	T288 Eclair Toff 1.662k+66.48g X 4 J	100	138	840	840	38	6955.2	5040	1915.2	Credit claimed over excess qty or no such goods are available as per invoice.
1053	16.05.2017	T272 Kismi Toffee 1.764k+70.56g X 4 J	28	48	840	840	20	2419.2	1411.2	1008	Credit claimed over excess qty or no such goods are available as per invoice.
1053	05.04.2017	C181 Mazelo 3.878K+232.68g X 2 j	116	209	980	980	93	12289.2	6829.8	5468.4	Credit claimed over excess qty or no such goods are available as per invoice.
1055	22.06.2017	C170 Mango Bite 867+17.34g X 12 j	10	55	1260	1260	45	4158	756	3402	Credit claimed over excess qty or no such goods are available as per invoice.
1055	22.06.2017	C173 Mango Bite 4.046K+242.76g X 2 j	200	310	980	980	110	18228	11760	6468	Credit claimed over excess qty or no such goods are available as per invoice.
1055	22.06.2017	T280 Eclair Toff 831g+16.62g X 12 J	80	92	1260	1260	12	6955.2	6048	907.2	Credit claimed over excess qty or no such goods are available as per invoice.
1078	24.06.2017	T272 Kismi Toffee 1.764k+70.56g X 4 J	70	92	840	840	22	4636.8	3528	1108.8	Credit claimed over excess qty or no such goods are available as per invoice.
1082	13.06.2017	C184 Poppins Mazelo 25g x (50+2) 520 RL	133	161	1750	1750	28	16905	13965	2940	Credit claimed over excess qty or no such goods are available as per invoice.
1105	24.06.2017	T273 Melody Choco 2.737k+164.22g X 2 J	300	476	980	980	176	58310	36750	21560	Credit claimed over excess qty or no such goods are available as per invoice.
1191	19.04.2017	C177 Kaccha Mango 831+16.62g X 12 j	99	233	1260	1260	134	17614.8	7484.4	10130.4	Credit claimed over excess qty or no such goods are available as per invoice.
1688	18.06.2017	C159 Londonderry 277g X 20 PB	615	892	700	700	277	37464	25830	11634	Credit claimed over excess qty or no such goods are available as per invoice.
1688	18.06.2017	C174 Kaccha Mango 277g X 20 PB	400	663	700	700	263	27846	16800	11046	Credit claimed over excess qty or no such goods are available as per invoice.
1632	09.06.2017	C180 Mazelo 831+16.62g X 12 j	125	384	1260	1260	259	29030.4	9450	19580.4	Credit claimed over excess qty or no such goods are available as per invoice.

Annexure C: Credit not admissible due to lack of supporting documents

Excise Invoice No.	Invoice date	Material description	Stock position		Assessable Value		Excess qty	Credit claimed	Credit available	Excess Credit taken	Remarks
			as per invoice	As per stock ledger	As per invoice	As per stock ledger					
2461	16.06.2017	C174 Kaccha Mango 277g X 20 PB	NA	1210	NA	700	1210	50820	0	50820	Invoice not available.
1438	24.06.2017	B967 Monaco 37.7g+8.7g X 90 P .	NA	1850	NA	315	1850	34965	0	34965	Invoice not available.
1438	29.05.2017	B832 Happy Happy 40+5g X 144 P	0	1184	NA	504	1184	35804.16	0	35804	Invoice not available.
1065	05.05.2017	B739 H&S Black BB Vanilla 100g X 36 P	0	25	0	630	25	945	0	945	Such item not available in the said invoice. Credit not admissible.
1128	08.06.2017	BF58 Monaco Cheeslings 3.5k Tin X 1 TN	0	83	0	490	83	2440.2	0	2440	Such item not available in the said invoice. Credit not admissible.
1130	06.06.2017	BE23 Hide & Seek Bourbon 60g X 60 P	0	366	0	420	366	9223.2	0	9223.2	Such item not available in the said invoice. Credit not admissible.
1158	07.06.2017	BC99 PG Milk Shakti SB&MLK 60g X 120 P	0	5	0	1260	5	378	0	378	Such item not available in the said invoice. Credit not admissible.
1721	26.06.2017	C174 Kaccha Mango 277g X 20 PB	0	277	0	700	277	11634	0	11634	Such item not available in the said invoice. Credit not admissible.
Total										146209.2	

[illegible]

Annexure E(Credit claim in duplication which is already availed under table 7A(not admissible))

Annexure E: Credit claim in duplication which is already availed under table 7A (Not admissible)							
Number	Excise Inv date	Material Description	Base Unit of Measure	Sum of Quantity	Sum of Assessable Value	Sum of Excise duty	Remarks
	13/06/2017	K21 Happy Happy Cake Tutti Fruity 60gx60	BOX	100	90,000	5,400	Duplicate entry. Credit on entire qty already availed in 7A.
	30/06/2017	C167 Orange Bite 867+17.34g X 12 j	BOX	22	27,720	1,663	Duplicate entry. Credit on entire qty already availed in 7A.
	30/06/2017	C170 Mango Bite 867+17.34g X 12 j	BOX	150	189,000	11,340	Duplicate entry. Credit on entire qty already availed in 7A.
	30/06/2017	C171 Mango Bite 289g X 24 PB	BOX	181	152,040	9,122	Duplicate entry. Credit on entire qty already availed in 7A.
	30/06/2017	T192 Kismi Toffee 294g X 40 PB	GB	200	280,000	16,800	Duplicate entry. Credit on entire qty already availed in 7A.
	25/06/2017	C40 Poppins 16.2G 52RL-X1040 rolls	BOX	40	56,000	3,360	Duplicate entry. Credit on entire qty already availed in 7A.
	29/06/2017	BF7 Hide & Seek Bourbon 20g X 288 P	BOX	60	60,480	3,629	Duplicate entry. Credit on entire qty already availed in 7A.
	29/06/2017	BF78 Fab Bourbon 60g X 60 P	BOX	500	210,000	12,600	Duplicate entry. Credit on entire qty already availed in 7A.
	29/06/2017	BF81 Fab Bourbon 150g X36 P	BOX	100	63,000	3,780	Duplicate entry. Credit on entire qty already availed in 7A.
Total						67,694	

4.12. It appeared that as per verification report submitted by Deputy Commissioner, Central Excise Div.-IV, Ahmedabad South, an excess credit of input tax amounting to **Rs.4,88,315/-** is availed by them, as mentioned in Table 1 and Table 2 above. Therefore out of TRAN-1 credit claim of **Rs.1,05,56,994/-** only **Rs.1,00,68,679/-** is found admissible and credit of **Rs.4,88,315/-** found inadmissible. I hold that the Tax Payer is liable to pay Duty of **Rs.4,88,315/-** under provisions of Section 74(1) of CGST Act, 2017, alongwith with applicable interest under the provisions of Section 50 of the CGST Act.

4.13. In addition to above vide the report submitted by the Deputy Commissioner, Central Excise Div.-IV, Ahmedabad South, it appears that the taxpayer has filled the revised TRAN-1 on 30.11.2022. In addition to original and earlier filled Tran-1 of Rs. 1,05,56,994/- an additional credit of Rs. 82,75,649/- claimed as a IGST credit (ISD credit received from their Haryana ISD unit) in their revised TRAN-1. The Deputy Commissioner in his verification report further reported that except claiming additional ISD credit of Rs. 82,75,649/-, there is no material change in their earlier filled TRAN-1 claimed and new revised TRAN-1 and their submission would also be same vis a vis verification of their Transitional claim of Rs. 1,05,56,994/-.

The Summary of the verification report submitted by the Deputy Commissioner, Central Excise Div.-IV, Ahmedabad South are as under

Sr No.	Description	Enclosure	inadmissible credit
1	7A-Credit claimed over enhanced assessable value (AV is more than actual AV in the invoice)	Annexure-A	69,318.5142
2	7A-Credit claimed over quantity which is over and above of the total qty available in invoice	Annexure-B	1,91,182.88
3	7A-Credit not admissible due to lack of supporting documents	Annexure C	1,46,209.2
4	7A-goods received not in Gujarat	Annexure-D	13,910
Part-I	Sub-total (inadmissible claim under table-7A)		4,20,621
5	Credit claim in duplication which is already availed under table 7A	Annexure-E	67,694.4
Part-II	Sub-total (inadmissible claim under table-7b)		67,694.4
Total inadmissible credit claim under TRAN-1			4,88,315

4.14. I find that the Tax Payer has failed to prove that he is eligible for input tax credit as the burden to prove the eligibility is on the Tax Payer 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 Tax Payer has failed to discharge the burden to prove the eligibility, the claim of ITC amounting to **Rs.4,88,315/- [Rs.4,20,621/- (entry 7A in table 7(a) of Tran-1) and Rs.67,694/- (entry 7B in table 7(a) of Tran-1)]** of the Tax Payer is not acceptable and, therefore, I hold that the Tax Payer 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.4,88,315/-** 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.

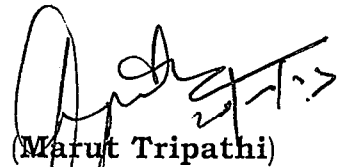
4.15. I rely upon the verification report submitted by the Deputy Commissioner, Central Excise Div.-IV, Ahmedabad South, I conclude that ITC amounting to **Rs.4,88,315/-** is inadmissible and ITC amounting to **Rs.1,00,68,679/-** is admissible out of Total amount of **Rs.1,05,56,994/-** wrongly availed as Cenvat Credit Carried forward under Section 140(3), 140(4)(b) and 140(6) and 140(7) of the CGST Act, 2017 [Entry 7A in table 7(a) of Tran-1].

4.16. I also find that the Tax Payer 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 Tax Payer has carried forward Credit amount to **Rs.4,88,315/- [Rs.4,20,621/- (entry 7A in table 7(a) of Tran-1) and Rs.67,694/- (entry 7B in table 7(a) of Tran-1)]**, 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.

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

ORDER

- (i) I hereby disallow the transitional credit amounting to **Rs.4,88,315/- (Rupees Four Lakh Eighty Eight Thousand Three Hundred Fifteen Only)** out of **Rs.1,05,56,994/- (Rs. One Crore Five Lakhs Fifty Six Thousand Nine Hundred, Ninty Four)** wrongly availed as Cenvat Credit Carried forward under Section 140(3), and 140(5) of the CGST Act, 2017 [Entry 7A in table 7(a) of Tran-1] under provisions of Section 74(9) of the CGST Act, 2017, read with the provisions of Rule 121 of the CGST Rules.
- (ii) I confirm the demand of interest at the applicable rate of under Section 50 of the CGST Act 2017 on the demand of **Rs.4,88,315/- (Rupees Four Lakh Eighty Eight Thousand Three Hundred Fifteen Only)** of (i) above;
- (iii) I impose penalty of **Rs.4,88,315/- (Rupees Four Lakh Eighty Eight Thousand Three Hundred Fifteen Only)** 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)

Additional Commissioner,
CGST, Ahmedabad South.

F.No. CGST/04-23/O&A/Parle/21-22

Date: 20/01/2023

DIN-

By Speed Post AD/E-mail/HD

To,

M/s. PARLE BISCUITS PRIVATE LIMITED,
PLOT NO.875 358/A, PRACHI FORWARDING AGENCY,
OPP SCREENOTEX ENGINEERING PVT LTD,
PALDI-KANKAJ GAM,DHOLKA ROAD,
ASLALI, Ahmedabad, Gujarat, 382425

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 for uploading DRC-07 on GSTN portal.
- ✓ 5) The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website.
- 6) Guard file.