



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/04-76/O&A/JK Tyre/2022-23

DIN 20230364WS0000313113

आदेश की तारीख: Date of Order: 03/03/2023

जारी करने की तारीख: Date of Issue: 03/03/2023

द्वारा पारित /Passed by: Shri Shravan Ram, Joint Commissioner

मूल आदेश सं./Order-In-Original No.: 85 /CGST/Ahmd-South/JC/SR /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- 15 को प्रारूप **GST APL-01** में अपील कर सकता है। उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से तीन माह के भीतर दाखिल की जानी चाहिए। इसपर रुपए -/2.00 केवल का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this order in Form **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 जद्वारा 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 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 -/2.00 का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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

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

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

संदर्भ/Reference : कारण बताओं सूचना फा.सं./Show Cause Notice F.No V/WS0605/TRAN-1/JK Tyre & Industries/21-22 dated 10/09/20221 issued to M/s. JK Tyre & Industries Limited, Situated At 802, 8th Floor, Madhuban, Under Pass, Ellisbridge, Ahmedabad, Gujarat, 380006.

BRIEF FACTS OF THE CASE:-

M/s. JK Tyre & Industries Limited, Situated At 802, 8th Floor, Madhuban, Under Pass, Ellisbridge, Ahmedabad, Gujarat, 380006 (hereinafter referred to as the said "Tax Payer") is having a GSTIN 24AAACJ6716F1ZU and engaged in the manufacture/providing service of 'Retreaded Or Used Pneumatic Tyres Of Rubber, Solid Or Cushion Tyres, Tyre Treads And Tyre Flaps, Of Rubber - Retreaded Tyres : Of A Kind Used On Motor Cars (Including Station Wagons And Racing Cars)'. The said Tax Payer filed TRAN-1 on 06.12.2017 and has taken transitional credit of Central Excise/Service Tax amounting to Rs. 16323530/- 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.

3. Section 16 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,—

(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;

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/WS0605/TRAN-1/2019-20 dated 11.06.2021 subsequent to which reminders/email were issued for said information. However, in spite of repeated request the taxpayer has till date 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.

5. Whereas the Taxpayer has failed to submit the required documents, admissibility of geniuses of the credit could not be verified. Hence it appeared that the transitional credit amounting to Rs. 1,63,23,530/- 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 had intentionally suppressed the information from the department. Thus, the Taxpayer appeared to have has 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. 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.

8. Therefore show cause notice F.No. CGST/WS0604/TRAN-1/JK Tyre & Industries/21-22 dated 10/09/2021 was issued to the taxpayer M/s. JK Tyre & Industries Limited, by the Assistant Commissioner, Central Goods & Services Tax, Division-VI, having his office at 3rd Floor, APM Mall, Anandnagar Road, Satellite, Ahmedabad-380015 as to why:

- 1) The transitional credit of input tax amounting to Rs. 1,63,23,530/- (Rupees One Crore Sixty Three Lakh Twenty Three Thousand Five 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.V/WS0605/TRAN-1/JK TYRE & INDUSTRIES/21-22 DATED 10/09/20221 was issued under F.No.V/WS06/SCN-169/2021-22 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 and also substituting the amount of transitional credit from Rs.1,63,23,530/- to Rs.1,67,20,724/-.

DEFENSE SUBMISSION :-

10.1 The tax-payer vide reply dated 06/09/2021 and 28/09/2021 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 29/06/2018 and 26/06/2021 and also requested for personal hearing.

10.2 The tax-payer vide written submissions dated 10/02/2023 has stated that they are producing the relevant documents to justify their

claim of CGST credit taken in TRAN-1. They have further submitted that, they are in the business of manufacturing and trading of various ranges of tyre, tube and flaps; that their business is spread all over India as well as in foreign countries; that they have total 9 manufacturing plants in India which are located at different parts of the country like Karnataka, Madhya Pradesh, Rajasthan and Tamil Nadu; that for Gujarat they have purchased only finished goods from various plants as per the needs of the market and sale it to the various dealers, distributors and retailers; that they don't have any manufacturing facility in Gujarat; that as on 30/06/2017 they have only finished goods on which they have paid Excise duty at the time of purchase of goods from manufacturing plants. It has been further submitted that that they have filed TRAN-1 on 06/12/2017 claiming CGST credit amounting to Rs.1,67,20,724/- which is mainly segregated into two parts wherein one part pertains to stock of finished goods held on 30/06/2017 on which they have paid Excise duty and other part pertains to finished goods which was received after 30/06/2017 viz. Transit goods on which they have paid Excise duty as well; that they have claimed CGST credit of Rs.1,47,42,098/- for finished goods held as stock on 30/06/2017 and CGST credit of Rs.19,78,626/- for goods which was received after 30/06/2017 viz. Transit goods by filing of table 7(a) and 7(b) respectively of TRAN-1.

PERSONAL HEARING :-

11. The taxpayer was offered personal hearing on 11/11/2022 and 22/11/2022, however, no one appeared for personal hearing. However Shri Hiren Patel, Chartered Accountant appeared for personal hearing on 08/02/2023 before my predecessor wherein the taxpayer was given time till 10/02/2023 for making written submissions. Consequent to the issue of Establishment Order No.08/2023 dated 13.02.2023 (DGHRD/ADC/JC/11/2023), issued by the Commissioner, Central GST, Ahmedabad South, adjudication of this case is now assigned to the undersigned and therefore, a fresh personal hearing was granted to the taxpayer to comply with the principles of natural justice. Shri Hiren Patel, Chartered Accountant appeared on behalf of the tax-payer on 23.02.2023 and reiterated the written submissions dated 10/02/2023.

DISCUSSION AND FINDINGS:-

12. I have carefully gone through the facts of the case on record and the submissions made by the taxpayer in this regard. 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 taxpayer has taken transitional credit of **Rs. 1,67,20,724/-** under Section 140(3) and 140(5) of the CGST Act,2017 in Tran-1 return. Out of the said amount of

Rs.1,670,20,724/-, the input tax credit of Rs.1,47,42,098/- purportedly belongs to the amount of Central Excise duty in respect of the stock held as on 30/06/2017 in respect of 760 invoices which was claimed as TRAN-1 credit. The input tax credit of the remaining amount of Rs.19,78,626/- belongs to the amount of Central Excise duty in respect of the goods in transit as on 30/06/2017 in respect of 11 invoices.

12.1 Before going into the merits of the case, I take up the submissions made by the taxpayer vide their letter dated 06/10/2021 and 28/10/2021 before the Assistant Commissioner, CGST Division-VI, Ahmedabad 05/11/2022 and further written submissions dated 10/02/2023. The taxpayer in the written submissions dated 06/10/2021 and 28/10/2021 has contended that they have already submitted all the documents to the jurisdictional Range Superintendent complied for verification and have requested to grant them personal hearing before issuing final order. I also find that the taxpayer vide their letter dated 10/02/2023 alongwith their written submissions have submitted two box files containing the documents related to verification of the genuineness of the eligibility of the credit carried forward in TRAN-1 viz. in Box File-1 excel sheet of excise invoices of stock held as on 30/06/2017, excel sheet of excise invoices which were in transit as on 30/06/2017, extract of TRAN-1 filed, summary sheet of stock held as on 30/06/2017, photo copy of all invoices which were in transit as on 30/06/2017 and other relevant correspondences, photo copy of all invoices held as stock as on 30/06/2017 (Serial No. 1 to 270) and in Box file-2 photo copy of all invoices held as stock as on 30/06/2017 (Serial No. 271 to 760). I agree with the contentions raised by the taxpayer in this regard and find that the taxpayer had submitted the documents before the jurisdictional Range officer as claimed by them in their letter dated 06/09/2021 and 28/09/2021 addressed to the jurisdictional Assistant Commissioner. The taxpayer has been given ample opportunity to present their case as personal hearing has been granted to them following the principles of natural justice. The personal hearing was attended by them on 08/02/2023 before my predecessor and during the course of personal hearing, the taxpayer had requested/sought time to file additional submissions. The request of the taxpayer was considered by granting them time to file the additional submissions and produce the documents which has been complied by them vide letter dated 10/02/2023.

12.2 I now proceed to deal the case based on merits, legal provisions, records and written submissions provided by the taxpayer. I find that the taxpayer has submitted excel sheet containing the details of stock held by them as on 30/06/2017 alongwith copies of all the 760 invoices on which they have taken the ITC in respect of the Central Excise duty amounting to Rs.1,47,42,098/-. They have also submitted copies of all the 11 invoices in respect of the goods in transit as on 30/06/2017 involving Central Excise duty of Rs.19,78,626/-. In the

present case on hand, I find that the taxpayer had taken credit of Rs.1,47,42,098/- in their ITC ledger as CGST credit on 06/12/2017 on the basis of 760 invoices which pertains to the stock held by them on 30/06/2017 and the same has been reflected in TRAN-1 as per Section 140(3) of the CGST Act,2017. I also find that the taxpayer had taken credit of Rs.19,78,626/- in their ITC ledger as CGST credit on 06/12/2017 on the basis of 11 invoices in respect of the goods in transit as on 30/06/2017 and the same has been reflected in TRAN-1 filed by the taxpayer as per Section 140(5) of the CGST Act,2017. I find that as per Section 140(3) condition (iii) read with Section 16(2), a registered person must possess the duty paying documents for the eligible credit which has been carried forward by them. I also find that as per Section 140 (5) a registered person is entitled to take credit of eligible duties and taxes in respect of inputs or input services subject to the condition that the invoice or any other duty or taxpaying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day.

12.3 The show cause notice for demand of **Rs.1,67,20,724/-** 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 eligible credit 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.

(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 services 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 a 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 the provisions of sub-section (3).

(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 the 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 taxpaying document 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 a further period not exceeding thirty days:

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

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 taxpaying 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.]

12.4 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 in respect of inputs or input services received on or after the appointed day, the registered person will be entitled to take credit of eligible duties and taxes on the grounds that the duty or tax in respect of such inputs or input services have been paid by the 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 taxpaying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day

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.

12.5 In the instant case, I observe that the taxpayer has taken TRAN-1 credit of Rs. 1,67,20,724/- in their ITC ledger as CGST credit on 06/12/2017 under Section 140 of the CGST Act, 2017 read with Rule 117 of the CGST Rules, 2017 by entry in table 7(a) and table 7(b) of TRAN-1. The description of **table 7(a)** in the TRAN-1 filed by the taxpayer pertains to "Amount of duties and taxes on inputs claimed as credit excluding the credit claimed under Table 5(a) (under section 140(3), 140(4)(b) and 140(6) and 140(7) wherein the entry 7A is shown as "Where duty paid invoices {including Credit Transfer Documents (CTD) are available". Out of the credit of Rs. 1,67,20,724/- the credit of Rs. 1,47,28,098/- mentioned in table 7(a) of the TRAN-1 was taken on the basis of 760 invoices (Seven Hundred Sixty) invoices of domestic purchase. Further the description of **table 7(b)** in the TRAN-1 filed by the taxpayer pertains to "Amount of eligible duties and taxes/VAT/[ET] in respect of inputs services under Section 140(5) and Section 140(7). The credit of remaining Rs. 19,78,626/- mentioned in table 7(b) was taken on the basis of 11 (Eleven) invoices which were in transit as on 30/06/2017. 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.

12.6 I observe that the taxpayer had submitted all the documents to the jurisdictional office for verification and genuineness of the transitional credit carried forward by them. I further find that the

taxpayer vide their letter dated 10/02/2023 alongwith their submissions. has produced the documents in two box files alongwith excel sheet containing the details of stock held by them as on 30/06/2017 and the invoices on the basis of which the credit of Rs.1,47,28,098/- mentioned in table 7(a) of the TRAN-1 was taken on the basis of 760 invoices (Seven Hundred Sixty).

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 already provided all the documents to the Jurisdictional Assistant Commissioner, CGST Division-VI, Ahmedabad South vide their letter dated 29/06/2018 in response to the verification process of transitional credit carried out by the jurisdiction office. The taxpayer has also brought out these facts vide their letter dated 06/09/2021 and 28/09/2021 in response to the DRC-01 dated 03/09/2021 and show cause notice dated 10/09/2021. 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 Jurisdictional Assistant Commissioner, CGST Divison-VI, Ahmedabad South on 26/09/2022 was requested to submit their verification report. The Assistant Commissioner, CGST Division-VI, Ahmedabad vide letter issued from F.No. CGST/WS06/O&A/Misc/2021-22 dated 17/11/2022 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:

"1. The taxpayer was first/second stage dealer in Central Excise era and they had availed ITC of Rs.1,67,20,724/- in TRAN-1 (Rs.1,47,42,098/- in table 7a and Rs.19,78,626/- in table 7b).

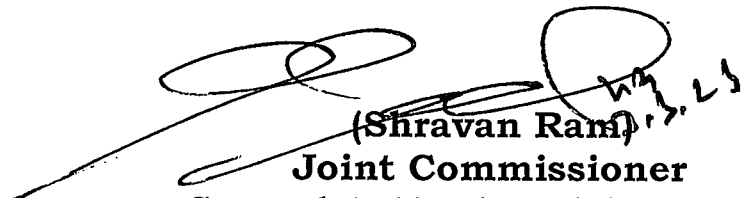
2. On verification of documents submitted by the taxpayer, i.e. copy of invoices and list of stock available as on 30/06/2017. As per the copy of invoices and stock register provided by the taxpayer, the credit availed in tran-1 found to be correct."

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. 1,67,20,724/- (Rupees One Crore Sixty Seven Lakhs Twenty Thousand Seven Hundred Twenty Four Only)** has been correctly carried forward in TRAN-1 by the taxpayer and the same is admissible to them.

13.4 In view of the above discussions and finding, I pass the following order:

ORDER

I drop the proceedings initiated against M/s. J K Tyre & Industries Limited, 802, 8th Floor, Madhuban, Under Pass, Ellisbridge, Ahmedabad, Gujarat-380 006 vide show cause notice F. No. V/WS0605/TRAN-1/JK Tyre & Industries/21-22 dated 10/09/20221.


(Shravan Ram)
Joint Commissioner
Central GST, Ahmedabad-South

DIN-20230364WS0000313113

By Registered Post A.D./Email

F.No. CGST/4-76/O&A/JK Tyre/2022-23

Dated : 03.03.2023

To,

**M/s. J K Tyre & Industries Limited,
802, 8th Floor, Madhuban, Under Pass,
Ellisbridge, Ahmedabad, Gujarat, 380006.**

Copy to:

- (1) The Commissioner, CGST, Ahmedabad South
- (2) The Assistant Commissioner, CGST, Division-VI, Ahmedabad South
- (3) The Superintendent, Range-V, Central Excise & CGST, Division-VI, Ahmedabad South for uploading DRC-07 on GSTN portal.
- (4) The Assistant Commissioner, TAR, CGST Ahmedabad South
- (5) The Superintendent (System), CGST Ahmedabad South
- (6) Guard File.