



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. CGST/04-72/O&A/Metro/2022-23

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

**DIN-20230364WS000000A781**

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

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मूल आदेश सं./Order-In-Original No.: 86/CGST/Ahmd-South/JC/SR/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।

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यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त )अपील ,( केन्द्रीय जीएसटी ,केन्द्रीय जीएसटी भवन ,आंबावाड़ी ,अहमदाबाद- 15को प्रारूप **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 -/2.00केवल 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 3के उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए। इसकेसाथ 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 -/2.00का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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

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

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

संदर्भ/Reference : कारण बताओं सूचना फा.सं./Show Cause Notice F.No V/WS0604/TRAN-1/Tran Verification/P-1/4/2019-20 dated 10/09/2021 issued to M/s. Metro Brands Limited, Shop No.17-20, Aniket, C.G.Road, Near Municipal Market, Ahmedabad - 380 009.

**Brief facts of the case:-**

M/s. Metro Brands Limited, situated at Shop No 17 -20, Aniket C.G.Road, Near Muncipal Market, Navrangpura, Ahmedabad - 380 009 (hereinafter referred to as the said "Tax Payer") are engaged in the manufacture/providing service of 'Retail Business'. They were registered with the Central Excise and Service Tax Department and at present holding GSTIN 24AAACM4754E1ZR. The said Tax Payer filed TRAN-1 on 18-10-2017 and has taken transitional credit of Central Excise/Service Tax amounting to Rs. 1,72,37,688/- in their electronic Credit ledger under Section 140 of the CGST Act, 2017.

2. Section 140 of the CGST Act, 2017 allows a registered person to take Cenvat credit of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law within such time and in such manner as may be prescribed subject to the conditions specified therein. The Explanations 1 & 2, below the said Section defines "eligible duties" the credit of which can be carried forward.

Further, the provision to section 140 of the CGST Act read as under; Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under the Act.

(a) Section 16 of the CGST Act, 2017 prescribed eligibility and conditions for taking input tax credit — (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person. (2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,— he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

3. In terms of the above provision, the tax payers were required to possess and produce the documents for verification, whenever called for by the Department. In absence of the same

admissibility of the credit cannot be established.

4. Whereas in order to ascertain/verify the admissibility of the transitional credit availed, the Tax Payer was requested to submit the documents based on which they have availed the said transitional credit in TRAN-1 vide letter F.No. CGST/WS0604/TRAN VERIFICATOIN/P-1/4/2019-20 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, the admissibility of transactional credit claimed by the tax payer could not be verified. 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 had 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. 1,72,37,688/- availed by them is not admissible to them and the same is required 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 violated the provisions of Section 140 of the CGST Act, 2017 and had 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/Tran Verification/P-1/4/2019-20 dated 10/09/2021 was issued to the taxpayer M/s. Metro Brands Limited by the Assistant Commissioner, Central Goods & Services Tax, Division-VI, having his office at 3<sup>rd</sup> Floor, APM Mall, Anandnagar Road, Satellite, Ahmedabad-380015 as to why:

1) The transitional credit of input tax amounting to Rs. 1,72,37,688/- (Rupees One Crore Seventy Two Lac Thirty Seven Thousand Six Hundred Eighty Eight Only) wrongly carried forward and utilized by them, should not be demanded and recovered from them, under the provisions of Section 73(1) of the CGST Act read with the provisions of Rule 121 of the CGST Rules;

2) Interest should not be charged and recovered from them under the provisions of Section 50 of the CGST Act; and

3) Penalty should not be imposed on them under the provisions of Section 122 (1) (xvii) of the CGST Act on the grounds discussed herein above.

9. A corrigendum to the show cause notice F.No. CGST/WS0604/TRAN-1/Tran Verification/P-1/4/2019-20 dated 10/09/2021 was issued under F.No.V/WS06/SCN-232/2021-22 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.

#### **DEFENSE SUBMISSION :-**

10.1 The tax payer has not submitted any defence submission to the show cause notice. However, this office vide letter dated 10/07/2022 had taken up the matter with the taxpayer to submit their reply to the show cause notice. The taxpayer in reply vide letter dated 12/10/2022 stated that they had not received the show cause notice and that they are giving regular submission for the Tran-1 verification. The taxpayer in their reply has stated that they are a leading manufacturers and traders of footwear in the country; that they have about 425 showrooms across the country from where the goods manufactured by them are sold; that under the Central Excise regime, the activity of labelling or re-labelling footwear

was deemed to be a manufacturing process; that they were undertaking labelling of footwear purchased in bulk from local vendors as well as imports at their premises located at D2/D3, Bhagwan Sheth Estate, Puma Village, Bhiwandi and duly registered with the Central Excise department. Accordingly, they were discharging Central Excise duty and storing the removed goods in a demarcated area which functioned as a depot; that the goods were then being sent to their showrooms all over the country, in accordance with the provisions of the existing laws; that the Central Excise duty on footwear was payable with respect to the retail sale price less a specified abatement. (30% abatement vide Notification No. 12/2016 dated 01.03.16); that under the Central Excise regime, they were eligible to avail Cenvat credit on all inputs and input services used by them in or in relation to the manufacture of final product and their clearance as also in respect of services specified in the inclusive limb of the definition of input services; that the Sale of these goods takes place for the first time from the showrooms. Hence, showroom is our "place of removal". This was considered in the Customs, Excise & Service Tax Appellate Tribunal vide their order dated 10.03.2008 and produced the extract as under:

*"It was submitted that the appellant manufactured the goods at their factory premises and do not sell these goods to any agent or dealer. It is submission that the goods transported from their premises to retail showrooms which are their own showrooms, on a stock transfer memo. It is submitted that the sale of the said goods takes place for the first time from the showrooms. Hence, the showrooms has to be considered as place of removal."*

**10.2** It has been further stated by the taxpayer that in terms of the applicable provision in terms of the Central Excise Act though the sales were being made from the showroom, which is the place of removal, however excise duty was required to be paid at the time of the removal of goods from the factory gate. Since their customers are not eligible to avail input tax credit of the duty paid on footwear manufactured by them, they were not availing credit of the duty paid at the factory gate on receipt of the good at the retail outlet from where the goods are further sold; that as the retail outlet from where the goods were being sold were not to avail credit, while clearing the goods from the factory, the invoice prepared by them, did not in the body of the

invoice itself give reference to the exact address of the retail outlet where the goods were destined, but in the annexure attached to it. With every invoice, there was a detailed annexure attached which contained exhaustive break-up detailing the clearances to each of the retail outlets; that they have an ERP system which tracks each footwear and the showroom to which it has been dispatched to and its further sale therefrom; that for the said purpose, each of their footwear is affixed with a unique barcode which the system identifies with a particular footwear; that in other words, at any given point in time they can identify the location where the footwear cleared from the factory has been dispatched as also the status of the same at that location; that in the transition to GST, they applied for and were granted GST registration for the State of Gujarat; that they have 33 showrooms in Gujarat, all of which are covered in the said registration; that in the course of transition to GST, they availed credit of Rs. 1,72,37,688/- against the Central Excise duty paid at the time of clearance in respect of the stock available with them at their retail outlet in the State of Gujarat as on 30<sup>th</sup> June, 2017; that the said credit was availed by them in terms of Section 140(3) and was reflected in the relevant Column 7a of the form Tran-1. Section 140(3) is applicable to 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 works contract service and was availing of the benefit of notification no. 26/2012-Service Tax dated 20<sup>th</sup> June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a 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 goods held in stock on the appointed day 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 services is not eligible for any abatement under this Act:

**10.3** The taxpayer further stated that they satisfy all the conditions, subject to which credit of duty paid by a manufacturing unit could be availed by them, with respect to

the stock available as on 30 June 2017; that they are in possession of the invoices issued by the manufacturing unit with respect to clearances made to various depots; that the annexure which forms a part of the invoice sets out the duty attributable to clearances made to each of the showrooms; that they, therefore, satisfy the condition of being in possession of the invoice evidencing payment of the Central Excise duty; that they also have availed credit only in respect of such invoices which were issued within 12 months of the cut-off date; that transitional credit has been availed by them in accordance with the law; that they wish to be heard in person before any decision is taken in this matter.

### **PERSONAL HEARING :-**

11. The taxpayer was offered personal hearing on 07/02/2023 wherein Dhvani Mehta, Consultant appeared on behalf of the taxpayer before my predecessor wherein as per the request the taxpayer was given two weeks of time. 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. Accordingly, a fresh personal hearing was granted to the Noticee wherein Shri Ram Salodkar, Deputy Manager of the Noticee and Ms. Dhvani Mehta, Chartered Accountant appeared on behalf of the Noticee on 24.02.2023 and reiterated their earlier reply dated 12/10/2022 and further submitted that they have nothing else to add.

### **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. 1,72,37,688/-** under Section 140(3) of the CGST Act, 2017 in Tran-1 return. The input tax credit of Rs.1,72,37,688/- purportedly belongs to the amount of Central Excise duty paid at the time of clearance in respect of the stock available with them at their retail outlets in Gujarat as on 30/06/2017 which was claimed as TRAN-1 credit.

14.1 I observe that the tax payer had not submitted any defence submission to the show cause notice. However in the absence of any written submissions, this office vide letter dated 10/07/2022 had taken up the matter with the taxpayer to submit their reply to the show cause notice. The taxpayer in reply vide letter dated 12/10/2022 stated that they had not received the show

cause notice and that they are giving regular submission for the Tran-1 verification. The taxpayer in their reply dated 12/10/2022 has also forwarded the statement of closing stock as on 30/06/2017, copy of Tran-1, statement of input working on closing stock, copies of Central Excise ER-1 returns from January, 2017 to June, 2017, copies of Service Tax returns for the period October, 2016 to March, 2017 and April, 2017 to June, 2017, copy of Tribunal Order and copy of Excise Registration Certificate. However, I find from the verification report of the JAC that the taxpayer was already served with the show cause notice dated 10/09/2021 as well as the corrigendum dated 18/08/2022 through RPAD. However, a copy of the show cause notice was again sent by the JAC through e-mail for which the taxpayer has submitted acknowledgement dated 15/10/2022 through email.

**14.3** 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 work sheet containing the details of stock held by them as on 30/06/2017 and which are below 12 months on which they have taken the ITC in respect of the Central Excise duty amounting to Rs.1,72,37,688/-. In the present case on hand, I find that the taxpayer had taken credit of Rs.1,72,37,688/- in their ITC ledger as CGST credit on 18/10/2017 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 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.

**14.4** The show cause notice for demand of **Rs.1,72,37,688/-** 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 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 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.]

**14.5** 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.

**14.6** In the instant case, I observe that the taxpayer has taken TRAN-1 credit of Rs. 1,72,37,688/- in their ITC ledger as CGST

credit on 18/10/2017 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". The credit of Rs.1,72,37,688/- mentioned in table 7(a) of the TRAN-1 was taken against the Central Excise duty paid at the time of clearance in respect of the stock available with them at their retail outlet in the State of Gujarat 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.

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.

**15.1** The jurisdictional Officer is the competent authority to examine/ verify the correctness/admissibility of documents submitted for taking credit. I observe that the taxpayer has provided the documents to this office vide letter dated 12/10/2022 which have been sent to the Jurisdictional Assistant Commissioner, CGST Division-VI, Ahmedabad South for verification.

**15.2** The Assistant Commissioner, CGST Division-VI, Ahmedabad vide letter issued from F.No. CGST/WS06/O&A/SCN-232/2021-22 dated 22/11/2022 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:

*"5. The no. of invoices/branch transfer documents of stocks available as on 30/06/2017 (of below 365 days) is voluminous and the verification of each and every invoices with the branch transfer documents and with List of stocks as on 30/06/2017 are very time consuming. However, sample invoices along with branch transfer documents have been checked. Based on the CA certified Stock Register and verification of sample invoices with the list of stocks, it is found that ITC claimed is in order and*


*the taxpayer has fulfilled the conditions of section 140(3) of CGST Act,2017. Hence, the ITC claimed in Tran-1 found in order.”*

**15.3** 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. 1,72,37,688/- (Rupees One Crore Seventy Two Lakhs Thirty Seven Thousand Six Hundred Eighty Eight Only)** has been correctly carried forward in TRAN-1 by the taxpayer and the same is admissible to them.

**15.4** In view of the above discussions and findings, I pass the following order:

**ORDER**

I drop the proceedings initiated against M/s. Metro Brands Limited, Shop No 17 -20, Aniket C.G.Road, Near Municipal Market, Navrangpura, Ahmedabad - 380 009 vide show cause notice F. No. CGST/WS0604/TRAN-1/Tran Verification/P-1/4/2019-20 dated 10/09/2021.

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

**DIN-20230364WS000000A781**

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

F.No. CGST/4-72/O&A/Metro/2022-23

Dated: 03.02.2023

To,  
M/s. Metro Brands Limited,  
Shop No. 17 -20, Aniket C.G.Road,  
Near Municipal Market, Navrangpura,  
Ahmedabad - 380 009.

**Copy to:**

- (1) The Commissioner, CGST, Ahmedabad South
- (2) The Assistant Commissioner, CGST, Division-VI, Ahmedabad South
- (3) The Superintendent, Range-IV, 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.