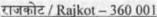


::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल,जी एस टी भवन / 2nd Floor, GST Bhavan, रेस कोर्स रिंग रोड, / Race Course Ring Road,



Tele Fax No. 0281 - 2477952/2441142Email: commrappl3-cexamd@nic.in



रजिस्टर्डडाकए.डी. द्वारा :-

DIN-20220364SX0000424687

अपील / फाइलसंख्या/ क Appeal /File No.

मलबादेशमं /

दिनांक/

OlONo

V2/24/GDM/2021

17GST/JC/2020-21

23/12/2020

अपील आदेश संख्या(Order-In-Appeal No.):

KCH-EXCUS-000-APP-272-2021-22

आदेश का दिनांक /

28.02.2022

जारी करने की तारीख /

02.03.2022

Date of Order:

Date of issue:

श्रीअखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित/

Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सुजित: / Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

अपीलकर्ता&प्रतिवादी का नाम एवं पता /Name&Address of theAppellant&Respondent :-

M/s H. D. Enterprises, HD House, Above ICICI Bank, Pooja Complex - A, Station Road, Bhuj (Kutch).

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/ Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

सीमा शुक्क केन्द्रीय उत्पाद शुक्क एवं सेवाकर अपीक्षीय न्यायाधिकरण के प्रति अपील केन्द्रीय उत्पाद शुक्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निस्नलिखि+त जगह की जा सकती है।/ (A)

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर॰ के॰ पुरेम, नई दिल्ली, को की जानी चाहिए ।/ (i)

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेय सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिको,,द्वितीय तल, बहुमाली भवन असार्वा अहमदाबाद- ३८००१६को की जानी चाहिए।/ (ii)

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para-1(a)

(iii) अपीलीय त्यावाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मौंग ज़्याज की मौंग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो ब्रन्थश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रिजस्टार के नाम से किसी भी सार्वजितक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक द्वापट द्वारा किया जाना चाहिए। संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑडर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/- Rs.10,000/- where amount of dutydemand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समझ अपील, वित्त अधिनियम,1994की घारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में चार प्रतियों में की जा सकरी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न कर (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ज्याज की माँग और लगाया गया जुमाना, रुपए 5 लाख या उसके कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो कमशः 1,000/- रुपये, 5,000/- रुपये अथवा वाख का अधिक है तो कमशः 1,000/- रुपये, 5,000/- रुपये अथवा रुपए को प्रति में प्रति संलग्न करें। निर्धारित शुल्क को भूगतान, सर्वधित अपीलीय न्यायाधिकरण की शाखा के सहायक रिजस्टार के नाम से किसी भी सार्वजिनके क्षेत्र के बेंब द्वारा जारी रेखांकित बेंक ड्राएट हारा किया जाना चाहिए। संबंधित ड्राएट का भूगतान, बैंक की उस शाखा में होना चाहिए जहां सुंबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमां करनी होगा।/

The appeal under sub section (1) of Section 86 of the Finance Act. 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a fees of Rs. 1900/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- बित्त अधिनियम, 1994की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपन्न S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ मेवाकर, को अपीलीय न्यायाधिकरण को आदेवन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) &9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissionerauthorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal. (i)
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

 केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" मे निम्न शामिल है

 (i) धारा 11 डी के अंतर्गत रकम

 (ii) सेनवेट जमा की ली गई गलत राशि

 (iii) सेनवेट जमा विवादित है किया रहे के अंतर्गत देय रकम (ii)

(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- वशतें यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्जी एवं अपील को लागू नहीं होगे।/
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

भारत सरकार कोपुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदश की पुनरीक्षणयाचिका निम्नलिखित मामली में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव,
भारत सरकार, पुनरीक्षण आवेदन ईकाई,विस मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया
जाना चाहिए। (C) A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to subsection (1) of Section-35B ibid:

यदि गाल के किसी नुक्सान के मामले में, जहां नुक्सान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक मंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुक्सान के मामले में।/ In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse (i)

भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के बिनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिवेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India. (ii)

यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outsideIndia export to Nepal or Bhutan, without payment of duty. (iii)

सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विक्त अधिनियम (न॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए एटिटी की पार्टी किए पार्टी के पार्टी की पार्टी किए एटिटी के पार्टी की पार्टी के पा (iv)

उपरोक्त अवेदन की दो प्रतियां प्रपत्न संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस अदेश न अपील अदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account. (v)

पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000-/ का भुगतान किया जाए। The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac. (vi)

यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भूगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order in Original, fee for each O.I.O. should be paid in the aforesaid manner, not with standing the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each. (D)

यथामंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-! के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चोहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended. (E)

सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982. (F)

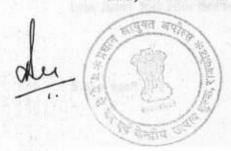
उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in (G)



:: ORDER-IN-APPEAL ::

M/s H.D. Enterprise, Bhuj (hereinafter referred to as "Appellant") has filed Appeal No. V2/24/GDM/2021 against Order-in-Original No. 17/GST/JC/2020-21 dated 23.12.2020 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST & Central Excise, Gandhidham (hereinafter referred to as 'adjudicating authority').

- 2. The facts of the case, in brief, are that the Appellant was holding Service Tax registration No. AABFH2614QST001 and migrated to GST having GSTIN No. 24AAABFH2614Q1ZD. On scrutiny of details provided by the Appellant in GST-TRAN-1 about credit of duties transferred by them under Section 140 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'Act'), it was found by the jurisdictional Range Superintendent that they had shown Cenvat credit of capital goods amounting to Rs. 3,65,40,350/- under Table 6(a) of the said TRAN-1, being the amount of unavailed Cenvat credit pertaining to the period from 1.9.2009 to 18.6.2010, which was not availed in the existing law. It appeared that said Cenvat credit was not admissible to the Appellant in the existing law due to limitation prescribed under Rule 4(1) of the Cenvat Credit Rules, 2004. It appeared that the Appellant had carried forward said Cenvat credit in contravention of proviso to Section 140(2) of the Act read with Rule 117 of the Central Goods and Service Tax Rules, 2017. The Appellant voluntarily paid the said Cenvat credit of Rs. 3,65,40,350/- by way of GST DRC-03 on 30.7.2020.
- 2.1 The Show Cause Notice No. 3/JC/GST/2019-20 dated 7.8.2020 was issued to the Appellant calling them to show cause as to why an amount of Rs. 3,65,40,350/- carried forward in Electronic Credit Ledger through TRAN-1 should not be demanded and recovered from them under Section 73 of the Act along with interest under Section 50 of the Act and proposed imposition of penalty under Section 122(2)(a) of the Act.
- 2.2 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who confirmed the amount of Rs. 3,65,40,350/- under Section 73 of the Act and appropriated the amount of Rs. 3,65,40,350/- paid by them, along with interest under Section 50 of the Act.
- 3. Being aggrieved, the Appellant has preferred the present appeal, inter alia, on the following grounds:-



They had purchased capital goods viz. Dumpers and tippers during (i) the F.Y. 2008-09 and 2009-10 which were used in providing mining services, cargo handling services, supply of tangible goods services etc. On 22.06.2010, by virtue of Notification No. 25/2010-C.E. (NT), clause (C) came to be inserted in Rule 2(a) of the CCR, 2004, thereby providing that, Dumpers or Tippers, falling under Chapter 87 of the CETA, registered in the name of provider of output service for providing taxable services as specified in Sub clauses (zzza) and (zzzy) of Clause 105 of Section 65 of the Finance Act, 1994, were capital goods. They had availed and utilized Cenvat credit on dumper/tippers purchased prior to 22.06.2010. A Show Cause Notice dated 14.10.2010 was issued to them proposing to deny and recover Cenvat credit of Rs. 3,97,93,728/- taken and utilized during the period from April 2008 to March 2010, along with interest and penalty on the ground that Dumpers / Tippers used for Site Formation Service i.e. Section 65(105)(zzza) and Mining Service i.e. Section 65(105)(zzzy) were brought under 'capital goods' from 22.06.2010 and thus Site Formation Service and Mining Service under which they were registered as service provider, did not fall under eligible categories for taking Cenvat credit on motor vehicles at the relevant time and therefore the availment and utilization of such Cenvat credit was wrong. In order to avoid litigation, they decided that the Cenvat credit pertaining to dumper/tippers purchased prior to 22.06.2010 and for which show cause notice had not been issued, will not be availed by them, till the show cause notice dated 14.10.2010 is finally decided. In this regard, they vide letter dated 26.07.2011, informed their Range office that they will not be taking Cenvat credit of the remaining capital goods viz. dumpers/tippers purchased prior to 22.06.2010, in their books of accounts in view of the dispute raised by the Department. After the introduction of GST w.e.f. 01.07.2017, service tax was being subsumed into GST, hence, they were left with no choice but to avail this Cenvat credit for excise duties paid on dumpers and tippers to protect their right to claim Cenvat credit, in case the decision of the matter comes in their favour. Thereafter, they, by way of filing GST TRAN-1 on 27.12.2017, carried forward the Cenvat credit on capital goods viz. dumpers and tippers amounting to Rs. 3,65,40,350/- under Section 140 of the CGST Act, 2017. The Appellants submit that since their Appeal No. 11071/2014 was not decided by the Hon'ble Tribunal at the time of availing the credit under TRAN-1, the order-in-original passed against them for previous period was not final and binding on them. Hence, they were eligible to avail transitional credit in terms of Section 140(2) of the CGST Act, 2017.

- (ii) That the Cenvat credit of dumpers/tippers is also eligible to be availed by them during the disputed period as 'input' under the provisions of CCR, 2004. The definition of 'input' as defined under Rule 2(k) of CCR, 2004 was wide enough to cover dumpers/tippers thereunder. Further, there was no statutory bar in availing Cenvat credit of dumpers/tippers as inputs and relied upon case laws of Aditya Cement reported in 2017 (346) ELT 300, M/s IBC Ltd 2016 (45) STR 414 and M/s Soumya Mining Ltd 2017 (6) TMI 1071.
- (iii) That time limit specified under Rule 4(1) of CCR, 2004 is applicable only to inputs. Since, the capital goods in the present case were purchased prior to 1.9.2014, the time limit stipulated in Rule 4(1) introduced w.e.f. 1.9.2014 is not applicable and hence, Cenvat credit is eligible to them and relied upon following case laws:
- (a) Bharat Aluminium Co. Ltd 2019 (7) TMI 1084
- (b) Indian Potash Ltd 2019 (369) E.L.T. 742 (Tri. All.)
- (c) Industrial Filters and Fabrics Pvt Ltd 2019 (1) TMI 1426
- (d) Voss Exotech Automotive Pvt Ltd 2018 (3) TMI 1048
- (iv) They were issued show cause notice dated 07.08.2019 under Section 73 of the Act, for recovery of Cenvat credit of capital goods availed by filing TRAN-1 under Section 140(2) of the Act. On combined reading of Section 73 and Section 2(63) of the Act, it is evident that transitional credit does not get cover under any of the sub-clauses under Section 2(63) and therefore, it cannot be construed as 'input tax credit' for the purposes of Section 73 of CGST Act, 2017. It does not get covered under the inclusive definition of input tax and is also not covered by the means portion, as it cannot be said that transitional credit pertains to Central Tax or State Tax. Thus, Cenvat credit on capital goods purchased under the erstwhile regime of taxation availed under transitional provisions of CGST Act, 2017, by filing TRAN-1, is not subject to the provisions of Section 73(2) of CGST Act, 2017. There is no mechanism under the CGST Act, 2017 to recover Cenvat credit pertaining to goods or services purchased/provided under the erstwhile taxation regime. The impugned order imposing interest liability from the date of availment till date of reversal of transition credit is not sustainable and bad in law.



. 1

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4. Personal hearing in the matter was conducted in virtual mode through video conferencing on 30.12.2021. Shri Jigar Shah, Advocate, appeared on behalf of the Appellant. He reiterated submissions made in appeal memorandum as well as in additional written submission made as part of hearing.

- 5. I have carefully gone through the facts of the case, the impugned order, and written as well as oral submissions made by the Appellant. The issue to be decided in the present appeal is whether the Appellant had correctly carried forward Cenvat credit of Central Excise duty paid on Dumper and Tipper in their Electronic Credit Ledger in this case through TRAN-1 under Section 140 of the Act or not.
- 6. On perusal of the records, I find that the Appellant had carried forward Cenvat credit amounting to Rs. 3,65,40,350/- in TRAN-1 under Section 140 of the Act. The said Cenvat credit pertained to Central Excise duty paid on Dumpers and Tippers by the Appellant during the period from 1.9.2009 to 18.6.2010. The proceedings were initiated against the Appellant for denying said Cenvat credit by invoking limitation prescribed under Rule 4(1) of the Cenvat Credit Rules, 2004. The Appellant reversed the disputed Cenvat credit by way of filing DRC-03 on 30.7.2020. The adjudicating authority confirmed demand under Section 73 of the Act and appropriated the payment made by the Appellant against confirmed demand, along with interest under Section 50 of the Act.
- 7. The Appellant has raised various contentions before me contesting confirmation of demand under Section 73 of the Act and recovery of interest under Section 50 of the Act as detailed in para 3 *supra*. On going through the appeal records, it is observed that the Appellant had also raised the said contentions before the adjudicating authority during the course of adjudication proceedings. The adjudicating has given following findings at Para 14 of the impugned order:

"I have gone through the SCN, the relied upon documents and the defense submission of the Noticee in detail. The issue to be decided is the eligibility of Transactional Credit availed by the Noticee in their TRAN-1 under Section 140 of CGST Act. However, it is observed that, the Noticee has naid the said

"I have gone through the SCN, the relied upon documents and the defense submission of the Noticee in detail. The issue to be decided is the eligibility of Transactional Credit availed by the Noticee in their IRAN-1 under Section 140 of CGST Act. However, it is observed that, the Noticee has paid the said ineligible Credit of Rs. 3,85,40,350 voluntarily and in evidence has submitted Form GST DRC-03 wherein vide Debit Entry no DC2407200451887/