

भारत सरका

GOVERNMENT OF INDIA

आयुक्त का कार्यालय

OFFICE OF THE PR. COMMISSIONER  
जीएसटी एवं केन्द्रीय उत्पादशुल्क आयुक्तालय, गुवाहाटी

GST & CENTRAL EXCISE COMMISSIONERATE, GUWAHATI  
जीएसटी भवन, केदर रोड, माछखोवा, गुवाहाटी-781001  
GST BHAWAN, KEDAR ROAD, MACHKHOWA GUWAHATI - 781 001

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DIN- 20230370UQ0000611423

Order-In-Original No.6 /Addl. Commr./GST /GHY/2022-23

Dated, Guwahati, the 28<sup>th</sup> Feb, 2023

मूल आदेश सं 6 /Addl. Commr. /GST/GHY/2022-23

गुवाहाटी दिनांक the 28<sup>th</sup> Feb, 2023

(संयुक्त आयुक्त जीएसटी एवं केन्द्रीय उत्पाद शुल्क गुवाहाटी द्वारा पारित)

(Passed by the Additional Commissioner, CGST & CX, Guwahati)

1. The copy is granted free of charge for the private use of the person to whom it is issued.
2. Any person deeming himself aggrieved by any decision or order passed under CGST Act, 2017 or the SGST Act may appeal against it to:- The Commissioner (Appeals), 3rd Floor, GST Bhawan, Kedar Road, Machkhowa, Guwahati-781001, where such decision or order is passed by the Additional or Joint commissioner, The Additional/ Joint Commissioner (Appeals), 3rd Floor, GST Bhawan, Kedar Road, Machkhowa, Guwahati-781001, where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent.
3. No appeal shall be filed under sub-section (1) of Section 107 of the CGST Act or the SGST Act, 2017 unless the appellant has paid: -
  - (a) In full such part of the amount of tax, interest, fine, fees and penalty arising from the impugned order, as is admitted by him
  - (b) A sum equal to 10% of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.
4. An appeal to the Appellate Authority under sub-section (1) of Section 107 shall be filed in Form GST APL-01 along with the relevant documents, either electronically or otherwise in terms of Rule 108(1) of the CGST or SGST Rules, 2017.
5. The grounds of appeal and the form of verification as contained in Form GST APL-01 shall be signed in the manner specified in Rule 26 of the CGST or SGST Rules, 2017 - Rule 108(2) of the CGST Rules or SGST Rules, 2017.
6. A certified copy of the decision or order appealed against shall be submitted within 7(seven) days of filing of the appeal in terms of Rule 108(3) of the CGST or SGST Rules, 2017.

**Subject:-Demand cum Show Cause Notices issued under C. No.V(15)313/ADJ/CGST-HQRS/GHY/GST/2021/574 dated 25/02/2022 against M/s Tata Motors, Monal Towers, 3rd. Floor, Beside SBI, G S Road, Dispur, Kamrup, Assam, 781006 - Adjudication Reg**

**BRIEF FACTS OF THE CASE**

1. A demand cum show cause notice under C. No.V(15)313/ADJ/CGST-HQRS/GHY/GST/2021/574 dated 25/02/2022 (hereinafter referred to as “the said SCN”) was issued against M/s Tata Motors, Monal Towers, 3rd. Floor, Beside SBI, G S Road, Dispur, Kamrup, Assam, 781006 (herein-after referred as the “Noticee”), holding GSTIN **18AAACT2727Q1ZV** (hereinafter referred to as “the noticee” ) by the Additional Commissioner of Central GST and Central Excise, Guwahati,. The brief of the said SCN are as follows:
  - 1.1 It appeared that the Noticee is engaged in trading as wholesaler of motor vehicles for transport of ten or more persons, including the driver with compression-ignition internal combustion piston engine under HSN 87021019.
  - 1.2 On scrutiny, it appeared that the Noticee has availed Transitional Credit of Central Tax of **Rs.3,53,47,877/- (Rupees Three Crores Fifty Three Lakhs Forty Seven Thousand Eight Hundred Seventy Seven)** only in their Electronic Credit Ledger by way of filing a declaration in column 6 of 7A of the Table 7(a) and column 8 of 7(b)of Form TRAN-1 electronically in the GST portal under Section 140 of the Central Goods and Services Tax 2017 (hereinafter referred as “the Act”), on 28.08.2017 and 19.12.2017 (revised).
  - 1.3 Correspondence was made with the noticee vide office email dated 16.09.2019 and 06.11.2020 on their registered emails requesting them to submit the relevant documents on the strength of which transitional credit so availed by the Noticee in Form TRAN-1. In response to the emails, the Noticee submitted only a very brief and incomplete summary of details of inputs held in stock or inputs contained in semi-finished or finished goods held in stock on appointed day. The noticee was yet again asked vide email dated 28.01.2022 to submit all the



invoices on the strength of which Central Tax credit to the extent of Rs.3,53,47,877/- was availed under TRAN-1 but they failed to submit the same.

1.4 As per clause (iii) of sub-Section (3) of Section 140 of the CGST Act, 2017, the prerequisites for claiming transitional 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 is 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”*.

1.5 The Noticee failed to submit the relevant documents on the strength of which they availed transitional credit. It appeared that *prima facie* there were reasons to believe that the Noticee was not in possession of the documents evidencing payment of duty under the erstwhile Central Excise Act, 1944. Hence the amount of **Rs.3,53,47,877/- (Rupees Three Crore Fifty Three Lakh Forty Seven Thousand Eight Hundred Seventy Seven)** only so availed as transitional credit by way of filing Return in Form TRAN-1 appeared to be not admissible in terms of the conditions laid down under Section 140(3) of the Act, 2017 in as much as the Noticee failed to fulfill the conditions laid down under Section 140 (3)(iii) of the CGST Act 2017.

1.6 As such, it appeared that the above amount of **Rs. 3,53,47,877/- (Rupees Three Crore Fifty Three Lakh Forty Seven Thousand Eight Hundred Seventy Seven)** is not admissible as transitional credit under GST in terms of Section 140(3) of the said Act. It appeared that the Noticee had wrongly availed credit of Central Tax amounting to **Rs.3,53,47,877/- (Rupees Three Crore Fifty Three Lakh Forty Seven Thousand Eight Hundred Seventy Seven)** under Section 140(3) of the Act, in their Electronic Credit Ledger on 28.08.2017 and 19.12.2017, which is recoverable from them along with appropriate interest and penalty in terms of the provisions of Section 73 of the Act read with Rule 121 of the CGST Rules, 2017.

1.7 In view of the above, M/s Tata Motors, Monal Towers, 3rd. Floor, Beside SBI, G S Road, Dispur, Kamrup, Assam, 781006 was called

upon to show cause to the Additional Commissioner of Central GST and Central Excise, Guwahati, as to why —

(a) Central Tax amounting to **Rs.3,53,47,877/- (Rupees Three Crore Fifty Three Lakh Forty Seven Thousand Eight Hundred Seventy Seven)** only should not be demanded and recovered from them under Section 73(1) of the Central Goods and Services Tax, 2017 read with Rule 121 of the CGST Rules, 2017.

(b) Applicable Interest on the aforesaid amount of Central Tax should not be demanded and recovered from them under Section 73(1) read with Section 50 of the Central Goods and Services Tax, 2017;

(c) Penalty should not be imposed under Section 73(9) of the Central Goods and Services Tax Act, 2017.

2. The noticee in their written reply dated 05/01/2023 *inter alia* submitted as follows-

2.1 That, vide email dated 16/09/2019 they were requested to submit documents/information like ER-1/Credit on Capital Goods etc with respect to Tran 1 credit verification. That, in response to the said mail they submitted reply along with copy of ER-1 for June, 2017/Credit on Stock-details as per format in XL file through email on 17/09/2019.

2.2 That, they sent an email requesting to allow some time to collate/arrange the 5 years old copies of physical invoices. That, subsequently, through their letter dated 26/02/2022 they submitted all the relevant copies of physical invoices in support of their Transitional Credit of Central Tax.

2.3 That, as per requirement of Section 140(3), they had correctly carried forward the Transitional Credit of Central Tax and submitted all relevant invoices/documents in support of such credit. That, thus the allegation that they failed to submit relevant documents/invoices is not correct. They stated that, they had submitted all earlier submissions/communications and copies of invoices in support of Transitional Credit once again with their reply to the SCN.



3. Personal hearing of the case was held on 07/02/2023 wherein Shri Suni Baran Mahata, Senior Manager (Indirect Taxation), Authorized Representative, appeared for hearing. He stated that all relevant documents have now been submitted hence transitional credit is eligible to them. He requested to drop the case.

### DISCUSSION AND FINDINGS

- 4.1 I have carefully gone through the records of the case, impugned show cause notice, defence reply to impugned show cause notice made by the said noticee and the submissions made during personal hearing.
- 4.2 I find that it was alleged in the said SCN that on being asked the Noticee failed to submit the relevant documents on the strength of which they availed transitional credit of **Rs.3,53,47,877/-**. It was further alleged that *prima facie* there were reasons to believe that the Noticee was not in possession of the documents evidencing payment of duty under the erstwhile Central Excise Act, 1944 and hence the above transitional credit is not admissible in terms of the conditions laid down under Section 140(3) of the Act, 2017, in as much as the Noticee failed to fulfil the conditions laid down under Section 140 (3)(iii) of the CGST Act 2017.
- 4.3 I find that Section 140(3) of the CGST Act, 2017, provides as under-
- “(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 works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th 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 or 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;*

*Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards 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.*

I find that Section 140 (3) of the CGST Act 2017, deals with Transitional Credit in respect of 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 the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer.

I further find that clause (iii) of the Section 140 (3) ibid provides that the 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 on which Transitional Credit is availed.

I find that in the SCN it was alleged the Noticee failed to fulfil the above conditions laid down under Section 140 (3)(iii) of the CGST Act 2017.



Thus, I find that the basic allegation in the SCN was non-submission of supporting documents.

- 4.4 I find that the noticee has contended that they submitted all the relevant documents vide their letter dated 26/02/2022 to the Range Officer on 28/02/2022. However, I find that the present SCN was already issued on 25/02/2022. The noticee has again submitted the documents already submitted to the Range Officer, along with their reply to the SCN.
- 4.5 I find that, the noticee has submitted break-up of their total Transitional Credit as follows-

Sl.No.	Particulars	CGST	SGST	Total
1	Excise as per closing balance on 30.06.2017 in ER1	1567064		1567064
2	Excise on stock of vehicles on 30.06.2017	33713976		33713976
3	Excise on SIT of spares on 30.06.2017	43870		43870
4	Service tax on SIT as on 30.06.2017	22968		22968
5	VAT on SIT of spares as on 30.06.2017		59850	59850
	Total	<b>35347878</b>	<b>59850</b>	<b>35407728</b>

4.5.1 I find from the copy of ER-1 return for the month of June, 2017 that the above amount of **Rs. 15,67,064/-** appearing at SL. No. 1 of the above Table was closing balance of CENVAT Credit. Therefore, I find that the noticee is eligible to take this amount as Transitional Credit in terms of Section 140 (1) of the CGST Act, 2017 which reads as follows-

*“(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 [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 :---"

4.5.2 I also find that the noticee has submitted an invoice wise statement and copies of invoices pertaining to the Excise Duty on stock of vehicles amounting to **Rs.3,36,80,543/-**, which were also submitted to the Range Officer after issuance of the said SCN. Therefore, I find that the noticee is eligible to take this amount as Transitional Credit in terms of Section 140 (1) of the CGST Act, 2017. However, I find that the noticee took Transitional Credit amounting to **Rs.3,37,13,976/-** in terms of Section 140 (1) of the CGST Act, 2017. Therefore, I find that the noticee is not eligible to take Transitional Credit of the differential amount of **Rs.33,433/-**.

4.5.3 I find that the noticee took Transitional Credit of **Rs.43,870/-** against spare parts in terms of Section 140 (5) of the CGST Act, 2017. The noticee has submitted an invoice wise statement and copies of invoices pertaining to the above amount. The said statement is reproduced below-

Tata Motors Ltd.  
GST no : 18AAACT2727Q12V

Name of the supplier	Excise Reg. No.	Invoice number	Invoice date	Description	Description1	Quantity	UQC	Value	Eligible duties and taxes	Date on which entered in recipients books of account
TATA MOTORS LTD HARYANA	AAACT2727QEM026	591097237	28.06.2017	Spareparts	TAPER ROLLER BEARING	1		135	17	14.07.2017
TATA MOTORS LTD HARYANA	AAACT2727QEM026	591097238	28.06.2017	Spareparts	TAPER ROLLER BEARING	5		675	84	14.07.2017
TATA MOTORS LTD HARYANA	AAACT2727QEM026	591097239	28.06.2017	Spareparts	TAPER ROLLER BEARING	5		675	84	14.07.2017
TATA MOTORS LTD HARYANA	AAACT2727QEM026	591097240	28.06.2017	Spareparts	ASSY.WATER PUMP-PSTGIP	1		2142	268	14.07.2017
TATA MOTORS LTD HARYANA	AAACT2727QEM026	591097241	28.06.2017	Spareparts	ASSY DRVW DOOR MTG SH	3		572	72	14.07.2017
TATA MOTORS LTD HARYANA	AAACT2727QEM026	591097242	28.06.2017	Spareparts	TAPER ROLLER BRG 12557	3		749	94	14.07.2017
TATA MOTORS LTD HARYANA	AAACT2727QEM026	591097243	28.06.2017	Spareparts	TAPER ROLLER BEARING I	3		479	60	14.07.2017
TATA MOTORS LTD HARYANA	AAACT2727QEM026	591097244	28.06.2017	Spareparts	SPIDER I ASSEMBLY DIFF	1		28	4	14.07.2017
TATA MOTORS LTD HARYANA	AAACT2727QEM026	591097245	28.06.2017	Spareparts	ASSY .ACCELERATOR CABL	1		144	18	14.07.2017
TATA MOTORS LTD HARYANA	AAACT2727QEM026	591097246	28.06.2017	Spareparts	BUSH	1		113	14	14.07.2017
TATA MOTORS LTD HARYANA	AAACT2727QEM026	591097247	28.06.2017	Spareparts	TAPER ROLLER BEARING	1		135	17	14.07.2017
TATA MOTORS LTD HARYANA	AAACT2727QEM026	8910017292	16.06.2017	Spareparts	ASSY HOUSING REAR & FR	2		15479	1935	25.07.2017
TATA MOTORS LTD JHARKHAND	AAACT2727QEM067	8910017293	16.06.2017	Spareparts	GEAR BOX HOUSING ASSY.	2		16392	2049	25.07.2017
TATA MOTORS LTD JHARKHAND	AAACT2727QEM067	8910017294	16.06.2017	Spareparts	ASSY CROWN WHEEL & PIN	2		11637	1455	25.07.2017
TATA MOTORS LTD JHARKHAND	AAACT2727QEM067	8910017295	16.06.2017	Spareparts	ASSY HOUSING REAR & FR	2		15479	1935	25.07.2017
TATA MOTORS LTD JHARKHAND	AAACT2727QEM067	8910017296	16.06.2017	Spareparts	ASSY CROWN WHEEL & PIN	2		11637	1455	25.07.2017
TATA MOTORS LTD JHARKHAND	AAACT2727QEM067	8910017297	16.06.2017	Spareparts	ASSY CW & PINION 148/7	4		29282	3660	25.07.2017
TATA MOTORS LTD JHARKHAND	AAACT2727QEM067	8910017298	16.06.2017	Spareparts	INTER AXLE DIFFERENTIAL	1		1854	232	25.07.2017
TATA MOTORS LTD JHARKHAND	AAACT2727QEM067	8910017299	16.06.2017	Spareparts	ASSY.DRIVER SEAT COMP.	2		5371	671	25.07.2017
TATA MOTORS LTD JHARKHAND	AAACT2727QEM067	8910017300	16.06.2017	Spareparts	ASSY SYNCHRONISING SLE	4		6551	819	25.07.2017
TATA MOTORS LTD JHARKHAND	AAACT2727QEM067	8910017301	16.06.2017	Spareparts	GEAR BOX HOUSING	2		7504	938	25.07.2017
TATA MOTORS LTD JHARKHAND	AAACT2727QEM067	8910017302	16.06.2017	Spareparts	CONSTANTMESH GEAR / CO	2		3383	423	25.07.2017
TATA MOTORS LTD JHARKHAND	AAACT2727QEM067	8910017303	16.06.2017	Spareparts	GEAR BOX HOUSING ASSY.	2		16392	2049	25.07.2017
TATA MOTORS LTD JHARKHAND	AAACT2727QEM067	8910017304	16.06.2017	Spareparts	ASSY DRIVER SEAT COMP.	2		5371	671	25.07.2017
TATA MOTORS LTD WEST BENGAL	AAACT2727QEM052	5810043101	18.06.2017	Spareparts	ASSY.CYLINDER HEAD CO	25		9702	1213	06.07.2017
TATA MOTORS LTD WEST BENGAL	AAACT2727QEM052	5810043102	18.06.2017	Spareparts	FUEL - WATER SEPERATOR	19		12130	1516	06.07.2017
TATA MOTORS LTD WEST BENGAL	AAACT2727QEM052	5810043103	18.06.2017	Spareparts	FUEL - WATER SEPERATOR	19		12130	1516	06.07.2017
TATA MOTORS LTD WEST BENGAL	AAACT2727QEM052	5810043104	18.06.2017	Spareparts	FUEL - WATER SEPERATOR	5		3192	399	06.07.2017
TATA MOTORS LTD KARNATAKA	AAACT2727QXM011	5210044181	21.06.2017	Spareparts	G600W BS-IV ENGINE CPT	1		44069	5509	06.07.2017
TATA MOTORS LTD KARNATAKA	AAACT2727QXM011	5210044182	21.06.2017	Spareparts	SPARE COMPLETE CYLINDER	1		37429	4679	06.07.2017
TATA MOTORS LTD KARNATAKA	AAACT2727QXM011	5210044184	21.06.2017	Spareparts	SPARE COMPLETE CYLINDER	2		74858	9357	06.07.2017
TATA MOTORS LTD KARNATAKA	AAACT2727QXM011	5210044185	21.06.2017	Spareparts	200 DIA. ASSY. CLUTCH	3		4784	598	06.07.2017
TATA MOTORS LTD KARNATAKA	AAACT2727QXM011	5210044186	21.06.2017	Spareparts	VALVE GUIDE SEAL-EXH I	10		256	32	06.07.2017
TATA MOTORS LTD KARNATAKA	AAACT2727QXM011	5210044187	21.06.2017	Spareparts	VALVE GUIDE SEAL-INLET	10		214	27	06.07.2017
Total									43870	

*D. S. S. S.*

The relevant portion of the Tran -1 is also reproduced below-



duties and taxes/VAT[ET] in respect of inputs services under section 140(5) and section 140(7):

Amount in Rupees ( ₹ )

Invoice Number	Invoice Date	Description	Quantity	UQC	Value	Eligible Duties and Taxes	VAT[ET]	Date on which entered in recipients books of account
011 5210044182	21-06-2017	Spareparts	1	Nos	44,069	5,509	0	06-07-2017
011 5210044183	21-06-2017	Spareparts	1	Nos	37,429	4,679	0	06-07-2017
011 5210044184	21-06-2017	SPAREPARTS	2	NOS	74,858	9,357	0	06-07-2017
011 5210044185	21-06-2017	Spareparts	3	Nos	4,784	598	0	06-07-2017
AACT2727QEM031 5210044186	21-06-2017	Spareparts	10	Nos	256	32	0	06-07-2017
AACT2727QEM031 5210044187	21-06-2017	Spareparts	10	Nos	214	27	0	06-07-2017
AACT2727QEM052 5810043101	18-06-2017	Spareparts	26	Nos	9,702	1,213	0	06-07-2017
AACT2727QEM052 5810043102	18-06-2017	Spareparts	19	Nos	12,130	1,516	0	06-07-2017
AACT2727QEM052 5810043103	18-06-2017	Spareparts	19	Nos	12,130	1,516	0	06-07-2017
AACT2727QEM052 5810043104	18-06-2017	Spareparts	5	Nos	3,192	399	0	06-07-2017
AACT2727QEM026 591097237	28-06-2017	Spareparts	1	Nos	135	17	0	14-07-2017
AACT2727QEM026 591097238	28-06-2017	Spareparts	5	Nos	675	84	0	14-07-2017
AACT2727QEM026 591097239	28-06-2017	Spareparts	5	Nos	675	84	0	14-07-2017
AACT2727QEM026 591097240	28-06-2017	Spareparts	1	Nos	2,142	268	0	14-07-2017
AACT2727QEM026 591097241	28-06-2017	Spareparts	3	Nos	572	72	0	14-07-2017
AACT2727QEM026 591097242	28-06-2017	Spareparts	3	Nos	749	94	0	14-07-2017
AACT2727QEM026 591097243	28-06-2017	Spareparts	3	Nos	479	60	0	14-07-2017
AACT2727QEM026 591097244	28-06-2017	SPAREPARTS	1	NOS	28	4	0	14-07-2017
AACT2727QEM026 591097245	28-06-2017	Spareparts	1	Nos	144	18	0	14-07-2017
AACT2727QEM026 591097246	28-06-2017	Spareparts	1	Nos	113	14	0	14-07-2017
AACT2727QEM026 591097247	28-06-2017	Spareparts	1	Nos	135	17	0	14-07-2017
AACT2727QEM067 8910017292	16-06-2017	Spareparts	2	Nos	15,479	1,935	0	25-07-2017
AACT2727QEM067 8910017293	16-06-2017	Spareparts	2	Nos	16,392	2,049	0	25-07-2017
AACT2727QEM067 8910017294	16-06-2017	Spareparts	2	Nos	11,637	1,455	0	25-07-2017
AACT2727QEM067 8910017295	16-06-2017	Spareparts	2	Nos	15,479	1,935	0	25-07-2017
AACT2727QEM067 8910017296	16-06-2017	Spareparts	2	Nos	11,637	1,455	0	25-07-2017
AACT2727QEM067 8910017297	16-06-2017	Spareparts	4	Nos	29,282	3,660	0	25-07-2017
AACT2727QEM067 8910017298	16-06-2017	Spareparts	1	Nos	1,654	232	0	25-07-2017
AACT2727QEM067 8910017299	16-06-2017	Spareparts	2	Nos	5,371	671	0	25-07-2017
AACT2727QEM067 8910017300	16-06-2017	Spareparts	4	Nos	6,551	819	0	25-07-2017
AACT2727QEM067 8910017301	16-06-2017	Spareparts	2	Nos	7,504	938	0	25-07-2017
AACT2727QEM067 8910017302	16-06-2017	Spareparts	2	Nos	3,383	423	0	25-07-2017
AACT2727QEM067 8910017303	16-06-2017	Spareparts	2	Nos	16,392	2,049	0	25-07-2017
AACT2727QEM067 8910017304	16-06-2017	Spareparts	2	Nos	5,371	671	0	25-07-2017
AACT2727QEM053 CENVATCREDIT001	30-06-2017	CENVAT CREDIT	1	NOS	1,11,83,314	15,67,064	0	01-07-2017
18050018596 GA/BPR/17-18/002	30-06-2017	Sales and Service	1	Nos	3,99,003	0	59,850	31-07-2017
AADC0198305T001 ML-GUV/17-18/001	27-06-2017	C and F charges	1	Nos	1,51,850	22,660	0	12-07-2017
AADC0198305T001 ML-GUV/17-18/002	27-06-2017	C&F AGENCY CHGS.	1	NOS	2,200	308	0	12-07-2017
Grand Total					1,21,07,320	16,33,602	59,850	

I find that in terms of Section 140 (5) of the CGST Act, 2017, a registered person is entitled to take Transitional Credit 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 subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day. The said Section 140 (5) of the CGST Act, 2017, is reproduced below-

“(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 tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day :”

It is found on the basis of the documents submitted by the noticee that they are eligible for the above Transitional Credit of **Rs.43,870/-** in terms of Section 140 (5) of the CGST Act, 2017.

4.5.4. I find that the noticee took Transitional Credit of **Rs.22,968/-** against input services in terms of Section 140 (5) of the CGST Act, 2017. The noticee has submitted an invoice wise statement and copies of invoices pertaining to the above amount. The said statement is reproduced below-

Tata Motors Ltd.  
GST no : 18AAACT2727Q1ZV

Sr no	DocumentNo	Pstng Date	Vendor Name	Reference	GL Description	Doc. Date	Taxable value	Service Tax
1	S101769873	10/07/2017	DELEX CARGO INDIA PVT LTD	ML-GUW/17-18/021	C&F Agency chgs.	27.06.2017	161860	22,660.00
2	S101769913	10/07/2017	DELEX CARGO INDIA PVT LTD	ML-GUW/17-18/022	C&F Agency chgs.	27.06.2017	2200	308.00
					Total		164060	22968

The relevant portion of the Tran-1 has been reproduced against para 4.5.3. above. I find that, in terms of Section 140 (5) of the CGST Act, 2017, a registered person is entitled to take Transitional Credit in respect of input services received on or after the appointed day as discussed above.

It is found on the basis of the documents submitted by the noticee that they are eligible for the above Transitional Credit of **Rs.22,968/-** against input services in terms of Section 140 (5) of the CGST Act, 2017.

4.5.5. I further find that the noticee took Transitional Credit of **Rs.59,850/-** against VAT on account of SGST. However, the noticee has neither submitted any explanation nor submitted any supporting documents in this regard.



Thus, I find that the noticee is not eligible to take Transitional Credit of this amount of **Rs.59,850/-**.

4.5.6. In view of the above I hold that the noticee took ineligible Transitional Credit of **Rs.93,283/- (Rs.33,433/- plus Rs.59,850/-)** and therefore the said ineligible Transitional Credit is recoverable from the noticee in terms of Section 73 (1) of the CGST Act, 2017 and corresponding Section of the Assam SGST Act, 2017.

4.5.7 I further hold that the noticee is also liable to pay interest on the above amount of **Rs.93,283/-** in terms of Section 50 of the CGST Act, 2017 and corresponding Section of the Assam SGST Act, 2017.

4.5.8 I also hold that the noticee is also liable for penalty under Section 73(9) of the CGST Act, 2017 and corresponding Section of the Assam SGST Act, 2017. Section 73(9) of the CGST Act, 2017 reads as follows-

*“(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.”*

Here, ten percent of the above amount being less than Rs.10,000/-, the noticee is liable for penalty of Rs.10,000/-.

4.5.9 In view of the above discussion and findings, I pass the following order.

### **ORDER**

1. I confirm the demand of above ineligible Transitional Credit of **Rs.93,283/-** in terms of Section 73(9) of the CGST Act, 2017 and corresponding Section of the Assam SGST Act, 2017.
2. I order the noticee to pay interest on the above amount of **Rs.93,283/-** in terms of Section 50 of the CGST Act, 2017 and corresponding Section of the Assam SGST Act, 2017.

3. I impose penalty of **Rs.10,000/-** on the noticee in terms of Section 73(9) of the CGST Act, 2017 and corresponding Section of the Assam SGST Act, 2017.

S>/-

(Chongneithem Changsan)  
Additional Commissioner

C. No.V(15)313/ADJ/CGST-HQRS/GHY/GST/2021/

Dated:-

To  
M/s Tata Motors,  
Monal Towers, 3rd. Floor,  
Beside SBI, G S Road, Dispur,  
Kamrup, Assam, 781006

S>/-

(Chongneithem Changsan)  
Additional Commissioner

C. No.V(15)313/ADJ/CGST-HQRS/GHY/GST/2021/

8/2-15<sup>2</sup>  
Dated:-  
09/03/2023

Copy forwarded for information and necessary action to:

1. The Principal Commissioner, GST & Central Excise, Guwahati. Copy of the Show Cause Notice is enclosed herewith.
2. The Assistant Commissioner, Guwahati Division-I, GST & Central Excise.
- ✓ 3. The Superintendent, Hqrs. System Branch, CGST, Guwahati, for uploading the order in the Department's website.

✓  
(Chongneithem Changsan)  
Additional Commissioner