



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009.</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN-20231264WT000000F585

F.No. WS07/O&A/SCN/Tran-1/Cadila-Interest/2021-22

Date of Order: - 22.12.2023

Date of Issue: - 22.12.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 52/JC/ LD /GST/2023-24

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 90 दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) 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 the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केंद्रीय जी. एस. टी. नियमावली, 2017 के नियम 108 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form GST-APL-01 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 108 of CGST Rules, 2017. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. WS07/O&A/SCN/Tran-1/Cadila-Interest/2021-22 dated 28.12.2021 issued to M/s Cadila Healthcare Ltd., having GSTIN 24AAACC6253G1ZZ at Survey No. 536, Scheme No. 63, Zydus Corporate Park, S.G. Highway, Nr . Vaishno devi Circle, Khoraj, Ahmedabad, Gujarat, 382481 (earlier situated at Office No Zydus Tower, Satellite Cross Road, Sarkhej Gandhinagar Highway, Ahmedabad, Gujarat, 380015).



BRIEF FACTS OF THE CASE

M/s Cadila Healthcare Limited, (hereinafter referred to as "the noticee") situated at Survey No. 536, Scheme No. 63, Zydus Corporate Park, S.G. Highway, Nr . Vaishno devi Circle, Khoraj, Ahmedabad, Gujarat - 382481 (earlier situated at Office No Zydus Tower, Satellite Cross Road, Sarkhej Gandhinagar Highway, Ahmedabad, Gujarat, 380015) are having GST registration and their GSTIN is 24AAACC6253G1ZZ. The Core business activity of the Noticee is manufacture and supply of (i) Human Blood; Animal Blood Prepared For Therapeutic, Prophylactic Or Diagnostic Uses; Antisera And Other Blood Fractions And Modified Immunological Products, (ii) Medicaments, (iii) Other Organic Compounds (iv) Food Preparations Not Elsewhere Specified Or Included, (v) Beauty Or Make-Up Preparations And Preparations For The Care Of The Skin (Other Than Medicaments), Including Sunscreen Or Suntan Preparations; Manicure Or Pedicure Preparations Lip Make-Up Preparations etc. falling under HSN 30021011, 30041010, 29420011, 21069011, 33041000.

2. The officers of Indian Audit & Accounts Department, office of the Principal Director of Audit (Central) Audit Bhavan, Navrangpura, Ahmedabad 380009, had audited the records/information available with the office of Central GST, Ahmedabad South and issued Statement of Fact (SoF) No. SOF Transitional Credit 84 dated 10.09.2021. Vide the said SoF Para no. 6.2.1 (iii) (Statement VI), the auditor raised one audit objection regarding 'Incorrect carry forward of credit in Tran-1 under Section 140(1) of CGST Act,2017 in respect of Non-payment of Interest'.

3. The Noticee had carried forwarded ineligible credit of Education Cess amounting to Rs. 24,57,483/- and Rs.78,92,833/- lying in the Balance of ER-1/ST Returns in Tran-1 Form. On being pointed out, the noticee reversed the same in the months of May-2018 and August-2018 respectively. However, no interest was paid on reversal of such ineligible credit amount by the noticee. Accordingly, the Show Cause Notice No. WS07/O&A/SCN/Tran-1/Cadila-Interest/2021-22 dated 28.12.2021 was issued by the Assistant Commissioner, CGST, Division-VII, Ahmedabad-South to noticee asking them to show cause as to why:-

- (i) The ineligible credit of Rs. 1,03,50,316/- shall not be demanded and recovered from them under Section 73(1) of CGST, Act, 2017. As the amount has been already paid by the noticee, the same shall not be appropriated against the demand.
- (ii) Amount of Rs. 11,28,841/-(1,82,998/-+9,45,843/-) calculated amount should not be charged and recovered from them under the Provision of Section 140(1) and Section 50(3) of CGST Act, 2017.
- (iii) Penalty should not be imposed on them under the provisions of Section 122(2)(a) read with 73(9) of the CGST Act.

4. After granting personal hearing on 19.05.2022, which was attended by Shri Amit Parmar, Manager(Taxation) of the noticee, and after considering the written reply dated 27.01.2022, the said SCN was adjudicated by the Assistant Commissioner, CGST, Division-VII, Ahmedabad South, wherein, it was ordered to recover ineligible credit of Rs.1,03,50,316/- from the noticee, it was also ordered to appropriate the amount of Rs.1,03,50,316/- paid by the noticee and the demand regarding interest and penalty was dropped vide Order-in-Original No. CGST/WS07/OIO-01(GST)/AC-RAG/2022-23 dated 16.06.2022.

5. The impugned OIO dated 16.06.2022 was reviewed by the Hon'ble Commissioner, CGST, Ahmedabad-South vide review Order No.53/2022-23 dated

08.12.2022 and directed/authorized the Assistant Commissioner, CGST, Division-VII, Ahmedabad-South for filing appeal against the impugned OIO dated 16.06.2022 on the grounds reproduced below:-

".....

4. In view of the above, it is clear that Deputy Commissioner or Assistant Commissioner of Central Excise Tax can pass orders in respect of input tax credit of central tax involving above Rs.10 Lakhs and not exceeding Rupees 1Crore. Where amount of input tax credit of central tax is more than Rs. 1 Crore, Additional or Joint Commissioner of Central Tax is the proper officer for issue of show cause notice and passing order under Section 73 and 74 of the CGST Act, 2017

5. However, without considering the monetary limit prescribed by the Board, Assistant Commissioner, CGST, Division-VII, Ahmedabad-South has passed order wherein amount of input tax credit of Central Tax involved was more than Rs.1Crore i.e., Rs.1,03,50,316/-, thereby Assistant Commissioner has exceeded his power for passing the subject order, which is not legal and proper and is required to be set aside.

..

8. For the reason stated above and in exercise of the powers conferred on me under Sub Section 2 of Section 107 of Central Goods and Service Tax Act, 2017, I am of the opinion that the Subject Order-In-Original No: CGST/WS07/OIO-01(GST)/AC-RAG/2022-23 dated 17.06.2022 (received on 20.06.2022); passed by the Assistant Commissioner, CGST, Div-VII, Ahmedabad-South in the case of M/s. Cadila Healthcare Ltd., Zydus Tower, Satellite Cross Road, Sarkhej-Gandhinagar Highway, Ahmedabad-380015, is not proper and legal and therefore, I hereby authorize the Assistant Commissioner, CGST, Div-VII, Ahmedabad-South to file an appeal against the said Order-In-Original No. CGST/WS07/OIO-01(GST)/AC-RAG/2022-23 dated 17.06.2022, before the Appellate Authority, CGST, Ahmedabad praying for relief as here below:"

6. Acting upon the direction of Hon'ble Commissioner, CGST, Ahmedabad-South, an appeal was filed by the Assistant Commissioner, CGST, Division-VII, Ahmedabad-South, before the Hon'ble Commissioner(Appeal), Ahmedabad against the impugned OIO dated 16.06.2022 issued on 17.06.2022. the Joint Commissioner (Appeals), Ahmedabad, vide OIA No. AHM-CGST-001-APP-JC-60/2023-24 dated 18.07.2023 issued on 19.07.2023 set aside the impugned OIO dated 16.06.2022 passed by Assistant Commissioner, CGST, Division-VII, Ahmedabad-South. Relevant portion of OIA is reproduced below:-

"In view of above discussions, I find that the impugned order is not legal and proper and therefore, require to be set aside. Accordingly, the appeal filed by the 'Department' is allowed and set aside the 'impugned order'."

7. Presently the noticee M/s. Cadila Healthcare Limited (GSTIN 24AAACC6253G1ZZ) is falling under the jurisdiction of CGST Ahmedabad-North Commissionerate. Accordingly, after issuing Corrigendum to SCN and making the same answerable to 'The Additional/Joint Commissioner, Central Goods & Services Tax, Ahmedabad North having office at 1st floor, Custom House, Near All India Radio, Navrangpura, Ahmedabad 380009, the said SCN was forwarded to this office vide letter F.No. WS07/O&A/SCN/Tran-1/Cadila-Interest/2021-22 dated 19.10.2023 for further adjudication.

8. SUBMISSION AND PERSONAL HEARING:

The noticee had submitted written reply dated 27.01.2022. Relevant part of same is reproduced as under:-

"Reversal of transitional ITC of Cess

2.1 With the introduction of GST majority of the erstwhile taxes subsumed into GST. Transitional provisions [Section 140 (1)] of the Act allowed the assesseees to carry forward the unutilized balance of CENVAT credit as on 30 June 2017 through the filing of form TRAN-1. We have produced below the extract of Section 140(1) before amendment.

"(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:

Explanation 1. For the purposes of sub-sections (3), (4) and (6), the expression "eligible duties" means-"

From the above, it is clear that the meaning of 'eligible duties' was defined for subsections 3, 5, and 6 and not for subsection (1) of Section 140.

2.2 Given above, The Company had filed form TRAN-1 and carried forward the credit of EC and SHEC (Cess) amounting to INR 1,03,50,316/- among other credits in the month of December 2017 as transitional ITC.

2.3 However, pursuant to CGST (Amendment) Bill, 2018 (which has been made effective from 1 February 2019) Section 140 got amended to exclude the ITC of Cess within its scope retrospectively. The relevant extract of the amended section has been reproduced below.

"In section 140 of the principal Act, with effect from the 1st day of July, 2017,-

(a) in sub-section (1), after the letters and word "CENVAT credit", the words "of eligible duties" shall be inserted and shall always be deemed to have been inserted;

(b) in the Explanation 1-

(i) for the word, brackets and figures "sub-sections (3), (4)", the word, brackets and figures "sub- sections (1), (3), (4)" shall be substituted and shall always be deemed to have been substituted;

(ii) clause (iv) shall be omitted and shall always be deemed to have been omitted;

(c) in the Explanation 2-

(i) for the word, brackets and figure "sub-section (5)", the words, brackets and figures "sub-sections (1) and (5)" shall be substituted and shall always be deemed to have been substituted;

(ii) clause (iv) shall be omitted and shall always be deemed to have been omitted;

(d) after Explanation 2 as so amended, the following Explanation shall be inserted and shall always be deemed to have been inserted, namely:-

'Explanation 3.-For removal of doubts, it is hereby clarified that the expression "eligible duties and taxes" excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975).....'

2.4 Pursuant to the above, the Company reversed the ITC of Cess amounting to INR 1,03,50,316 in the GSTR 3B of August 2018. Here, it is worth noting that even though the CGST Amendment Act became applicable from 1 February 2019 the Company reversed the credit as soon as the bill received president assent.

➤ **Imposition of interest on such reversal by Authority.**

2.5 Nonetheless, the Company has been asked to pay interest on such reversal vide impugned SCN.

In this regard, we would like to submit that the balance in E-Credit Ledger (ECL) never went below INR 1,03,50,316 from December 2017 to August 2018. This is a well-settled principle that interest liability cannot arise where the assessee is having a sufficient balance of ITC. The same position has been substantiated by the press release dated 14 March 2020 which made the proviso to section so effective retrospectively which clears the anomaly that interest is leviable only on the net portion of the tax paid by cash.

2.6 Above has been notified vide Notification no.16/2021- Central Tax dated 1st June 2021 which retrospectively amended Section 50 (Interest on delayed payment of tax) to levy interest on net cash tax liability. Relevant extract of the amended Section 50 has been reproduced below.

".....In section 50 of the Central Goods and Services Tax Act, in sub-section (1), the following proviso shall be inserted, namely:-

"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger."

In the support of this, we would like to refer to the recent judgment of Hon'ble Madras High Court. of Refex Industries Ltd. Vs Assistant Commissioner of CGST & Central Excise (Madras High Court), the matter of case which is similar to the present case. In this case, it was held that Section 50 that provides for levy of interest on belated payments would apply only to payments of tax by cash, belatedly, and would not stand triggered in the case of available ITC, since such ITC represents credit due to an assessee by the Department held as such. Relevant extract of the same has been reproduced below.

".....The use of the word 'delayed' connotes a situation of deprivation, where the State has been deprived of the funds representing tax component till such time the Return is filed accompanied by the remittance of tax. The availability of ITC runs counter to this, as it connotes the enrichment of the State, to this extent. Thus, Section 50 which is specifically intended to apply to a state of deprivation cannot apply in a situation where the State is possessed of sufficient funds to the credit of the assessee. In my considered view, the proper application of Section 50 is one where interest is levied on a belated

cash payment but not on ITC available all the while with the Department to the credit of the assessee. The latter being available with the Department is, in my view, neither belated nor delayed....."

Further, it was held by the Hon'ble High Court that the proper application of Section 50 is one where interest is levied only on a belated cash payment. ITC, being available with the department is neither belated nor delayed. Proviso to Section 50(1) of the Act as per which interest is leviable only on that part of tax which is paid in cash has been inserted w.e.f 1-8-2019, but clearly seeks to correct an anomaly in the provision as it existed prior to such insertion. Hence, the Proviso must be read to be clarificatory and operative retrospectively.

2.7 *Given Above, it is clear that the Company is not liable to pay interest on the amount of the transitional ITC of Cess so reversed.*

Allowance of Cess ITC by Madras High Court.

Furthermore, in the recent judicial precedent of [Sutherland Global Services Private Limited Vs Assistant Commissioner CGST and Central Excise (Madras High Court)], it was held that, while integrating the taxes, the intention of the Government was evidently to provide a seamless model for transitioning of all credits availed of by an assessee under the erstwhile regime to the GST regime as well. The benefits that had been made available and that had been permitted to continue in the erstwhile taxing regime were thus meant to be continued. A fiscal statute has to be read and understood, as seen. The interpretation should be on the basis of what is apparent, apart from being strict. These are settled principles that need no reiteration, nor support of case law. If one were to apply these propositions to the case on hand, the provisions of Section 140(1) provide for the transfer of all credits and levies, barring those set out in the proviso, which is, (i) where the said amount of credit is inadmissible as ITC, (ii) where an assessee has not furnished returns required under the existing law for six preceding months, (i) where the said credit relates to goods manufactured and cleared under exemption notifications. These are the only three conditions/embargoes that bar the transfer of accumulated credit. The language of Section 140(1) and (8), both make it clear that an assessee to GST is entitled to transition of the amount of Cenvat credit carried forward in the return relating to the period ending with the date preceding the appointed date' and this in the present case includes accumulated credit of EC, SHEC and KKC. The relevant extract of the judgement has been reproduced below.

"The intention of the Government, while introducing GST, was to provide a seamless model for transitioning all CENVAT credits hitherto availed by a taxpayer under the erstwhile law by subsumption of historical taxes.

- *Credits continue to be available until such time that they are expressly stated to have lapsed by the statute. Additionally, the Revenue was not able to provide any mention of a policy document by Central Board of Indirect Taxes and Customs indicating the complete lapse of such cess credit.*
- *Availment of credit and its utilisation thereof is a substantive right of the taxpayer and should be denied only in the event of an express legal prohibition to this effect,*
- *Sections 140(1) and 140(8) of the CGST Act allow the transition of credit carried forward in a return furnished under the erstwhile law, subject to*

fulfillment of certain conditions. The credit of cesses reflected in the return cannot be denied in the event that the taxpayer satisfies all such conditions.

- Section 140(1) of the CGST Act, was amended to contextualise the phrase "CENVAT credit" with the term "eligible duties." "Eligible duties" is in turn defined in Explanations 1 and 3 to section 140(1) of the CGST Act.
- However, section 140(8) of the CGST Act, governing the transition of CENVAT credit by service providers operating under a centralised registration, was not similarly amended. Accordingly, any person having a centralised registration under the erstwhile regime becomes entitled to claim transitional credit of cesses under section 140(8) of the CGST Act."

2.8 Given above, it can be inferred that pursuant to the above judgment, even though, the Company can rightfully avail and utilize ITC of EC and SHEC for the payment of GST, the Company has not utilized the said credit:

2.9 In light of the foregoing discussions, in no way, the Company can be asked to make payment of interest on the amount of EC and SHEC (INR 1,03,50,316) which has been reversed by the Company.

➤ **Imposition of interest and penalty**

2.10 In the present case, the Company has been also asked to show cause as to why the interest under Section 73 should not be imposed upon the assessee. In this regard, we would like to submit that is clear from the above that interest implication will not get triggered as the Company is having sufficient balance of ITC and interest implication arises only when there is belated payment of tax which is made in cash and not through ITC. This change will apply on a retrospective basis with effect from July 1, 2017, the date on which GST law came into force. In the present case, as the Company is having sufficient ITC balance in the ECL. and also the balance of ITC never went below the amount required to be reversed, there was no payment done in Cash. Therefore, there is no interest implication involved.

2.11 In the present case, the Company has been also asked to show cause as to why the penalty under Section 73 should not be imposed upon the assessee. In this regard, we would like to submit that penalty can be imposed only when there is active concealment or deliberate misstatements of facts by the Company. In the present case, the Company has not made the mistake deliberately. Furthermore, it is a well-settled law that penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or guilty of conduct, contumacious or dishonest, or acted in conscious disregard to its obligation. Therefore, the question of imposition of the penalty does not arise at all."

9. Personal Hearing

In this instant Case, Personal Hearings were fixed on dated 08.12.2023 & 18.12.2023. Shri Vaibhav Vahia, Sr. Manager of the noticee and Shri Amit Parmar Manager appeared on behalf of the Noticee on 18.12.2023. During personal Hearing, they reiterated their submission made on 27.01.2022 and requested to decide the matter on merits.

10. Discussion and findings

10.1 I have carefully gone through the Show Cause Notice and relevant documents and submission made by noticee in written reply and oral submission made at the time of personal hearing. I find that the show cause notice was issued

on ground that the noticee had carried forward ineligible credit of Education cess lying in the balance of ER-1/ST Returns in Tran-1 which was not allowed. On being pointed out, the credit of Rs. 24,57,483/- was reversed by the noticee on May 2018 but they had not paid any interest on the said amount of ineligible credit. It was also found that the noticee had also taken ineligible credit of 78,92,833/- in their Tran-1 but subsequently reversed the same in the month of August 2018 but failed to pay interest under Section 50 of the CGST Act, 2017. Total amount of interest came to Rs. 11,28,841/- as per Section 50 of CGST Act, 2017

10.2 The noticee in their reply submitted that during the initial months of GST implementation, the Noticee had availed ITC of Education Cess (EC), Secondary and Higher Education Cess (SHEC), collectively known as "Cess"] as transitional credit in terms of Section 140 of the CGST Act ('Act) as there was no absolute clarity regarding admissibility of the ITC of Cess.

10.3 Pursuant to CGST (Amendment) Bill, 2018, dated 29th August 2018, which specifically disallowed the ITC of Cess retrospectively, the Noticee reversed the said ITC of Cess partially in GSTR 3B of the month of May 2018 and remaining in the GSTR 3B of August 2018 and they have tabulated below the amount of ITC of Cess reversed by the Company for ease of reference:-

Sr. No.	Reversal Month	Days	Amount	Rate of Interest	Interest
1	May 2018	151	Rs. 24,57,483/-	18%	Rs. 1,82,998/-
2	August 2018	243	Rs. 78,92,833/-	18%	Rs. 9,45,843/-
Total			Rs. 1,03,50,316/-		Rs.11,28,841/-

10.4 Let me first discuss about the Section 140 of CGST Act, 2017 which provides the Transitional arrangements for input tax credit, I have carefully gone through Sub-Section 1 of Section 140 of CGST Act, 2017, which provides the entitlement of Cenvat Credit carried forward in return filed under erstwhile tax regime. The said sub-rule is reproduced below for ease of reference:-

(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 ¹[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 ²[within such time and] 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.

*** Enforced w.e.f . 1st July, 2017.**

1. Inserted w.e.f. 01.07.2017 by s.28 of The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) - Brought into force w.e.f. 01st February, 2019.

2. Inserted w.e.f. 01.07.2017 by s.128 of The Finance Act, 2020 (No. 12 of 2020)- Brought into force w.e.f 18.05.2020 vide Notification No. 43/2020-C.T., dated 16-5-2020.

On going through the above sub-rule, it can be observed that any registered person, other than a person opting to pay tax under section 10, is entitled to take the credit of amount of Cenvat Credit of eligible duty carried forward in their erstwhile return. However, the Section 140 of CGST Act, 2017 was amended vide THE Central Goods and Services Tax (Amendment) Act, 2018, dated 28.08.2018 through which after the word 'Cenvat Credit' the word 'of eligible duty' were inserted retrospectively w.e.f 01.07.2017. Further, in the Explanation 1 for Sub-Section sub-sections (1), (3), (4)] and (6) & Explanation 2 for sub-sections (1) and (5) the term 'Eligible Duties' & 'Eligible duties and taxes' were explained which is reproduced below-

Explanation 1. -For the purposes of ¹⁰[sub-sections (1), (3), (4)] and (6), the expression "eligible duties" means-

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(iv) "[****];

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986); and

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001 (14 of 2001),

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

Explanation 2. -For the purposes of ¹⁰[sub-sections (1) and (5)], the expression "eligible duties and taxes" means-

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(iv) "[****];

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001 (14 of 2001); and

(viii) the service tax leviable under section 66B of the Finance Act, 1994 (32 of 1994),

in respect of inputs and input services received on or after the appointed day.

¹²[**Explanation 3.**- For removal of doubts, it is hereby clarified that the expression "eligible duties and taxes" excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975).]

*** Enforced w.e.f . 1st July, 2017.**

10. Substituted by s.28 of the Central Goods and Services Tax (Amendment) Act, 2018 w.e.f 01.07.2017 and shall always be deemed to have been substituted. This amendment, not yet enforced.

11

12. Inserted w.e.f. 01st July, 2017 by s.28 of The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) - Brought into force w.e.f. 01st February, 2019.

10.5 On perusal of above explanations, it is observed that the explanation of the word 'eligible duties' and 'eligible duties and taxes' for [the sub-sections (1), (3), (4)] and [sub-sections (1) and (5)] were substituted with effect from 01.07.2017. The word "eligible duties and taxes" was further clarified by the explanation-3, which is also inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 retrospectively w.e.f 01.07.2017. After these amendments, the noticee were not ineligible for the credit availed on Cess i.e., Education Cess and SHEC. Accordingly, the noticee reversed the Cenvat Credit amounting to Rs. 1,03,50,316/- availed by them in Dec-2017 on Cess in GSTR-3B returns for the months of May-18 & August -2018 as detailed in table below:-

Sr. No.	Reversal Month	Days	Amount
1	May 2018	151	Rs. 24,57,483/-
2	August 2018	243	Rs. 78,92,833/-
Total			Rs. 1,03,50,316/-

10.6 As discussed above, I find that the before commencement of the explanation 3, there no clarity regarding admissibility of Cenvat Credit was provided in the statute which led to availment of Cenvat Credit of ineligible credit of Education Cess and Secondary Higher Education Cess by the noticee. In their reply, the noticee have stated that pursuant of CGST (Amendment) Act, 2018, which specifically disallowed the ITC of Cess retrospectively, they have reversed the Cenvat Credit availed in respect of Cess in month of May-18 and Aug-2018.

10.6 I have verified the electronic Credit Ledger (ECL) of the noticee where I find that the balance of respective head in ECL never went below INR 1,03,50,316 for

the period from December 2017 to August 2018, therefore it appeared that they had availed the credit of Rs. 1,03,50,316/-, however, balance in ECL did not fall below the said amount for the period from December 2017 to August 2018. I find that the Interest on wrongly availed ITC is dealt with the provision of Section 50 of CGST Act, 2017 read with Rule 88B of the CGST Rules, 2017. Accordingly, it is pertinent to discuss the same to determine as to whether interest is leviable on such ITC. Section 50 of the CGST Act, 2017 and Rule 88B are reproduced below for ease of reference:-

"Section 50. Interest on delayed payment of tax

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:

¹[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

²[(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed]

***Enforced w.e.f. 1st July, 2017.**

1* proviso of section 50

Brought into force on 1st June, 2021 vide Notification No. 16/2021-Central Tax dated 1st June, 2021. Whereas, the said amendment got the assent of President of India on 28.03.2021.

2. Substituted (w.e.f. 1st July, 2017) by s. 111 of The Finance Act 2022 (No. 06 of 2022) - brought into force w.e.f 05-07-2022 vide Notification No. 9/2022-C.T, dated 05-07-2022 .Whereas, the said amendment got the assent of President of India on 31.03.2022."

" Rule 88B. Manner of calculating interest on delayed payment of tax.-

(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.

(2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.

Explanation.-For the purposes of this sub-rule, -

(1) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

(2) the date of utilisation of such input tax credit shall be taken to be, -

(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or

(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases."

10.7 From the plain reading of Section 50(3) of CGST Act, 2017, it can be observed that the said sub-section provides that "interest shall be calculated, in such manner as may be prescribed". The said sub-section does not provide any mechanism for calculation of interest. The same is provided in Rule 88B, which was inserted vide Notification No. 14/2022-CT dated 05.07.2022 w.e.f. 01.07.2017. Sub-rule 3 of the said rule provides that interest is to be calculated for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal. Accordingly, interest is only to be levied only if ITC is utilized. Further, Explanation 1 to the said sub-rule further clarifies as to when the ITC is construed to be utilized. As per the said explanation, input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed. In this case, however, balance in electronic credit ledger did not fall below the ITC availed by the noticee. Accordingly, on the basis of facts and provisions of Section 50 of the CGST Act, 2017 read with Rule 88B of the CGST Rules, 2017, I find that no interest is not leviable in the present case as the noticee did not utilize the ITC of Cess availed by them. Accordingly, I do not propose to levy interest in this case.

10.8 Penalty under Section 122(2)(a) read with Section 73(9) of CGST Act, 2017 has also been demanded from the noticee. In this regard, I find that the present Show Cause Notice has been issued to notice under Section 73 of the CGST Act, 2017. Accordingly, it is pertinent to discuss provisions of sub-section (5), (6) and (8) of Section 70 of the CGST Act, 2017. The said sub-section is reproduced for ready reference:-

"(5) The person chargeable with tax may, before service of notice under subsection (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment."

(6) The proper officer, on receipt of such information, shall not serve any notice under subsection (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded."

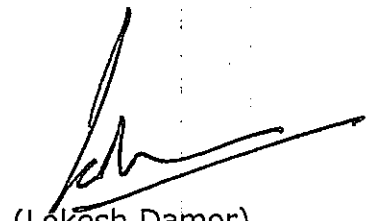
10.9 As per the provisions of above sub-section, if the person chargeable with tax makes payment of amount of tax along with interest payable thereon within before service of notice and informs proper officer in writing, Show Cause Notice is not required to be issued. I find that the present Show Cause Notice was issued on 28.12.2021 and at that time Rule 88B was not inserted and prior to insertion of the said Rule, interest calculation was to be done on amount of ITC availed and hence the present Show Cause Notice might have been issued. However, after insertion of Rule 88B of the CGST Rules, 2017 w.e.f 01.07.2017, there is no confusion as regards calculation of interest on ITC and interest is to be calculated on the amount of ITC utilized only. I find that in the present case, the noticee had reversed ITC of Cess availed by them before issuance of Show Cause Notice and as per the provisions of Section 50(3) CGST Act, 2017 read with Rule 88B of the CGST Act, 2017, no interest is payable by them. Accordingly, entire amount is payable by them was paid by them before issuance of Show Cause Notice and no penalty is payable in view of the provisions of sub-section (6) and sub-section (8) of the Section 73 of the CGST Act, 2017, Show Cause Notice was not required to be issued to them. Accordingly, I do not propose to levy penalty under Section 122(2)(a) of the CGST Act, 2017.

11. In view of the above findings, I pass the following order.

ORDER

- (i) I order to recover the ineligible credit of Rs. 1,03,50,316/- from the noticee under Section 73(1) of CGST act, 2017. As the amount of Rs. 1,03.50,316/- has already been paid by the noticee, I order to appropriate the same against the said demand.
- (ii) I do not order for recovery of any Interest under Section 50 of CGST Act, 2017.
- (iii) I do not impose any penalty on M/s. Cadila Healthcare Limited, situated at Office No Zydus Tower, Satellite Cross Road, Sarkhej-Gandhinagar Highway, Ahmedabad 3800015, under section 73(9) and 122(2) of CGST Act.2017.

12. The Show Cause Notice No. WS07/O&A/SCN/Tran-1/Cadila-Interest/2021-22 dated 28.12.2021 has been disposed of in the above manner.



(Lokesh Damor)
Joint Commissioner,
CGST, Ahmedabad -North.
Date:22.12.2023

F No. WS07/O&A/SCN/Tran-1/Cadila-Interest/2021-22

By RPAD/E-mail

To,
M/s Cadila Healthcare Limited,
Survey No. 536, Scheme No. 63,
Zydus Corporate Park, S.G. Highway,
Nr . Vaishno devi Circle, Khoraj, Ahmedabad

Copy to:-

- 1) The Commissioner, CGST, Ahmedabad-North.
- 2) The Deputy/Assistant Commissioner, CGST, Division-VII, Ahmedabad-North for kind information and record please.
- 3) The Superintendent, CGST , Range-IV, Division-VII, Ahmedabad-North with a request to upload the DRC-07 electronically in the portal.
- 4) The Superintendent (System), CGST, HQ, Ahmedabad-North with a request to upload the OIO on Ahmedabad-North CBIC website.
- 5) Guard File.

