



<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
फा.सं./F.No. GST/15-319/OA/2021

DIN-20231264WT000000B3B2
आदेश की तारीख/Date of Order: - 26.12.2023
जारी करने की तारीख/Date of Issue :- 26.12.2023

द्वारा पारित/Passed by:- लोकेश डामोर //Lokesh Damor
सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 54/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 रू. 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 रू .5) 00. पांच रूपये (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. GST/15-319/OA/2021 dated 12.08.2022 issued to M/s Torque Automotives Private Limited., having GSTIN 24AACCT6528R1ZR, 2nd Floor, Mrudul Tower, Behind Times of India, Ashram Road, Ahmedabad, Gujarat-380009.



Brief facts of the case:-

M/s Torque Automotive Private Limited, 2nd Floor, Mrudul Tower, Behind Times of India, Ashram Road, Ahmedabad, Gujarat, 380009 having GSTIN 24AACCT6528R1ZR (hereinafter referred to as the "the noticee" for sake of brevity) is engaged in the business of trading of "motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars vehicles specially designed for travelling on snow; golf cars and similar vehicles electrically operated", which fall under purview of Central Goods & Service Tax Act, 2017 (herein after referred to as "CGST Act 2017") and availing the benefit of Input Tax Credits on inputs, capital goods and inputs services under the Central Goods & Service Tax Rules, 2017 (herein after referred to as "CGST Rules, 2017").

2. During the course of Tran-1 verification, it was observed that the Noticee had filed Tran-1 return on 28.10.2017, wherein they had carried forward Input Tax Credit as under Section 140 of the CGST Act, 2017 read with Rule 117 of the CGST Rules, 2017. The same is reproduced as under:

"7(a) Amount of duties and taxes on input claimed as credit excluding the credit claimed under Table 5(a) (under sections 140(3), 140(4)(b) and 140(6) and 140(7))-

(Amount in Rs.)

Sr. No.	Details of inputs held in stock				Eligible Duties Paid on such inputs
	HSN (as applicable)	Unit	Qty	Values	
7A.	Inputs where duty paid invoices (including Credit Transfer Document (CTD)) are available			14,25,55,785/-	2,95,18,102/-
GROSS TOTAL OF EXCESS CREDIT AVAILED					2,95,18,102/-

3. The relevant provisions of Section 140 reproduced is 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, within such time and in such manner as may be prescribed, subject to]107 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.

(4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994, but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,—

- (a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and*
- (b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).*

(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished [goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to]109 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 not paying tax under section 10;

(iii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and

(v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as [credit under this Act, within such time and in such manner as may be prescribed, even if] the invoices relating to such services are received on or after the appointed day.”

4. In terms of the above provisions, it appeared that the Noticee were entitled to carry forward only amount of duties and taxes on input claimed as credit excluding the credit claimed under Table 5(a) (under sections 140(3), 140(4)(b) and 140(6) and 140(7)) of the CGST Act, 2017. In the instant case, the Noticee had claimed the quantum of Cenvat Credit as detailed in Para 2 hereinabove. The noticee had claimed the stock credit of Rs. 2,95,18,102/-, however, except summary of this credit, no other supporting documents were available on record to substantiate this claim of the noticee.

5. Therefore, email dated 10.12.2021 and letter dated 13.12.2021 were issued to the noticee by Jurisdiction Range Office (JRO) to clarify the same and to submit relevant documents for verification, but letter was returned by postal authorities with remark as “LEFT”. Therefore, the noticee had failed in

providing documents in respect of the Cenvat Credit wrongly transited to GST regime through TRAN 1. Thus, there were no invoices establishing the involvement of credit have been furnished by the noticee till date.

6. It appeared that the noticee had not replied to any of the letter or mail sent by the JRO. Thus, it appeared that the noticee had failed to provide documents in respect of credit taken in Para 2 hereinabove. Hence, there was no other option left but to issue a notice against the wrong availment of Cenvat Credit in Tran-1 by the noticee.

7. In terms of the above provisions, it appeared that the Noticee had wrongly transited the amount of CENVAT Credit to the tune of Rs. 2,95,18,102/- in contravention of Section 140 of the CGST Act, 2017 read with Rule 117 of the CGST Rules, 2017. Therefore, **Rs. 2,95,18,102/-** appeared to be recoverable from them under Section 73(1) of the CGST Act, 2017 along with Interest under Section 73(5) of the CGST Act, 2017, the Noticee had rendered themselves liable for penal action under Section 122(2) of the CGST Act, 2017.

8. As a part of Dispute Resolution initiative of the department, the said assessee was given an opportunity for pre-show cause consultation/ DRC-01 A on 21.07.2022 at 11.30 hrs vide letter F.No. GST/15-319/OA/2021 dated 13.07.2022 before the Joint Commissioner of Central GST & Central Excise, Ahmedabad- North, before issuance of Show Cause Notice. The pre- show cause consultation letter returned undelivered. Therefore, one more pre- show cause consultation on 10.08.2022 at 12.00 hrs was granted to the assessee vide letter F.No. GST/15-319/OA/2021 dated 27.07.2022.

9. In response to the pre- show cause consultation/ DRC-01 A, Sh. Parag Sheth, Resolution Professional (IP Registration No. IBBI/IPA-002/IP-N00142/2017-18/10381) vide letter dated 08.08.2022 sent by mail (cirp.torque@gmail.com) dated 08.08.2022 informed that he had filed an application for initiation of liquidation M/s Torque Automotive Pvt Ltd. vide IA No. 335 of 2022 with the Hon'ble National Company Law Tribunal, Ahmedabad Bench, which has been kept in abeyance by the Hon'ble Supreme Court in Civil Appeal no. 2841/2022 vide order dated 15.07.2022.

10. Therefore, a SCN F. No. GST/15-319/OA/2021 dated 12.08.2022 was issued to M/s Torque Automotive Private Limited, 2nd Floor, Mrudul Tower, Behind Times of India, Ashram Road, Ahmedabad, Gujarat, 380009 called upon to show cause as to why:

- (i) Input Tax Credit of Rs. 2,95,18,102/- (Rupees Two Crore Ninety Five lakhs Eighteen Thousand and One Hundred Two Rupees Only) as determined should not be demanded and recovered under Proviso to Section 73 (1) of the Act;
- (ii) Interest at the appropriate rate on the amount mentioned at Sr. No. (i) above should not be charged and recovered from them under Section 73(5) of the Act;
- (iii) Penalty on the amount mentioned at Sr. No. (i) above should not be charged and recovered under the provisions of Section 73(1) read with 122(2)(a) of CGST Act, 2017;

Defense submission:

11. The noticee had submitted written reply dated 04.12.2023. Relevant part of same is reproduced as under:-

"Torque Automotive Private Limited was a first stage dealer of motor vehicles as manufactured by Skoda India Private Limited under the brand name — "SKODA." The Company has dealership to buy and sell the motor vehicles based in Gujarat. During the financial year 2017-18, the Company had active business of automobile dealership and was regular in compliance of various laws affecting the business of the Company. Due to unforeseen and unexpected reason, Torque Automotive Private Limited had filed an application for initiating the liquidation vide petition no. IA 335 of 2022 with Honourable National Company Law Tribunal (NCLT), Ahmedabad Branch; and the said matter is in the stage of hearing at the forum of Honourable NCLT. As per the direction of Honourable NCLT Bench, the Company has submitted all the original documents pertaining to the Company including purchase invoices, vouchers, documents, contracts, letters, statements, books of accounts of all years to the appointed CIRP/liquidator for custody and proceedings of the Honorable NCLT Bench.

Prior to implementation of GST, the Company was charged following duties and taxes on supply of vehicles by the supplier namely,

- a) excise at the rate of 24% to 27% on basic; -*
- b) NCCD taxes on at the rate of 1% on basic price*
- c) Auto Cess at the rate of 0.125% on basic price*

All the above charges levied by the Central Government were NOT eligible for input tax credit or cenvat under the earlier indirect taxes law prior to 01-07-2017. Afterwards, the Company was charged IGST at rate of 28% on basic value of purchase and cess at the applicable rates, which were eligible for GST credit against outwards supply by the Company under the Good and Service Tax regime. On implementation of GST Law with effect from 01-7-2017, the Company claimed transitional credit of taxes paid under the earlier law on the closing stock of inventory as on 30-06-2017 in Form No. GST-TRANS-1 during FY – 2017-18 as per the provisions of Section 140(3) of the CGST Act, 2017 read with CGST Rules, 2017.

Section 140(3) of the Act is read out 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, within such time and in such manner as may be prescribed, subject to]93 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 safeuuards 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. he allowed to take credit at such rate and in such manner as may be prescribed.

As the Company was the first stage automobile dealer of Skoda India Private Limited, the Company was rightly eligible for claiming the excise duty, NCCD taxes and Auto Cess on the stock held by the Company as on 30-06-2017. Based on the information available with the Company; and on the basis of the purchase register maintained in the books of accounts of the Company, we are submitting herewith the extract of purchase register details of the closing stock and of the Company as on 30-06-2017 as per Exhibit-I, with bifurcation into duties which the Company has claimed credit in Form GSTR-TRANS-1 under the transition provision of the CGST Act, 2017.

We hereby also submit the balance sheet and profit and loss account of the Company as of 30-06-2017 as per Exhibit-11 to ensure that the Company was rightly holding the stock as on the GST implementation date.

Accordingly, the Company has rightly claimed the GST credit amounting to Rs. 2,95,18,1021-in Form GST Tran-1 dated 28-10-2017; and the said notice is to be disposed off accordingly.

As the Company is already into liquidation and the registered address and correspondence e-mail id of the Company are not operational at present, we were not able to receive the notices pertaining to the said matter; otherwise we are always ready to comply with the law on a timely manner.”

Personal hearing:

12. The tax payer had been given opportunity to be heard in person on 25.09.2023, 26.10.2023, 09.11.2023 and 08.12.2023 vide this office letters F. No. GST/15-319/OA/2021 dated 15.09.2023, 19.10.2023, 01.11.2023 and 29.11.2023 respectively. CA Pooja K. Agrawal, authorized representative of the noticee appeared and re-iterated written submission dated 04.12.2023 and requested to decide the matter on merits.

Discussion and findings:

13. I have carefully gone through show cause notice, the facts of the case available on record and written submission made by the noticee.

14. I find that the issue involved in the present case for consideration is whether the Transitional Credit of Rs. 2,95,18,102/- taken by the noticee in the Tran-1 return under Section 140 of the CGST Act, 2017 read with Rule 117 of the CGST Rules, 2017 is admissible to the them.

15. In respect of said issue, I find that the noticee had filed Tran-1 on 28.10.2017 and had carried forward input tax credit of Rs. 2,95,18,102/- by entry in 7A in Table 7(a) of Tran-1. The description of table 7(a) in the TRAN-1 filed by the noticee reads as "Amount of duties and taxes on inputs claimed as credit excluding the credit claimed under Table 5(a) (under section 140(3), 140(4)(b) and 140(6) and 140(7) wherein the entry 7A is shown as "Where duty paid invoices {including Credit Transfer Documents (CTD) are available.

16. The instant show cause notice for demand of Rs.2,95,18,102/- was issued under Section 73 of the CGST Act, 2017 mainly on the grounds that the noticee had not submitted the documents in order to verify the genuineness of the eligible credit carried forward in TRAN-1. Section 140 of the CGST Act contains elaborate provisions relating to transitional arrangements for input tax credit. From perusal of section 140 of the CGST Act, 2017, it is evident that the possession of invoice or other prescribed documents, issued not earlier than twelve months immediately preceding the appointed day i.e. 01 July 2017, evidencing payment of duty under the existing law in respect of such inputs is pre-requisite to take any input tax credit in Tran-1 in Entry 7A of table 7(a) of Tran-1. Further in respect of inputs or input services received on or after the appointed day, the registered person would be entitled to take credit of eligible duties and taxes on the grounds that the duty or tax in respect of such inputs or input services have been paid by the supplier under the existing law, within such time and in such manner as may be prescribed, subject to the condition that the invoice or any other duty or taxpaying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day.

17. In the present case, I find that the noticee had taken TRAN-1 credit of Rs.2,95,18,102/- under Section 140 of the CGST Act, 2017 by entry in 7A in Table 7(a) of TRAN-1, however, the noticee did not submit the relevant documents to the proper officer to substantiate their claim of transitional credit taken by them in Tran-1. In the absence of the requisite documents, it was not possible to ascertain admissibility of transitional credit claimed by the noticee which resulted into issuance of the instant show cause notice. Further, in the submission dated 04.12.2023 made by the noticee, they have submitted copy of purchase register details of the closing stock of the company as on 30.06.2017, however, they have not submitted any copy of invoice or any other

prescribed document, evidencing payment of duty under the existing law in respect of such inputs to prove the veracity of the TRAN-1 credit claimed by them in Tran-1 and in absence of the same, the genuineness and admissibility of the disputed credit availed through TRAN-1 cannot be ascertained. Accordingly, I am inclined to hold that the Input Tax Credit carried forward by the noticee in their Electronic Credit Ledger through TRAN-1 is not admissible in view of the non-submission of supporting documents and the same is required to be recovered from the noticee under provisions of Section 73(1) of the Central Goods and Services Tax Act, 2017.

18. Now, I would like to discuss the applicability of interest. I find that the noticee have not reversed/paid the Input Tax Credit carried forward in their Electronic Credit Ledger through TRAN-1. I also observe that the noticee have nowhere claimed that they have not utilized the ITC availed through TRAN-1, nor have they produced any document to this effect before me. It is incumbent upon me to mention it here that once the wrongly availed credit has been utilised for discharging the output liability, the same needs to be recovered or reversed along with applicable interest. I find that the case before me, no reversal of wrongly availed Input Tax Credit has been done and no interest on such Input Tax Credit has been paid by the noticee. The provisions of Section 50(3) of the CGST Act, 2017, prescribe interest on Input Tax Credit wrongly availed and utilised. For ease of reference the relevant provisions is reproduced as under:-

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:

[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.

[(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].

19. In view of above, it is evident that interest liability would squarely arise on wrong availment of Input Tax Credit and subsequent to utilization of the same. I find that the noticee have failed to reverse/pay such wrongly availed ITC and did not pay applicable interest on such wrong availment and utilization of ITC.

20. Further, I find that a new Rule 88B of Central Goods and Service Tax Rules, 2017, regarding manner of calculating interest on delayed payment of tax has been inserted retrospectively w.e.f. 01.07.2017 vide CBIC Notification No. 14/2022-Central Tax, dated 05.07.2022 for easy of reference the same is reproduced as under:-

"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."

21. As per the provisions of the sub-rule (3) of Rule 88B of the CGST Rules, 2017, it is evident that the utilisation of wrongly availed ITC would attract interest provisions if balance of such wrongly availed ITC has been reduced in guise of discharging of output tax liability. I find that the wrong availment of ITC is through TRAN-1 has been established beyond doubt as per discussions in foregoing paras and as regards utilisation of the said ITC, the noticee have neither made any written submission nor produced any documentary evidence before me to explain the situation of non utilisation of wrongly availed ITC of Education Cess & Secondary & Higher Secondary Cess. Accordingly, the liability of interest would arise if the tax or wrongly availed ITC due is on such wrongly availed ITC. In this regard, I rely upon the judgement of Hon'ble Jharkhand High Court in case of M/s. Mahadev Construction reported at 2020 (36) G.S.T.L. 343 (Jhar.), wherein it was held that:-

"Liability of interest is automatic, the same is required to be adjudicated in event of an assessee disputes in computation or vary leviability of interest, by initiation of adjudication proceeding under section 73 or section 74 of the CGST Act."

22. In view of the above, I am hold that Interest, on wrongly availed and utilised ITC through TRAN-1, is correctly applicable as per provisions of Section 50(3) of the CGST Act, 2017 read with sub rule (3) of Rule 88B of the CGST Rule, 2017, as amended.

23. Now, Coming to next limb regarding imposition of penalty under the provisions of Section 73(1) read with Section 122(2)(a) of the CGST Act, 2017. I find from facts of case elaborated in the notice that the demand of wrong availed and utilised ITC has been proposed by invoking the provisions of Section 73 of the CGST Act, 2017 and penalty has been proposed under the provisions of Section 73(1) read with Section 122(2)(a) of the CGST Act, 2017. Before going ahead, it would be pertinent to look into the provisions of Section 122(2) of CGST Act, 2017 first, the same is reproduced as under:-

“Section 122 (2):- Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher. “

24. On plain reading of the above provisions, it is evident that clause (a) of the Section 122(2) of the Act, speaks about the penalty commensurate to Section 73(9) of the Act for contraventions of provisions of the Act. Further, it is also evident that quantum of penalty equal to ten thousand or ten percent of tax due, whichever is higher, is liable on a registered taxable person who supplies any goods or service or both; or where the input tax credit has been wrongly availed or utilised for reason other than fraud or any wilful misstatement or suppression of facts to evade tax. Looking to the facts of the case, the wrong availment of ITC through TRAN-1 has been soundly established in the instant case. Further, the utilisation of such wrongly availed ITC and consequent to liable for interest has also been justified as per discussions in foregoing paras. I find that the noticee have availed transitional Credit in contravention of provisions of Section 140 of the CGST Act, 2017 and have wrongly utilized the same. Accordingly, they have made themselves liable

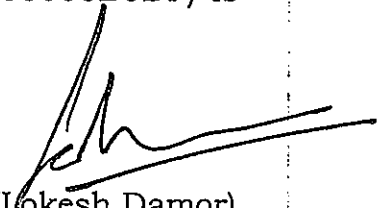
for penalty under the provisions of Section 73(9) of the CGST Act, 2017 read with Section 122(2)(a) of the CGST Act, 2017.

25. In view of the above discussion and findings, I pass the order as under:-

O R D E R

- i. I confirm the demand of Input Tax Credit of Rs. 2,95,18,102/- (Rupees Two Crore Ninety Five Lakh Eighteen Thousand and One Hundred Two Rupees only) and order to recover the same under the provisions of Section 73 (9) of the Central Goods and Service Tax Act, 2017;
- ii. I order the recover applicable interest on (i) by holding the liability of interest on confirmed demand under Section 50(3) of the Central Goods and Services Tax Act, 2017;
- iii. I impose penalty of Rs. 29,51,810/- (Rupees Twenty Nine Lakh Fifty One Thousand Eight Hundred and Ten only) upon the noticee under Section 73(9) read with Section 122(2)(a) of the Central Goods and Services Tax Act, 2017 for the wrongly availing, carrying forward and utilization of inadmissible Cenvat Credit as transitional credit in TRAN-1.

26. Accordingly, the Show Cause Notice bearing F.No.GST/15-319/OA/2021 dated 12.08.2022 (having DIN 20220864WT000000BODF) is disposed off in above terms.


(Lokesh Damor)

Joint Commissioner,
Central Excise & CGST,
Ahmedabad North.

Date: 26.12.2023

BY SPEED POST/ BY HAND
F.No. GST/15-319/OA/2021

To,
M/s Torque Automotive Private Limited (GSTIN 24AACCT6528R1ZR)
2nd Floor, Mrudul Tower, Behind Times of India,
Ashram Road, Ahmedabad, Gujarat, 380009.

Copy to:-

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, CGST & Central Excise, Division-VII, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, CGST & Central Excise, Ahmedabad North, with a request to create Form GST DRC-07 electronically in terms of DSR Advisory no.01/2018 dated 26.10.2018 of the ADG, Systems & Data Management, Bengaluru.
- ✓ 4. The Superintendent (System), CGST & Central Excise, Ahmedabad North for uploading the order on website.
5. Guard File.

