सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2660/2023 /992
(ख)	अपील आदेश संख्याऔर दिनांक / Order-In –Appeal and date	AHM-CGST-002-APP-JC-128/2023-24 and 16.01.2024
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	19.01.2024
(ङ)	Arising out of Order-In-Original No. 01/AC/Dem/NA/2023-24 dated 23.05.2023 passed by The Assistant Commissioner, CGST, Division-V, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Cadila Pharmaceuticals Limited (GSTIN 24AAACC6251E1Z5) Plot No. 1389, Trasad Road, Dholka, Ahmedabad, Gujarat-382225

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी /प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying – (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to twenty five per cent of the remainingamount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइटwww.cbic.gov.inको देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in.

ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE :

M/s Cadila Pharmaceuticals Limited, PLOT NO.1389, TRASAD ROAD, DHOLKA, Ahmedabad, Gujarat, 382225 (GSTIN 24AAACC6251E1Z5) (herein after referred to as "The Tax Payer") are engaged in the supply of pharmaceutical products, has filed the present appeal against the Order No. 01/AC/demand/NA/2023-24 dated 23.05.2023 (hereinafter referred to as the *'impugned order'*) passed by the Assistant Commissioner, CGST & C. Ex., Division- V, Ahmedabad North Commissionerate (hereinafter referred to as *the 'adjudicating authority'*)

2. Briefly stated the facts of the case are that the *'Appellant'* is engaged in the supply of pharmaceutical products. During the course of audit conducted by the Department, the following objections were raised, on which the present appeal is filed.

(i) Non payment of GST on refund claimed under Rule 96(10) of the Rules – Goods imported under Advance Authorization.

It was seen that the Appellant had filed a claim for refund of Integrated Goods and Services Tax ('IGST') paid by them. The refund claim was scrutinized. It was noticed that the Appellant had imported inputs without payment of IGST through Advance authorization licences, as tabulated below. It was further seen that the Appellant had exported finished goods on payment of IGST and then claimed the refund of the tax paid by them.

Financial Year	IGST (Rs.)
July 17- Mar 18	14,75,105/-
2018-19	2,73,541/-
Total	17,48,646/-

As per the Explanation in Rule 96(10) of the Rules, the option for claiming refund under clause (b) to the Rule is only for the exporters who has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications as mentioned in the said Rule. The Appellant have not paid the IGST on the inputs, and therefore, they would be ineligible for a refund in terms of Rule 96(10)(b) of the Rules. Therefore, the Appellant have wrongly availed the refund of Rs.17,48,646/- and required to pay back the refund amount.

(ii) Short payment of GST on Corporate Guarantee

Audit had noticed from the balance sheet for the financial year at Note 38 under the heading 'Contingent liabilities, Commitments and other litigations' and further sub- heading 'Contingent liabilities point b and point d (vi)', that the Appellant had provided Corporate Guarantee to the tune of Rs 198.70 crores. For the financial year 2018-19, the Appellant had provided corporate guarantee worth Rs 220.46 crores under the same heads at Note 35.

In terms of the provisions of Sections 7(1) (c) of the Act read with the provisions of clause (2) to Schedule I to Sections 7 of the Act, the bank guarantee provided by the Appellant would fall within the ambit of supply. Further, clause (a) to Sections (17) of the Act says that there need not be any pecuniary benefit. The Appellant was liable to pay tax on reverse charge basis on these services. The tax calculated is as under:

FY	Value of Guarantee	Taxable value as per 0.925% per annum	Tax (Rs.)
July-17-March-18	177.914 Crores	177.914*0.925%/*9/12 = Rs.12342784/-	2221701/-
2018-19	208.312 Crores	208.312*0.925% = 19268860/-	3468395/-
Total			5690096/-

Total Tax	Tax paid	Tax due
2221701	32026	2189675
3468395	37494	3430899
5690096	69520	5620574

Hence a Show Cause Notice dated 01-12-2021 was issued to the appellant as to why?

"

i. .....

ii. tax amounting to Rs.17,48,646/- ('IGST'), as tabulated in the notice, should not be demanded and recovered from them, under the provisions of Sections 74(1) of the Act read with the provisions of Section 20 of the IGST Act;

iii. .....

iv. tax amounting to Rs.56,90,096/- (Rs.28,45,048/- (CGST) + Rs.28,45,048/- (SGST) should not be demanded and recovered from them, under the provisions of Sections 74(1) of the Act. As the supplier have paid a tax amounting to Rs.69,520/-, they are required to show cause as to why the said amount of Rs.69,520/- should not be adjusted and appropriated against the proposed demand of tax;

v. .....

vi .....

vii interest should not be charged and recovered from them, under the provisions of Sections 50(1) of the Act on the proposed demand of tax at (i), (iv) and (v) above. As the supplier have paid a tax amounting to Rs 43,306/- against interest for (iv) above they are required to show cause as to why the said amount of Rs 43,306/- should not be adjusted and appropriated against the proposed demand of interest.

viii penalty should not be imposed on them, under the provisions of Sections 74(1) of the Act read with the provisions of Sections 122(2)(b) of the Act on the proposed demand of tax at (i), (iv) and (v) above. As the supplier have paid a tax amounting to Rs 42,112/- against penalty for (iv) above, they are required to show cause as to why the said amount of Rs 42,112/- should not be adjusted and appropriated against the proposed penalty;

ix. interest should not be charged and recovered from them, under the provisions of Sections 50(1) of the Act read with the provisions of Section 20 of the IGST Act on the proposed demand of tax at (ii) above:

x. penalty should not be imposed on them, under the provisions of Sections 74(1) of the Act read with the provisions of Sections 122(2)(b) of the Act and the provisions of Section 20 of the 1GST Act on the proposed demand of tax at (ii) above; and

xi. penalty should not be imposed on them, under the provisions of Sections 73(1) of the Act read with the provisions of Sections 122(2)(a) of the Act and the provisions of Section 20 of the 1GST Ac! on the proposed demand of tax at (iii) above."

3. The adjudicating authority vide the impugned order passed the following order in the matter:

" (i) .....

(ii) I hereby confirm the demand of GST amounting to Rs 17,48,646/- (IGST') (Rupee Seventeen lacs forty eight thousand six hundred forty six only) under

the provisions of Sections 74(1) of the Act read with the provisions of Section 20 of the IGST Act;

(iii).....

(iv) I hereby confirm the demand of GST amounting to Rs.56,90,096/- (Rs.28,45,048/- (CGST) + Rs.28,45,048/- (SGST) under the provisions of Sections 74(1) of the Act. The said Tax payer has paid GST Tax amount to the tune of Rs.69,502/-, out of which Rs.34,751/- is appropriated towards the confirmed demand of Rs.28,45,048/- (CGST) and Rs.34,751/- is appropriated towards the confirmed demand of Rs.28,45,048/-(SGST)) under the provisions of Sections 74(1) of the Act

(v).....

(vi).....

(vii) I order to charge and recovery of interest on demand of Rs.56,90,096/- (Rs.28,45,048/- (CGST) + Rs.28,45,048/- (SGST) under section 50(1) of the Act. The said Tax payer has paid interest amount to the tune of Rs 43,306/-, Out of which Rs.21,653/- is appropriated towards the confirmed demand of Rs.28,45,048/- (CGST) and Rs.21,653/- is appropriated towards the confirmed demand of Rs.28,45,048/- (SGST)).

(viii) I hereby impose the penalty on Rs.56,90,096/- (Rs. 28,45,048/- (CGST) + Rs.28,45,048/- (SGST)) under section 74(1) of the Act read with section 122(2)(b) of the Act. The said Tax payer has paid penalty amount to the tune of Rs 42,112/-, Out of which Rs.21,056/- is appropriate towards Rs.28,45,048/- (CGST) and Rs.21,056/- is appropriate towards Rs.28,45,048/- (SGST)).

(ix) I order to charge and recovery of interest under the provisions of Section 50(1) of the Act read with provisions of Section 20 of the IGST Act on the confirmed demand o: tax of Rs.17,48,646/- ('IGST') at Sr. No. (ii).

(x). I hereby impose penalty under the provisions of Sections 74(1) of the Act read with the provisions of Sections 122(2)(b) of the Act and the provisions of Section 20 of the IGST Act on the confirmed demand of tax of Rs 17,48,646/- ('IGST') at Sr. No. (ii).

(xi) I refrain from imposition of penalty under the provisions of Section 73(1) of the Act read with the provisions of Section 122(2)(a) of the Act and the provisions of Section 20 of the IGST Act."

4. Being aggrieved with the above order of the adjudicating authority, the appellant filed the preset appeal on the following grounds:

"The Appellant submits that they counter and do not agree with any contentions of the Respondent, in so far as it is against the Appellant to the extent of penalty levied under Section 74(1) read with Section 122(2)(b) of the CGST Act. Accordingly, the Appellant is filing the present appeal on the following grounds which are independent and without prejudice to each other:

1. No penalty is payable under Section 122(2)(b) of the CGST Act 2017

1.1. The Appellant places reliance upon the judgment of the Hon'ble Supreme Court in case of Pratibha Processors 2002-TIOL-273-SC-CUS, wherein the Hon'ble Supreme Court has held that the demand of penalty is levied only when there is deliberate violations of the provisions of particular statute. The relevant extract of the said judgment is reproduced below:

"13. In fiscal Statutes, the import of the words -- "tax", "interest", "penalty", etc. are well known. They are different concepts. Tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty which is penal in character."

1.2. In view of above submissions, it is evident that the Appellant has complied with all the provisions mandated under the GST law during the prevailing period and therefore there was per se no intent to deliberately evade payment of GST on corporate guarantee services provided to group entities as well as on the erroneously IGST refund received. The term 'intent to evade' is very wide and cannot be applied in these circumstances, when the question of payment of GST on corporate guarantee services were subjected to interpretation.

1.3. Further, in addition to above it is submitted that the present case involved interpretation of the provisions of GST law. The Hon'ble Courts in various judgements have consistently held that the penalty should not be imposed where the question of interpretation of any statutory provision are involved. The Appellant relies upon the following judgments for the above proposition.

- *Uniflex Cables Ltd 2011 (271) ELT 161 (SC)*
- *Surbhi Textile Mills 2010(258)ELT(542(Tri-Ahmd.)*

∘ *Vijay Shanthi Builders Ltd. 2009(240)ELT.319 (Tri-Chen.)*

In view of above, it is submitted that no penalty is imposable on the Appellant.

PERSONAL HEARING :

5. Personal Hearing in the matter was held on 09.11.2023, wherein Shri Prakash Mehta – VP Taxation, appeared in person on behalf of the *'Appellant'* as Authorized Representative before the appellate authority. He submitted that :

(i) Penalty is not leviable under Section 74 of the GST Act, 2017 as the notifications issued given effect retrospectively. Therefore the action i.e. availment of refund was not intended to evade payment of tax or to avail erroneous refund. As soon as the SCN is issued, and the issue came to their notice, paid erroneous refund along with interest and 10% penalty.

In view of the above, requested to allow the appeal.

(ii) As regards the corporate guarantee issue, it is taxable service or otherwise. The issue is finally clarified by the GST Council in 52nd meeting and clarified the issue of taxability Ref. Circular No.204/16/2023-GST dated 27.10.2023. Since there was no clarity on the issue and the fact is disclosed in all statutory records, there is no ground to impose penalty under Section 74. All dues have already been paid. He further, reiterated the written submissions and requested to allow the appeal.

DISCUSSION AND FINDINGS :

I have carefully gone through the facts of the case available on records, and submissions made by the *'Appellant'* in the appeal memorandum, I find that the main issue to be decided in the instant case is :

Whether the impugned order passed by the adjudicating authority with regard to penalty imposed under Section 74(1) of the CGST/GGST Act, 2017 read with Section 122(2)(b) of the CGST/GGST Act, read with IGST Act, 2017 is proper or otherwise?

6.1 At the foremost, I observed that in the instant case the "impugned order" is of dated 23-05-2023 and the present appeal is filed online on 19-08-2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. Therefore, I find that the present appeal is filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

6.2 I find that the appellant is engaged in the supply of pharmaceutical products. During the course of audit, on verification of various refund claims with documentary/financial records, it has been observed by the Audit that the Appellant had filed a claim for refund of Integrated Goods and Services Tax ('IGST') amounting to Rs.17,48,646/- for the period July-2017 to March -2019, paid by them. It was noticed that the Appellant had imported inputs without payment of IGST through Advance authorization licences. It was further seen that the Appellant had exported finished goods on payment of IGST and then claimed the refund of the tax paid by them. It was also observed that they would be ineligible for a refund in terms of Rule 96(10)(b) and the explanation of the said rule under the CGST Rules, 2017.

6.3 Therefore, I refer the provisions of the Rule 96(10)(b) of the CGST Act,2017which is reproduced here under:

Rule 96. Refund of integrated tax paid on goods [1][or services] exported out of India.-

[(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have –

(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272 (E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.]

[16][**Explanation.** - For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.]

15. Substituted vide Notification No. 54/2018-CT dated 09.10.2018.
16. Inserted vide Notification No. 16/2020-CT dated 23.03.2020 w.e.f. 23.10.2017.

6.4 From the above, it is observed that the persons claiming refund of integrated tax paid on exports of goods or services should not have availed the benefit under notification No. 78/2017-Customs, dated the 13th

October, 2017 or notification No. 79/2017-Customs, dated 13.10.2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme. Further, as per explanation to the said section, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications. However, in the present case, I find that the Appellant has not paid IGST leviable on the inputs at the time of import. Therefore, they are not eligible for refund of the IGST paid on export of goods/services. The Appellant however, has submitted that they have paid erroneous refund along with interest and penalty (10%). The appellant has contended only for the penalty imposed vide the impugned order under the provisions of Section74(1) of the CGST/SGST Act, 2017 read with Section 122(2)(b) of the Act and Section 20 of the IGST Act, 2017.

6.5 For this I refer the provisions of Section 74 (1), Section 50, and Section 122(2)(b) :

***Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts.-**

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not **pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.**

Explanation 2.- For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made there under, or failure to furnish any information on being asked for, in writing, by the proper officer.

***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.

Section 122. Penalty for certain offences.-

(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,-

(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.

6.6 I find that in the instant case, the Appellant has suppressed the material facts of the refund of Rs.17,48,646/- for the period July-2017 to March -2019 which was not eligible to them as per the provisions discussed supra and the appellant has not reversed/paid back the refund, sanctioned of Rs.17,48,646/- on their own inspite of the fact that the same was not eligible, has been detected during Audit by the Department and the adjudicating authority has confirmed the same under Section 74(1) of the CGST Act, 2017 along with interest under Section 50 (1) of the CGST Act, 2017 vide the impugned order, which I am of the view that the same is legal and proper, as per the provisions ibid. Therefore, the contention of the appellant that they have paid IGST of Rs.17,48,646/- along with interest and penalty of Rs.1,74,865/- (10%) on 19-08-2023 and allow the appeal, is not tenable, as the Penalty confirmed under Section 74(1) read with Section

122(2)(b) of the CGST Act, 2017 read with Section 20 of the IGST Act confirmed is Rs.17,48,646/-.

6.7 The judgment of the Hon'ble Supreme Court in case of Pratibha Processors 2002-TIOL-273-SC-CUS quoted by the appellant pertains to erstwhile regime of Central excise & Service Tax, which is not applicable in the present regime of GST where the suppression of facts are defined very clearly.

6.8 Further, it is observed that the Appellant had provided Corporate Guarantee to the tune of Rs 198.70 crores for the Financial Year 2017-18 and Rs.220.46 Crores for the financial year 2018-19. In terms of the provisions of Section 7(1) (c) of the CGST Act, 2017 read with the provisions of clause (2) to Schedule I to Section7 of the Act, the bank guarantee provided by the Taxpayer would fall within the ambit of supply. The terms business has been given a wide ambit and therefore would cover the words "when made in the course of furtherance of business" mentioned in clause (2) of Schedule I to Section 7 of the Act. Further, clause (a) to Section 17 of the Act, says that there need not be any pecuniary benefit. I also observe that the Appellant has not paid the tax within the prescribed due date on supply of Bank Guarantee. The supply had also not been shown in their GSTR 3-B/GSTR-9 returns filed by them for the relevant period.

6.9 In this regard, the appellant has submitted that the services of Corporate Guarantee whether it is taxable service or otherwise has been finally clarified by the GST Council in 52nd Meeting and clarified the issue of taxability. The matter is clarified by the CBIC vide Circular No.204/16/2023-GST dated 27.10.2023. Further submitted that since there was no clarity on the issue and that the fact is disclosed in all statutory records, there is no ground to impose penalty under Section 74 of the CGST Act, 2017. All dues have already been paid.

6.10 I refer to the Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST issued by the CBIC vide Circular No. 204/16/2023-GST dated 27.10.2023. The relevant text of which is as under:

Issue	Clarification
Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction	Where the corporate guarantee is provided by a company to the bank/financial institutions for providing credit facilities to the other

of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services.	company, where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration. Similarly, where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of 'related persons'. Hence the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per provisions of Schedule I of CGST Act. In respect of such supply of services by a person to another related person or by a holding company to a subsidiary company, in form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value will be determined as per rule 28 of CGST Rules. Considering different practices being followed by the field formations and taxpayers in determining such taxable value, in order to provide uniformity in practices and ease of implementation, sub-rule (2) has been inserted in rule 28 of CGST Rules vide Notification No. 52/2023 dated 26.10.2023, for determining the taxable value of such supply of services between related persons in respect of providing corporate guarantee. Accordingly, consequent to insertion of the said sub-rule in rule 28 of CGST Rules, in all such cases of supply of services by a related person to another person, or by a holding company to a subsidiary

	company, in the form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value of such supply of services, will henceforth be determined as per the provisions of the sub-rule (2) of Rule 28 of CGST Rules, irrespective of whether full ITC is available to the recipient of services or not

6.11 Further, I refer sub-rule (2) inserted in rule 28 of CGST Rules vide Notification No. 52/2023 dated 26.10.2023, which is as under:

"2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), rule 28 shall be renumbered as sub-rule (1) and after the sub-rule as so renumbered, the following sub-rule shall be inserted, namely:-"(2) Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.".

6.12 Further, Rule 28 of the CGST Rules is as under:

Rule 28. Value of supply of goods or services or both between distinct or related persons, other than through an agent. -

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

***Provided** that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:*

***Provided** further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services."*

6.13 From the above, I find that though the CBIC has issued clarification vide the Circular ibid that Where the corporate guarantee is provided by a company to the bank/financial institutions for providing credit facilities to the other company, where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration. Further, vide Notification No. 52/2023 dated 26.10.2023, only sub-rule (2) in Rule 28 of CGST Rules is inserted regarding the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher."

6.14 I also find that in schedule I of the CGST Act, Activities to be treated as supply even if made without consideration includes "Supply of goods or services or both between related persons or between distinct persons as specified in Section 25 when made in the course of furtherance of business".

6.15 Therefore, in view of the above the tax was payable for such supply of the Bank Guarantee by the Appellant during the relevant time as the provisions of the Act, are made for implementation and cannot be ignored till any clarification in the matter is received. Further, I find that the contention of the appellant is that the fact is that it is disclosed in all statutory records; however I find that the same is not disclosed in the Returns furnished by the appellant during the relevant period.

6.16 From the above, I find that the Appellant has neither shown the Taxable value of Rs.56,90,096/- in the Returns filed for the relevant period, nor at any point of time come forward and brought this fact to the Department and paid tax. It is only when the Audit pointed out the same, they have agreed to pay the tax. Thus they have suppressed the facts from the Department. The explanation to Section 74(1) of the CGST Act it is crystal clear that For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document

furnished under this Act or the rules made there under and therefore as the Appellant has not declared the required details in the Returns filed for the relevant period, as per Section 74(1), they are liable to pay the tax along with interest under Section 50(1) of the CGST Act, 2017 and penalty read with Section 122(2)(b) of the CGST Act, 2017.

6.17 The Appellant has cited the Hon'ble Supreme Court's judgment in case of M/s Uniflex cables Ltd. (in CIVIL APPEAL NO. 5870 OF 2005) and also some Hon'ble Tribunal's judgements and submitted that the penalty should not be imposed where the question of interpretation of any statutory provision are involved.

Therefore, I refer to the Hon'ble Supreme Court's judgment in case of M/s Uniflex cables Ltd. (in CIVIL APPEAL NO. 5870 OF 2005) .The relevant text of the said judgement is re-produced hereunder:

"10. So far as the second issue with regard to the imposition of penalty in the present case is concerned, the Commissioner, himself in his order-in-original has stated that the issue involved in the case is of interpretational nature. Keeping in mind the said factor, the Commissioner thought it fit not to impose harsh penalty and a penalty of an amount of Rs.5 lakhs was imposed on the appellant while confirming the demand of the duty.

11. It is also evident from the said order that the Commissioner also found that except for the statement of the Excise Executive Director and Excise Clerk of the assessee company there was no other evidence pointing out any accusing finger at them in dealing with offending goods knowingly.

A clear finding has been recorded by the Commissioner that it was difficult to hold that the appellant knowingly dealt with excisable goods which were cleared without payment of duty. Nor the department itself took it as a formal case of offence.

12. When we take into consideration the aforesaid facts and also the fact that the Commissioner himself found that it is only a case of interpretational nature, in our considered opinion, no penalty could be and is liable to be imposed on the appellant herein.

13. Therefore, in the facts and circumstances of the present case we are of the view that penalty should not have been imposed upon the appellant.

Consequently, we quash the order of the Commissioner imposing penalty as also the order of the Tribunal so far as it confirms imposition of penalty upon the appellant. The appeal is allowed to the aforesaid extent leaving the parties to bear their own costs".

6.18 From the above, I find that in the above case, the fact was that the Commissioner himself found that it is only a case of interpretational nature and based on this fact as well as other facts of the case, the Hon'ble Supreme Court quashed the order of the Commissioner imposing penalty as

also the order of the Tribunal so far as it confirms imposition of penalty upon the appellant.

6.19 However, in the present case, I find that the matter is not involving any interpretational nature of the issue in the impugned adjudicating order. Also the audit para raised has not taken the issue on interpretational basis or any such discussion. Therefore, I am of the view that the above judgment of the Hon'ble Supreme Court is not applicable in the present case.

6.20 In view of the above I am of the view that the order passed by the adjudicating authority is legal and proper.

7. From the discussions and findings above, I do not find any infirmity in the impugned order passed by the adjudicating authority and thus upheld.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

8. The appeal filed by the *appellant* stands disposed of in above terms.

16/01/2024

(ADESH KUMAR JAIN)
JOINT COMMISSIONER (APPEALS)

Date: .01.2024

Attested

(SUNITA D. NAWANI)
SUPERINTENDENT,
CGST & C.EX.(APPEALS),
AHMEDABAD

By R.P.A.D.
To:
M/s Cadila Pharmaceuticals Limited,
PLOT NO.1389, TRASAD ROAD, DHOLKA,
Ahmedabad, Gujarat, 382225 (GSTIN 24AAACC6251E1Z5)

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad North Commissionerate.
4. The Additional Commissioner, Central Tax (System), Ahmedabad North Commissionerate.
5. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-V, Ahmedabad North Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad for publication on website.
7. Guard File. /P.A. File.