आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
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सत्यमेव जयते

आज़ादी का अमृत महोत्सव

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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/247/2022-APPEAL /4230-35
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-085/2022-23, dated 21.10.2022
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपर आयुक्त (अपील) **Shri Mihir Rayka, Additional Commissioner (Appeals)**
(घ)	जारी करने की दिनांक / Date of issue	25.10.2022
(ङ)	Arising out of Order-In-Original No.GST/D-VI/O&A/19/GODREJ PROPERTIES /AM/2021-22, dated 06.10.2021 issued by The Assistant Commissioner, CGST, Division – VI , Ahmedabad-North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Godrej Properties Ltd., (GSTIN-24AAACG3995M1Z7) 2nd Floor, Rudra Path Complex, Near Rajpath Club, Sarkhej-Gandhinagar Highway, Ahmedabad-380059 , Gujarat.

(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 वेबसाइट **www.cbic.gov.in** को 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.**

आयुक्तालय, केन्द्रीय वस्तु एवं सेवा कर (अपील) अहमदाबाद
OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS) AHMEDABAD

ORDER-IN-APPEAL

Brief Facts of the Case :

M/s. Godrej Properties Ltd., 2nd Floor, Rudra Path Complex, Near Rajpath Club, Sarkhej-Gandhinagar Highway, Ahmedabad-380059, Gujarat (hereinafter referred as *'Appellant'*) has filed the present appeal against Order No. GST/D-VI/O&A/19/GODREJ PROPERTIES/AM/2021-22, dated 06.10.2021 (hereinafter referred as *'impugned order'*) passed by the Assistant Commissioner, CGST & C. Ex., Division-VI, Ahmedabad-North (hereinafter referred as *'adjudicating authority'*).

2(i). Briefly stated the facts of the case is that the *'Appellant'* is holding GST Registration GSTIN No.24AAACG3995M1Z7 has filed the present appeal on 03.01.2022. During the course of verification of Form TRAN-1 and ST-3 return of the appellant it was observed that the *'Appellant'* had wrongly carried forward the closing balance of credit of Krishi Kalyan Cess [Hereinafter referred to as 'KKC'] of Rs.61,895/- as reflecting in the ST-3 Return filed for the period of April-June'2017, in TRAN-1 as transitional credit. The same was not admissible as per Section 140(1) of the CGST Act, 2017. Accordingly, the said KKC amount of Rs. 61,895/- was paid by the appellant on 24.08.2021 vide GST DRC-03 DI2408210374875 *under protest* however, applicable interest and penalty on this amount has not been paid by them. A Show Cause Notice dated 25.08.2021 was accordingly issued to the appellant. Thereafter, the adjudicating authority vide impugned order has confirmed the said demand of wrongly availed Cenvat Credit of KKC of Rs. 61,895/- under provisions of Section 73 of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017. The adjudicating authority vide impugned order has also confirmed the demand of interest under Section 50 read with Section 73 of the CGST Act, 2017 and imposed a penalty of Rs.10,000/- in terms of Section 122 read with Section 73 of the CGST Act, 2017.

2(ii). Being aggrieved with the impugned order the appellant has filed the present appeal on 03.01.2022 mainly on the grounds that the adjudicating authority has not given any findings on the following points :-

- Section 140(1) of the CGST Act among other things , provides that a registered person is entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return furnished in the existing regime for the period ending with the day immediately preceding the appointed day.
- Further, explanation to Section 142 provides that for the purpose of transitional provisions, the expression "CENVAT credit" shall have the same meaning as assigned to it in the Central Excise Act, 1944 or the rules made thereunder.
- In this regard, Rule 3(1) of the CENVAT Credit Rules, 2004 (Credit rules) framed under the Central Excise Act, 1944 ('Excise Act') and the Finance Act, 1994

('Finance Act') deals with the eligibility of CENVAT credit for a manufacturer or a service provider. The said rule included in its ambit EC and SHEC paid on excisable goods and on taxable services to be allowed as CENVAT Credit.

- It may be noted here that vide Notification No. 28/2016-Central Excise (NT), dated 26.05.2016, Rule 3(1a) was inserted in Credit Rules which provided that CENVAT credit of EC, SHEC and KKC shall be allowed to provider of output service.
- In the light of above discussion , they understand that the CENVAT credit referred under Section 140(1) of CGST Act includes the credit of EC, SHEC and KKC as these were specifically included in the definition of CENVAT Credit given under the Credit Rules.
- Further, the language of Section 140(1) does not impose any restriction regarding the type / nature of CENVAT credit to be carried forward in the GST regime. In other words, Section 140(1) does not expressly bar carry forward of EC, SHEC & KKC which were validly taken and shown as closing balance in the returns.
- CENVAT credit of EC, SHEC and KKC was allowed as per Rule 3(1) of Credit Rules and being a service provider, credit of EC, SHEC and KKC is allowed. The credit of EC, SHEC and KKC lying in the Cenvat credit account is an accrued right of the appellant since the cess on inputs / input services was already paid by the appellant.
- Based the above, they humbly reiterate that in their view, the appellant is eligible to carry forward in the GST regime, the credit of KKC validly shown in ST-3 , in terms of Section 140(1) of the CGST Act. Further, they are not required to reverse the same.

The appellant has relied upon several judgments wherein it has been held that demand must be set aside if the order is a non-speaking order.

The appellant has further relied on CBIC's 3rd edition FAQ dated 15.12.2018 and claimed that the cesses were subsumed into the basic GST rate. Hence, the carry forward of CENVAT credit of EC, SHEC and KKC shall be allowed under section 140(1) of the CGST Act, 2017.

That prior to amendment through CGST Act, 2018, the provision of Section 140(1) of CGST Act, 2017 makes reference to CENVAT credit which is provided under Rule 3(1) and 3(1a) of Credit Rules and lists the duties / taxes, a manufacturer or producer of final products or a service provider be allowed to take as credit.

The appellant further contended that it is evident from Rule 3 of Credit Rules that the EC, SHEC and KKC are eligible credit. Thus, the amount of CENVAT credit includes EC,

SHEC and KKC; that they declared the credit of the said cess in the returns filed for the month of June, 2017 which is also not disputed in the SCN. Thus, appellant falls within the provisions of Section 140(1) of the CGST Act. Thus credit was correctly admissible to them at the time of filing Form GST Tran-1.

They further submitted that in the erstwhile regime, CENVAT credit of cesses, which includes KKC, were utilized only towards payment of those cesses. With the introduction of GST, since there was no levy of cesses, there was no output liability of the same and therefore, the CENVAT credit balance of such cesses could not be utilized by tax payers across India. Hence, in absence of any mechanism to utilize the balance of the cesses as on 30 June 2017, the same remained unutilized.

In support of their claim appellant relied upon the following case laws:-

- *Hon'ble Karnataka High Court in case of Union of India Vs. Slovak India Trading Co. Pvt. Ltd. - [2002(201)ELT 559(Kar)];*
- *Srinivasa Hair Industries Vs. CCE, Chennai-II- [2016-TIOL-1203-CESTAT-MAD];*
- *Jain Vangaurd Polybutylene Ltd. Vs. Commissioner of C.Ex, Nasik.- [2009(247) ELT 658 (Tri-Mumbai)].*

Appellant further contended that the credit of EC, SHEC and KKC is admissible even after the retrospective amendment of Section 140(1) of CGST Act, 2017.

In support of their interpretation the appellant placed reliance on the following case laws:-

- *Future Gaming & Hotel Services (Pvt.) Ltd. - [2015(40) STR 833(Sikkim)];*
- *Martin Lottery Agencies Ltd.- [2009(14) STR 593(SC)];*
- *Eicher Motors Ltd. -. [1999(106) ELT3 (SC)];*
- *Samtel India Ltd. - [2003(155) ELT 14(SC)];*
- *M/s Bharat Heavy Electricals Ltd.- [Order No.51849/2019 dated 26.04.2019];*
- *Hon'ble High Court of Gujarat in the case of Filco Trade Centre Pvt. Ltd. Vs Union of India.- [2018-TIOL-120-HC-AHM-GST];..... etc.*
- *M/s Idea Cellular Ltd. - [2019(6) TMI 903-CESTAT, Mumbai]...*

Regarding demand of interest, the appellant contended that te amount of KKC in Tran-1 was always unutilized. They submitted the copy of Electronic Credit Ledger for the period from July, 2017 to show that the amount of KKC amounting to Rs.61,895/- were always unutilized. The ITC of Rs.61895/- was never utilized by the company and this is being reflected in Electronic Credit Ledger as on date. They are not covered under any category of the persons liable for interest under CGST Act.

In support of their claim appellant relied upon the following case laws:-

- *Pratibha Processors Vs. Union of India- [1996(88) ELT 12(SC)];*

- *Star India Ltd. - [2006 (1) STR 73(SC)];*
- *D.S.Narayana & company Pvt. Ltd. - [2017(4) GSTL20(Tri-Hyd.]*

Regarding penalty appellant contended that they have already reversed the credit of KKC of Rs. 61,895/- in GST DRC-03, dated 24.08.2021 also the same was unutilized and they have not used cash payment for making such reversal. Hence even if the demand is upheld penalty should not be imposed in the present case. In support of their claim and interpretation the appellant relied upon various case laws and requested to set aside the penalty.

3. Personal Hearing in the matter was held on 21.09.2022 through virtual mode which was attended by Shri Pawan Kabra & other authorized representatives, on behalf of the *'Appellant'*. During P.H. he has reiterated the submissions made till date and informed that they want to give additional submission/information, which was approved and 7 working days period was granted.

4. Accordingly, the appellant has submitted the additional written submission on 28.09.2022, wherein they stated that:-

They draw attention to the recent retrospective amendment under Section 50(3) of the CGST Act, 2017 vide the Finance Act,2022 to provide for interest charge only when input tax credit is <u>*availed and utilised*</u>, effective from 01.07.2017. The relevant extract of the same is as follows: -

> ***"50. Interest on delayed payment of tax.***
>
> *(3) Where the input tax credit has been wrongly <u>availed and utilised</u>, 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."*

Further, CBIC had recently issued a Notification No. 09/2022-Central Tax dated 25 July 2022, which was made effective retrospectively from 1st July 2017 wherein Section 50 of the CGST Act was amended and proviso to section 50(1) was inserted which is re-produced below for easy reference:

"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 shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger".

In a nutshell, the CBIC has notified that the interest on late GST payments would be applicable only on net cash tax liability after the deduction of the available input tax

credits and hence interest levy is only on liability paid in cash and the same is not applicable for ITC availed and not utilized i.e. lying unutilized in the Electronic Credit Ledger.

In view of above amendment, in their case they have never utilized the disputed CENVAT credit transitioned as on date of reversal. Hence, in the above case demand for input tax credit alongwith interest and penalty should be set aside.

In addition to their earlier submission they also placed reliance of the following judicial precedents:

a. Pratibha Processors Vs Union of India – [1996 (88) E.L.T. 12 (S.C.)]
b. Sutherland Global Services Pvt. Ltd. Vs. Assistant Commissioner CGST and Central Excise.- [TS-972-HC-2019 (MAD)-NT)] ;
c. Sutherland Global Services - [TS-878-HC-2020(MAD)-NT] ;
d. CCEx. Vs. Delphi Automotive Systems Ltd.-[2013 (292) E.L.T. 189 (All.)];
e. Godrej & Boyce Mfg. Co. Ltd. Vs Union of India and Ors.
f. M/s Godrej Greenview Housing Ltd. Order-In-Appeal No. AK/ADC/GST/522/ RGD-APP/2021-22.
g. M/s Godrej Redevelopers (Mumbai) Pvt. Ltd. Order-In-Appeal No. AK/ADC/ GST/491-492/RGD-APP/2021-22
h. M/s Godrej Landmarks Redevelopers (Mumbai) Pvt. Ltd. Order-In-Appeal No. AK/ADC/GST/511/RGD-APP/2021-22
i. M/s Godrej Projects Development Pvt. Ltd. Order-In-Appeal No. AK/ADC/ GST/510/RGD-APP/2021-22
j. M/s Godrej Properties Ltd. Order-In-Appeal No. AK/ADC/GST/479-480/RGD-APP/2021-22

In view of the above submission, they pleaded that the demand for input tax credit along with interest and penalty should be set aside and proceedings initiated vide impugned order be dropped.

Discussion and Findings:

5(i). I have carefully gone through the facts of the case available on records, submissions made by the *'Appellant'* in the Appeals Memorandum as well as through additional submission. I find that the *'Appellant'* had availed the credit of Krishi Kalyan Cess of Rs. 61,895/- through TRAN-1 as transitional credit. However, as being pointed out during verification of TRAN-1 that the credit of KKC is not admissible, the appellant had paid the same. It was also observed that the appellant has not paid the applicable interest and penalty on this amount. Accordingly, a SCN dated 25.08.2021 was issued to the appellant in this regard. Thereafter, the adjudicating authority vide impugned order

has confirmed the demand of wrongly availed credit of KKC and appropriated the amount so paid by the appellant. I find that the adjudicating has confirmed the demand of interest and also imposed penalty of Rs.10,000/-. Accordingly, the appellant has preferred the present appeal.

5(ii) I find that the adjudicating authority has denied the Tran-1 credit and confirmed the demand on the ground that as per Section 140 of the CGST Act, credit of Cess amount cannot be carry forwarded to the GST regime. As per the CGST (Amendment) Act, 2018, Section 140 of the CGST Act stands amended retrospectively w.e.f. 01.07.2017 so that the credit of Cess from the pre-GST regime cannot be carry forwarded to GST regime. The term, eligible duties and taxes has been detailed in explanation-2 to section 140 of CGST Act, from which Cess has been excluded. Therefore, the core issue before me is to decide as to whether- (i) Krishi Kalyan Cess [KKC] amount can be carried forward to the GST regime as admissible Tran-1 credit, (ii) interest on the demand confirmed is chargeable under Section 50 readwith Section 73 of CGST Act, in the present case & (iii) penalty is imposable on the appellant under the provisions of Section 122 readwith Section 73 of CGST Act; or otherwise.

5(iii). For ease of reference, Section 140 (1) of CGST Act, 2017 is reproduced as under:-

> *140. (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law within such time and in such manner as may be prescribed:*
>
> *Explanation 3 of said Section further provides :-*
>
> *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.*

The appellant has stated that even in the amended provisions of Section 140 of the CGST Act clarification provided under the explanation-3 with respect to the term "eligible duties and taxes" does not apply to the term "Cenvat credit of eligible duties" used under Section 140(1). Their argument is that credit cannot be denied on the basis of such explanation as it cannot go beyond the main section. In this context, before going ahead it is necessary to understand in which manner the Explanations- 1, 2 & 3 defines the term eligible duties and taxes under Section 140 of CGST Act. As per the amended (w.e.f. 01.07.2021) version of the Section 140(1) of CGST Act, a registered person shall be entitled to take in his electronic credit ledger, the amount of Cenvat credit of eligible

duties carried forward in the return; and the term eligible duties has been detailed in explanation- 1 to Section 140 of CGST Act. Similarly, as per Section 140(5) of CGST Act, a registered person shall be entitled to take in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs and input services received on or after the appointed day; and the term eligible duties and taxes has been detailed in explanation-2 to Section 140 of CGST Act, which is also applicable to Section 140(1). The eligible duties and taxes enlisted under both Explanations-1 & 2 don't include any type of Cess. Moreover, Explanation-3 under Section 140 of CGST Act read as under: *"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 collectecl as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975"*

Thus, it is very clear from the amended provisions under Section 140 of CGST Act that, for the purpose of sub-sections 1 and 5, as per Explanations- 1 & 2 given thereunder, the terms eligible duties & eligible duties and taxes, doesn't include any type of Cess. Moreover. Explanation-3 under this section further clarifies this. Moreover, Section 140(1) of CGST Act, 2017, is amended retrospectively w.e.f. 01 .07.2017 vide the CGST (Amendment) Act, 2018 dtd 29.08.2018. Therefore, provisions of retrospectively amended section would be applicable in all the cases of credits transited by filing Tran-1 under Section 140 of CGST Act. Therefore, I find that Cenvat credit of Cess is not allowed to be carried forward to the GST regime as Tran- 1 credit under sub-sections (1) & (5) of Section 140 of CGST Act. In view of above discussions, I upheld the impugned order confirming the duty demand of Tran- I credit of KKC amount of Rs.61,895/-.

The appellant has argued that by way of discharging the liability of Cess on inputs/input services, cenvat credit of such Cess amount is an accrued right for them. As the Hon'ble Supreme Court had held in the case of Eicher Motors Ltd., such accrued right cannot be taken away by introduction of new law. Section 174 of CGST Act, 2017 provides that the amended Act cannot affect the right, privilege accrued under the repealed act. The credit of Cess amount paid by the appellant is an accrued right under the provisions of CENVAT Credit Rules issued under the provisions of Section 94 of the Finance Act, 1994. Therefore, as per the appellant, the repeal of the said Act should not affect their accrued right.

In this context, I find that ITC cannot be claimed as a matter of right; but it is a form of concession provided by the Act, claimed only in terms of the provisions of the statute, as held by the Apex Court in the case of TVS Motors as under. The Apex Court in the case of *TVS Motor Co. Ltd. Vs. State of Tamil Nadu - [2018] 98 taxmann.com 343/70 GST 501*, held that:

".41. It is very clear from the aforesaid discussion that this Court held that ITC is a form of concession which is provided by the Act; it cannot be claimed as a matter of right but only in terms of the provisions of the statute; therefore, the conditions mentioned in the aforesaid Section had to be fulfilled by the dealer;"

I further find that in the case of Commissioner of CGST & ors. Vs M/s. Sutherland Global Service Pvt. Ltd., vide order dated 16.10.2020 in Writ Appeal No. 53 of 2020, Hon'ble High Court of Madras held that :-

"60. Obviously, the transition of unutilised Input Tax Credit could be allowed only in respect of taxes and duties which were subsumed in the new GST Law. Admittedly, the three types of Cess involved before us, namely Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess were not subsumed in the new GST Laws, either by the Parliament or by the States. Therefore, the question of transitioning them into the GST Regime and giving them credit under against Output GST Liability cannot arise. The plain scheme and object of GST Law cannot be defeated or interjected by allowing such Input Credits in respect of Cess, whether collected as Tax or Duty under the then existing laws and therefore, such set off cannot be allowed.".

"62. That the Assessee was not entitled to carry forward and set off of unutilised Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess against the GST Output Liability with reference to Section 140 of the CGST Act, 2017."

In view of above discussions & decisions, I upheld the impugned order confirming the duty demand of Tran- I credit of KKC amount of Rs. 61,895/-.

I also find that there is no provision in CGST Act, 2017 to pay Taxes under protest, however, the appellant reversed the wrongly transited Cenvat Credit of KKC under protest to avoid any litigation or claim refund the same in future. Thus, I hold that the appellant rightly reversed the wrongly transited Cenvat Credit and the adjudicating authority correctly appropriated the same in the impugned order.

5(iv) On carefully going through the submissions of appellant I find that on being pointed out the credit of KKC amounting to Rs.61,895/- was reversed by the appellant. I further find that the appellant has not utilized the said credit of KKC and the same was lying unutilized till they reversed the same. The appellant has contended that interest is levied only on "ineligible ITC availed and utilized" and not on "ineligible ITC availed" and referred to the amendment of Section 50 of CGST Act, 2017 done through

Section 110 of Finance Bill 2022, which was notified through Notification No. 09/2022-Central Tax dated 05.07.2022. They also contended that as tax has already been paid on 24.08.2021 vide DRC 03 and interest is not payable on ITC as the same was not utilized, therefore penalty of Rs.10,000/- will also not be applicable.

5 (v). Considering the foregoing facts, I hereby referred the provisions of Section 50 (3) of the CGST Act, 2017, the same is as under:-

> ***SECTION 50 (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.]*
>
> [As per Section 110 of the Finance Bill, 2022 this amendment has been with effect from 1st July, 2017, which has been notified vide Notification No. 09/2022-Central Tax, dated 05.07.2022.]

In view of above, it is abundantly clear that interest is leviable only if the Input Tax Credit has been wrongly availed and utilized. In the present matter, the appellant availed the ITC in the Electronic Credit Ledger through TRAN-1 but have not utilized the same till 24.08.2021 i.e. the date of reversal of the said Input Tax Credit. Further, I find that the balance of CGST in Electronic Credit ledger was more than the reversal amount for the period when TRAN-1 was filed i.e. on 19.09.2017 till the date of reversal i.e. 24.08.2021. I find that the adjudicating authority has also not alleged at any point of time that the said wrongly availed credit of KKC was ever utilized. Therefore, I find that interest is not leviable in the present case.

5(vi) The appellant has transited Krishi Kalyan Cess amounting to Rs.61,895/- under Section 140 of CGST Act,2017. The definition of eligible duties as given in explanations under Section 140 of CGST Act, 2017, does not include Cess, after the retrospective amendment brought in the Section on 29.08.2018. The appellant has reversed the disputed credit of KKC of Rs. 61,895/- in their GSTR-3B for August, 2021, under protest. Hence, I find that prior to the above amendment dtd. 29.08.2018, there was no legal backing in the Act for restricting Tran- 1 credit on cess. When such retrospective amendment is brought in the statute, the tax payer responded by reversing the credit of Rs. 61,895/- from their Electronic Credit Ledger. Therefore, in the above circumstances I am not in agreement with the adjudicating authority's findings of contravention of provisions under Section 140 of CGST Act as ground for imposing penalty in this case under Section 122 readwith Section 73 of CGST Act. I find that it is improper to penalize a tax payer for retrospective amendment in law once he has positively responded with payment of such duce after such amendments

in the Act. Further, I find that in terms of Section 73(5) & 73(8) of CGST Act, 2017 when duty is discharged with interest (in the present case interest is not charged) before the issuance of SCN, imposing penalty in the case of reversal of the credit of Rs.61,895/- would not be sustainable. Hence, I find that penalty is also not imposable upon the appellant.

6. In view of the above discussions, I upheld the impugned order confirming the demand of Tran-1 credit of KKC amounting to Rs.61,895/- and set aside the demand of interest and penalty imposed by the original adjudicating authority. The impugned order is modified to the above extent. Hence, the appeal is partially allowed and partially rejected.

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

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

21/10/22

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 21.10.2022

Attested

25/10/22

(Ajay Kumar Agarwal)
Superintendent (Appeals)
Central Tax,
Ahmedabad.

By R.P.A.D.

To,
M/s. Godrej Properties Ltd.,
2nd Floor, Rudra Path Complex,
Near Rajpath Club,
Sarkhej -Gandhinagar Highway,
Ahmedabad – 380059, Gujarat.

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.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-VI, Ahmedabad-North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad-North.
6. Guard File.
7. P.A. File.