



सत्यमेव जयते

## आयुक्त ( अपील ) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20230764SW00008187E0

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/2/2023 -APPEAL 13100 - 05  
 ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-60/2023-24  
 दिनांक Date : 18-07-2023 जारी करने की तारीख Date of Issue : 19-07-2023

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

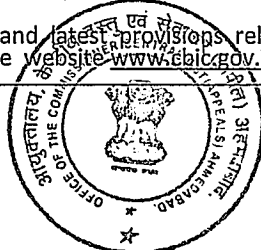
Passed by Shri. Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/WS07/OIO-01/AC-RAG/2021-22 DT.  
 17.06.2022 issued by The Assistant Commissioner, CGST, Division-VII, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name &amp; Address of the Appellant / Respondent

Appellant	Respondent
The Assistant Commissioner, CGST, Division-VII, Ahmedabad South	M/s. Cadila HealthCare Ltd. Zydus Tower, Satellite Cross Road, Sarkhej-Gandhinagar Highway, Ahmedabad-380015.

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> of the remaining amount 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .

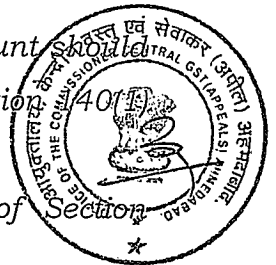


**ORDER IN APPEAL****Brief Facts of the Case :**

The Assistant Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the 'Appellant/Department') in terms of Review Order No. 53/2022-23 dated 08.12.2022 issued under Section 107 of the CGST Act, 2017, has filed the appeal against Order-in-Original No. CGST/WS07/OIO-01/AC-RAG/2021-22 dated 17.06.2022 (hereinafter referred to as the *Impugned Order*) passed by the Assistant Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the *Adjudicating Authority*) in the matter of **M/s. Cadila Healthcare Ltd.**, Zydus Tower, Satellite Cross Road, Sarkhej-Gandhinagar Highway, Ahmedabad - 380 015 (hereinafter referred to as the 'Respondent').

**2(i).** Briefly stated the facts of the case is that a Show Cause Notice dated 28.12.2021 was issued to the *Respondent* wherein it was proposed that as to why-

- i. *The ineligible credit of Rs.1,03,50,316/- shall not be demanded and recovered from them under Section 73(1) of the CGST Act, 2017 and as the amount have already been paid by the noticee, the same shall not be appropriated against the demand ;*
- ii. *Amount of Rs.11,28,841/- (1,82,998/- + 9,45,843/-) calculated amount should not be charged and recovered from them under the provision of Section 40(a) and Section 50 of the CGST Act, 2017 ;*
- iii. *Penalty should not be imposed on them under the provisions of Section 122(2)(a) read with 73(9) of the CGST Act.*



The Respondent has informed vide defence reply in response to above notice that they had filed TRAN-1 and carried forward the credit of Education Cess & Secondary Higher Education Cess (Cess) amounting to Rs.1,03,50,316/- among other credits in the month of December-2017 as transitional ITC ; however, pursuant to CGST (Amendment) Bill, 2018, Section 140 got amended to exclude the ITC of Cess within its scope retrospectively. Accordingly, they have reversed the ITC of Cess Rs.1,03,50,316/- in GSTR 3B of August 2018. They have also informed that their E-Credit Ledger (ECL) never went below Rs.1,03,50,316/- from December'17 to August'18 ; that therefore interest liability cannot arise.

**2(ii).** Further, after having gone through the SCN, relevant documents and submissions of the *Respondent*, the *adjudicating authority* has observed that the wrongly taken credit of Rs.1,03,50,316/- is recoverable under Section 73(1) of the CGST Act, 2017 and as the Respondent has already reversed

the said amount, the same is also liable to be appropriated. As regards to demand of interest the adjudicating authority has referred Section 50(2) of the CGST Act, 2017 and observed that liability of interest arises only in the cases where input tax credit wrongly availed and utilized. Whereas, in the instant matter the Input Tax Credit in dispute has been availed by the Respondent but not utilized the same.

Accordingly, in view of above, the adjudicating authority has passed the impugned order vide which ordered for recovery of ineligible credit of Rs.1,03,50,316/- u/s. 73(1) of the CGST Act, 2017 and appropriated the same towards payment made by Respondent. However, did not order for recovery of interest and did not impose any penalty under Section 73(9) and 122(2) of the CGST Act, 2017.

3. During Review of the said 'Impugned Order' dated 17.06.2022 the department has observed that the 'Impugned Order' is not legal and proper and accordingly, filed the present appeal on the following grounds :

- *The adjudicating authority has erred in appropriating the demand of transitional credit of CGST amount of Rs.1,03,50,316/- and dropping the demand of interest under Section 50 of the CGST Act, 2017, as he is not the 'Proper Officer' to decide such cases, hence Order-in-Original required to be set aside.*

- *Section 74 of the CGST Act, 2017 which specify the Proper Officer for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized.*

*Further, the Central Board of Excise and Customs, GST Policy Wing, New Delhi has issued Circular No. 31/05/2018-GST dated 09.02.2018 regarding Proper Officer under Section 73 and 74 of the CGST Act, 2017 and under the IGST Act, 2017 prescribing monetary limits for different levels of officers of Central Tax.*

- *In view of above Circular, it is clear that the Deputy Commissioner or Assistant Commissioner of Central Tax can pass orders in respect of input tax credit of Central Tax involving above Rs.10 Lakhs and not exceeding Rupees 1 Crore. Where amount of input tax credit of Central Tax is more than Rs. 1 Crore, Additional or Joint Commissioner of Central Tax is the Proper Officer for issue of SCN and passing order under Section 73 and 74 of the CGST Act, 2017.*

- *However, without considering the monetary limit prescribed by the Board, the adjudicating authority has passed the impugned order, wherein amount of input tax credit of central tax involved was more than Rs. 1 Crore i.e. Rs.1,03,50,316/-, thereby adjudicating authority has exceeded his power for*



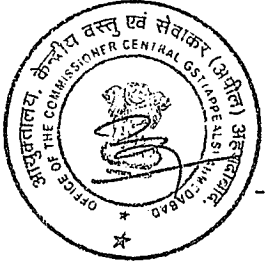
passing the subject order, which is not legal and proper and is required to be set aside.

In view of above, the appellant/department has made prayer as under:

- i. To set aside the impugned order.
- ii. To pass any other order(s) as deemed fit in the interest of justice.

4. In response to present appeal, the Respondent has submitted their submission on 20.02.2023, wherein stated that -

- They had availed transition Input Tax Credit by filing TRAN-1 in accordance with Section 140 of the CGST Act, 2017. They had availed ITC of Cess. Accordingly, a SCN was issued to them in this regard.
- In response to SCN, they made detailed submission, explaining that they have already reversed ITC availed in TRAN-1 for Cess and are not liable to pay interest in terms of Section 50 of the CGST Act, as ITC was not utilized by them till reversal made.
- However, the department/appellant has filed present appeal and contended that the impugned order is not proper and legal.
- The appellant in the impugned appeal challenged OIO passed by the Assistant Commissioner, only on the ground that the Assistant Commissioner was not the proper officer to adjudicate the issue raised in the SCN. However, appellant failed to appreciate the below facts of the case and submissions made by the Respondent during adjudication.
- SCN was raised on the ground that Respondent has availed ineligible ITC of Cess. The ITC of Cess was availed pursuant to law prevailing at the time of availing ITC in TRAN-1.
- Pursuant to CGST (Amendment) Bill, 2018 dated 29.08.2018 they reversed the ITC of Cess amounting to Rs.1,03,50,316/- in GSTR-3B of May 2018 and August 2018 i.e. before issuance of SCN.
- While filing appeal, the appellant failed to appreciate the above mentioned merits of the case and Appeal is filed by placing reliance on departmental internal Circular No. 31/05/2018-GST dated 09.02.2018, which specify the levels of authority to adjudicate the case basis the monetary amount involved in SCN issued under Section 73 or 74 of the CGST Act, 2017.
- The appeal is filed only on account of procedural lapse. They referred and relied upon the following case laws which have upheld that the procedural lapse can be condone -
  - o Mangalore Chemicals and Fertilizers Ltd. Vs. Dy. Commissioner 1991 (55) ELT 437 (SC) ;



- o *M/s. VST Industries Ltd. Versus CCE, C & ST, Hyderabad TMI 24 2017 (10)* :
- o *Welspun Global Ltd. Vs. C.C.E. & S.T. Rajkot 2023 (1) TMI 543.*

5. Personal Hearing in the matter was held on 28.06.2023, wherein Mr. Amit Parmar, Manager and Mr. Vaibhav Vahia, Sr. Manager were appeared on behalf of the *Respondent* as authorized representatives. During PH they have stated that they have already paid the amount before issuance of SCN and no amount is utilized at any point of time, no interest liability arises, therefore, it's a case of technical in nature.

### **Discussion and Findings :**

6(i). I have carefully gone through the facts of the case, grounds of appeal, submissions made by the *Respondent* and documents available on record. I find that the present appeal is filed to set aside the *impugned order* on the ground that the disputed amount of Input Tax Credit involved in present matter was more than Rs.1 Crore and as per the monetary limit prescribed by the Board vide Circular No. 31/05/2018-GST dated 09.02.2018 the *adjudicating authority* was not the proper officer to decide the matter.

6(ii). The issue involved in present matter is that the *Respondent* has availed transitional credit of ITC of Cess Rs.1,03,50,316/- in light of provisions of Section 140 of the CGST Act, 2017. I find that the availment of said Input Tax Credit of Cess was disputed by the department and accordingly a SCN dated 28.12.21 was issued to the *Respondent*. Thereafter, the Assistant Commissioner, Division VII, Ahmedabad South after having gone through the SCN, relevant documents and submissions of the *Respondent* has passed the impugned order. I find that vide impugned order the adjudicating authority has ordered for recovery of ineligible credit of Rs.1,03,50,316/- u/s. 73(1) of the CGST Act, 2017, however, do not imposed any penalty u/s. 73(9) and 122(2) of the CGST Act, 2017 as well as do not ordered for recovery of interest under Section 50 of the CGST Act, 2017.

6(iii). The *department/appellant* has challenged the *impugned order* under present appeal proceedings mainly on the ground that though the *Adjudicating Authority* i.e. AC, Division-VII, Ahmedabad South was not the competent authority to decide the issue involving amount of ITC of more than Rs.1 Crore, has decided the matter. I find that in support of their argument the *appellant/department* has referred the Circular No. 31/05/2018-GST dated 09.02.2018 issued by the CBEC, New Delhi. I have gone through the said Circular and noticed that the Deputy or Assistant Commissioner of Central Tax is the

proper officer in relation to issue of SCN and Orders under Section 73 & 74 of the CGST Act, 2017 and Section 20 of the IGST Act, 2017 for Input Tax Credit of Central Tax (including Cess) wrongly availed or utilized up to the monetary limit of Above Rs.10 Lakhs and not exceeding Rs. 1 Crore. However, I find that in the present matter thought the disputed ITC of Cess involved is more than Rs.1 Crore, the AC, Div. VII, Ahmedabad South has adjudicated the SCN and passed the impugned order.

7. From the above facts, it is clear that the *adjudicating authority*, the Assistant Commissioner is not the proper officer to decide the issue of ITC of Cess involving Rs.1 Crore and above in light of CBEC's Circular No. 31/05/2018-GST dated 09.02.2018. Since, in the instant case the ITC of Cess involved is Rs.1,03,50,316/- and the Assistant Commissioner has decided the matter, therefore, the *impugned order* is not legal and thus require to be set aside being the order issued by the authority who is not competent to decide the matter. Further, I am not going into the merit of the case and deciding the case based on competency of the Adjudicating Authority only.

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

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

The Appeal filed by 'Department' stand disposed off in above terms.

*Asarumud*  
18/07/2023  
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 18.07.2023

Attested

(Dilip Vadav)

Superintendent (Appeals)

By R.P.A.D.

To,

The Assistant / Deputy Commissioner,  
CGST, Division - VII, Ahmedabad South.

Appellant

M/s. Cadila Healthcare Ltd.,  
Zydus Tower, Satellite Cross Road,  
Sarkhej-Gandhinagar Highway,  
Ahmedabad - 380 015

Respondent



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-South.
4. The Dy/Asstt. Commissioner, CGST, Division-VII, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. ✓ Guard File.
7. P.A. File



