::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔरकेन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST &CENTRAL EXCISE
द्वितीय तल,जी एस टी भवन / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142Email: commrappl3-cexamd@nic.in

सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा:- **DIN-20220464SX0000723003**

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/50 /GDM /2021	**38GST/JC/2020-21**	**30-03-2021**

अपील आदेश संख्या(Order-In-Appeal No.):

KCH-EXCUS-000-APP-278-2021-22

आदेश का दिनांक / Date of Order:	**31.03.2022**	जारी करने की तारीख / Date of issue:	**08.04.2022**

श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर,राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता/प्रतिवादी का नाम एवं पता /Name & Address of the Appellant/Respondent :-

M/s.Welspun Corp. Limited, Welspun City, Village-Versamedi, Taluka-Anjar,District-Kutch Gujarat - 370110

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.

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असार्वा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कमें से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना,रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i) वित अधिनियम,1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वितीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" मे निम्न शामिल है

(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वितीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।/

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार कोपुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित अधिनियम (नं. 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए है।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various umbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.

:: ORDER-IN-APPEAL ::

M/s. Welspun Corp Ltd, District Kutch (*hereinafter referred to as* "Appellant"), has filed Appeal No. V2/50/GDM/2021 against Order-in-Original No. 38/GST/JC/2020-21 dated 30.3.2021 (*hereinafter referred to as* 'impugned order') passed by the Joint Commissioner, Central GST & Central Excise, Gandhidham (*hereinafter referred to as* 'adjudicating authority').

2. The facts of the case, in brief, are that the Appellant was engaged in supply of various taxable goods and services and was holding GSTIN No. 24AAACW0744L1ZC. On scrutiny of details provided by the Appellant in GST-TRAN-1 about credit of duties transferred by them under Section 140 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'Act'), it was found by the jurisdictional Range Superintendent (JRS) that the Appellant had carried forward, *inter alia*, Cenvat credit of Education Cess and Secondary and Higher Education Cess (SHE Cess) totally amounting to Rs. 2,39,22,525/- in their electronic credit ledger under Section 140(1). It appeared to the JRS that the Appellant was not eligible to carry forward said Cenvat credit of Education Cess and SHE Cess, in view of the provisions contained in Section 140(1) and Section 2(62) of the Act. The Appellant had subsequently vide their letter dated 29.10.2018 informed that they had reversed said Cenvat credit of Education Cess and SHE Cess amounting to Rs. 2,39,22,525/- under protest.

2.1 The Show Cause Notice No. SCN/6/JC/GST/2019-20 dated 3.10.2019 was issued to the Appellant calling them to show cause as to why wrongly availed credit of Education Cess and SHE Cess totally amounting to Rs. 2,39,22,525/- should not be demanded and recovered from them under Section 73(1) of the Act along with interest under Section 50 of the Act and Cenvat credit of Rs. 2,39,22,525/- already reversed by the Appellant should not be appropriated. The notice also proposed imposition of penalty under Section 122(2) of the Act.

2.2 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who confirmed the demand of wrongly availed credit totally amounting to Rs. 2,39,22,525/- under Section 73(1) of the Act and appropriated the amount of Rs. 2,39,22,525/- reversed by them against confirmed demand along with interest under Section 50 of the Act.

3. Being aggrieved, the Appellant has preferred appeal, *inter alia*, on the following grounds:-

(i) The entire proceedings itself is not maintainable, since SCN could not have been issued under Section 73 of the Act. Assuming without admitting that the Appellant had wrongly carried forward the credits, the provision of Section 73 does not provide for issuance of a notice in cases where CENVAT Credit of duties has been wrongly carried forward in the electronic credit ledger. In other words, Section 73(1) does not authorize the proper officer to issue notices demanding the recovery of credits which have allegedly wrongly been carried forward or transitioned. Wrong transitioning/carrying forward of credits is not a situation contemplated under Section 73(1) of the CGST Act for the issuance of show cause notices by the proper officer inasmuch as the same is not akin to availment or utilization of input tax credit and relied upon judgment of the Hon'ble Patna High Court in the case of Commercial Steel Engineering Corporation Vs. State of Bihar & Ors. [2019-TIOL-1585-HC-PATNA-GST].

(ii) None of the explanations to Section 140 affect their claim, which was made under Section 140(1) of the CGST Act, 2017. The phrase 'eligible duties' is defined under Explanation 1 to Section 140 of the CGST Act. However, the same applies only to sub-section (3), (4) and (6). The amendment made vide Section 28(b)(i) of the CGST (Amendment) Act by which the said explanation is applied to sub-section (1), is not notified yet and hence, the definition of 'eligible duties' will not apply in case of sub-section (1) as of now. That Explanation 2 defines the phrase 'eligible duties and taxes' which is nowhere used in Section 140(1). Hence, the provisions of Explanation 2 would be irrelevant for the purpose of Section 140(1), under which the Appellant has transitioned the credit in question. In any event, Explanation 2 applies only to sub-section (5) of Section 140. The amendment applying the said Explanation to sub-section (1) of Section 140 has not been notified yet. That Explanation 3 contains a stipulation in respect of the phrase 'eligible duties and taxes', whereas Section 140(1) uses the phrase 'eligible duties'. Hence, Explanation 3 inserted by the CGST (Amendment) Act, 2018 is irrelevant for determining the eligibility of credit under Section 140(1).

(iii) The Respondent has relied upon the decision of the Division Bench of the Hon'ble Madras High Court in the case of Sutherland Global Services Pvt. Ltd. -2019 (30) G.S.T.L. 628 (Mad.)] but failed to appreciate that the order of the Hon'ble High Court does not touch upon all the relevant facets pertinent to the issue at hand and some of the issues that were raised before the Division Bench of the High Court had not been

considered in their correct perspective. Thus, the said decision being per incuriam and sub-silentio, cannot be relied upon as a binding precedent.

(iv) That the Respondent has failed to appreciate that the Hon'ble Supreme Court in the case of SRD Nutrients Pvt Ltd - 2017 (355) ELT 481 (S.C.) has held that EC and SHEC, at the time of collection, takes the character of the parent levy. Therefore, the aforementioned Cesses are chargeable and collected as Excise duty/Service Tax. This being the case, transition of the said Cesses could not have been denied to the Appellant. Appellant further submits that the reliance placed by the Respondent on the decision of the Apex Court in the case of Unicorn Industries Ltd. does not apply to the present case inasmuch as the same was a dispute in respect of the area based incentive scheme wherein Cesses were held to be non-refundable. Appellant submits that the present issue relates to transition of credit to the GST regime and not to any area based incentive scheme and/or refund of Cess. Accordingly, the impugned order overlooking the submission of the Appellant based on the decision in the case of SRD Nutrients, deserves to be quashed and set aside on this ground alone.

(v) That there is no provision under the CGST Act or the erstwhile service tax law which prevents, blocks or specifically restricts the carry forward of CENVAT credit pertaining to EC and SHE Cess as transitional credit. That on perusal of Section 140, the only restriction with respect to carry forward of transitional credits pertains to credit which is not admissible under the CGST Act. That the transitional credit amounting to Rs. 2,39,22,525/- represents the vested right of the Appellant which cannot be taken away in the absence of explicit provisions for the same.

(vi) There is no infirmity in carry forward of the amount of Rs. 2,39,22,525/- under Section 140(1) of the CGST Act and consequently, there is no question of recovery of interest under Section 50 of the CGST Act. That Section 50(1) stipulates that interest should be recovered in case a person who is liable to pay tax fails to pay the same within the due date to the Government. In the present case, insofar as the amount of Rs. 2,39,22,525/- carried forward under Section 140 (1) is concerned, the same is an amount of credit transitioned by the Appellant and not an amount of tax which has not been paid or belatedly paid to the Government. Consequently, the Appellant submits that the provisions of Section 50(1) are not attracted in the present case at all.

4. Personal hearing in the matter was conducted in virtual mode through video conferencing on 11.3.2022. Shri Vishal Agrawal and Ms. Isha Shah, both Advocates, and Shri Suresh Darak, President, and Shri Surendar Mehta, Associate Vice President, appeared on behalf of the Appellant. The advocates reiterated submissions made in appeal memorandum. Ms. Shah relied upon decision of the Hon'ble Bombay High Court passed in the case of M/s Godrej & Boyce Mfg Co. Ltd, which she stated would be submitted as part of additional submission.

4.1 In additional written submission dated 21.3.2022, grounds raised in appeal memorandum are reiterated and case law of M/s Godrej & Boyce Mfg Co. Ltd-2021-TIOL-2112-HC-MUM-GST was submitted.

5. I have carefully gone through the facts of the case, the impugned order, and written as well as oral submissions made by the Appellant. The issue to be decided in the present appeal is whether the Appellant had correctly carried forward Cenvat credit of Education Cess and Secondary and Higher Education Cess in their Electronic Credit Ledger under Section 140 of the Act or not.

6. On perusal of the records, I find that the Appellant had carried forward Cenvat credit of Education Cess and SHE Cess totally amounting to Rs. 2,39,22,525/- in their electronic credit ledger through GST TRAN-1 under Section 140(1) of the Act. The adjudicating authority confirmed the demand, inter alia, on the grounds that Education Cess was not one of the 16 taxes which were subsumed under the GST Law and hence credit of such cess cannot be claimed against the output GST liability. It was also contended that levy of Education Cess and SHE Cess having been dropped vide the Finance Act, 2015, the unutilized credit of Education Cess and SHE Cess cannot be carried forward under transitionary provisions of Section 140 of the Act.

7. I find that Section 140 of the Act contains provisions for transitional arrangements to carry forward Cenvat credit of eligible duties from the erstwhile Central Excise Act, 1944 and the Finance Act, 1994 into the Goods and Service Tax Act, 2017 and list of eligible duties which are eligible to be carried forward into new GST regime. The relevant provisions are reproduced as under:

"Section 140. Transitional arrangements for input tax credit. —

(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 :

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—

(i) where the said amount of credit is not admissible as input tax credit under this Act; or

..

..

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

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

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

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

[(iv) * * *]

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

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

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

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

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

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

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

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

[(iv) * * *]

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

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

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

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

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

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

8. I find that the Appellant had carried forward Cenvat credit of Education Cess and Secondary and Higher Education Cess lying as balance in their ER-1 return / ST-3 return as on 30.6.2017 through form GST-TRAN-1. I find that levy of Education Cess and SHE Cess was dropped and deleted vide Section 153 and Section 159 of the Finance Act, 2015, respectively. Hence, at the time of introduction of GST, Education Cess and SHE Cess were not being levied in the existing law. I further find that Explanation 1 and Explanation 2 *supra* specified "Eligible Duties" and "Eligible duties and Taxes", which are eligible to be carried forward. Apparently, Education Cess and SHE Cess are absent from the list of duties/ taxes which can be carried forward in GST era and hence, the same cannot be carried forwarded in GST era. Further, in terms of Explanation 3 *supra*, expression "eligible duties and taxes" excludes any Cess which has not been specified in Explanation 1 or Explanation 2 of Section 140 reproduced supra. I also find that Rule 117(1) also stipulates that a registered person is entitled to take input tax credit of eligible duties and taxes, as defined in Explanation 2 to Section 140 through form TRAN-1 in terms of Section 140 of the Act. Further, Education Cess and SHE Cess were not part of 16 Duties/taxes which were subsumed under the GST Law. Considering the legal provisions, I hold that the Appellant is not eligible to carry forward credit of Education Cess and SHE Cess lying in their return as on 30.6.2017 into their electronic credit ledger through GST TRAN-1 under Section 140 of the Act.

8.1 I rely on the decision dated 16.10.2020 rendered by the Hon'ble Madras High Court in the case of CGST & Central Excise, Chennai Vs. Sutherland Global Services Private Limited reported as 2020-TIOL-1739-HC-MAD-GST, wherein it has been held that,

"58. We may also briefly add one more reason as to why we cannot subscribe to the view taken by the learned Single Judge and affirm it. GST Law, by enactment of respective laws by the Parliament and States and creation of GST Council to subsume the 16 indirect taxes which were in vogue prior to 01.07.2017 was a watershed moment in the taxation reforms in India. The

following 16 indirect taxes which were hitherto leviable were subsumed in the new GST Law Regime and Constitutional Amendments were effected for that purpose besides enactment of separate laws by Parliament and States to impose GST on the sales of goods and services like Central Goods and Services Tax Act, 2017, the Integrated Goods and Services Tax Act, 2017, the Union Territory Goods and Services Tax Act, 2017, the Goods and Services (Compensation to States) Act, 2017, etc. by Parliament and respective State Goods and Services Tax Act by different States and Union Territories.

(1) Central Excise Duty
(2) Additional Excise Duties
(3) Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955
(4) Service Tax
(5) Additional Customs Duty commonly known as Countervailing Duty
(6) Special Additional Duty of Customs
(7) Central Surcharges and Cess, so far as they relate to the supply of goods and services.
(8) State Value Added Tax/Sales Tax
(9) Entertainment Tax (other than the tax levied by the local bodies)
(10) Central Sales Tax (levied by the Centre and collected by the States)
(11) Octroi and Entry Tax
(12) Purchase Tax
(13) Luxury Tax
(14) Taxes on lottery
(15) Betting and gambling
(16) State cess and surcharges insofar as they relate to supply of goods and services.

59. The GST Law spared and did not include within its ambit and scope only six commodities which were left out and continued to be covered by the earlier existing laws of Excise Duty and VAT Law and for that purpose, Entry 54 of the State List and Entry 84 of the Union List were also suitably amended by 101st Constitutional Amendment Act. Six items which are not covered by GST are (a) Petroleum Crude, (b) High Speed Diesel, (c) Motor Spirit (commonly known as Petrol), (d) Natural Gas, (e) Aviation Turbine Fuel and (f) Tobacco and Tobacco products. Except the aforesaid 16 taxes and duties specified in different enactments, no other tax or duty were subsumed under the new GST Regime with effect from 01.07.2017.

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.

61. For these reasons also, in our opinion, the learned Single Judge, with great respects, erred in allowing the claim of the Assessee under Section 140 of the CGST Act. The main pitfalls in the reasoning given by the learned Single Judge are (a) the character of levy in the form of Cess like Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess was distinct and stand alone levies and their input credit even under the Cenvat Rules which were applicable *mutatis mutandis* did not permit any such cross Input Tax Credit, much less conferred a vested right, especially after the levy of these Cesses itself was dropped; (b) Explanation 3 to Section 140 could not be applied in a restricted

manner only to the specified Sub-sections of Section 140 of the Act mentioned in the Explanations 1 and 2 and as a tool of interpretation, Explanation 3 would apply to the entire Section 140 of the Act and since it excluded the Cess of any kind for the purpose of Section 140 of the Act, which is not specified therein, the transition, carry forward or adjustment of unutilised Cess of any kind other than specified Cess, viz. National Calamity Contingent Duty (NCCD), against Output GST liability could not arise.

62. For the aforesaid reasons, we are inclined to allow the appeal of the Revenue and with all due respect for the learned Single Judge, set aside the judgment of the learned Single Judge dated 05.09.2019 and we hold 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. The appeal of the Revenue is allowed. CMP No.690 of 2020 is closed. Costs easy."

(Emphasis supplied)

8. By respectfully following the above decision, I uphold the confirmation of demand of wrongly availed credit totally amounting to Rs. 2,39,22,525/- under Section 73(1) of the Act. Since demand is upheld, it is natural consequence that confirmed demand is to be paid along with interest at appropriate rate under Section 50 of the Act and I order accordingly.

9. The Appellant has contended that the SCN which was issued under Section 73 was not maintainable since Section 73 did not apply to cases of transition of credit. Section 73(1) does not authorize the proper officer to issue notices demanding the recovery of credits which have allegedly wrongly been carried forward or transitioned. Wrong transitioning/carrying forward of credits is not a situation contemplated under Section 73(1) of the CGST Act for the issuance of show cause notices by the proper officer inasmuch as the same is not akin to availment or utilization of input tax credit and relied upon judgment of the Hon'ble Patna High Court in the case of Commercial Steel Engineering Corporation Vs. State of Bihar & Ors. [2019-TIOL-1585-HC-PATNA-GST].

9.1 I find that provisions of Section 140 of the Act enables an assesse to transit Cenvat credit of eligible duties lying in balance immediately preceding the appointed day into their electronic credit ledger. The Appellant opted to transition, inter alia, Cenvat credit of Education Cess and SHE Cess in their electronic credit ledger through Form GST TRAN-1. So, when the said Cess was credited into their electronic credit ledger, it has to be considered that they availed credit of Cess. Since, the Appellant was not eligible for availing cess in their credit ledger, proceedings were initiated by invoking provisions contained in Section 73 of the Act, which empowers the proper officer to recover wrongly availed or utilised input tax credit. After careful

consideration of the facts, I am of the considered opinion that the adjudicating authority correctly invoked provisions contained in Section 73 of the Act in respect of ineligible credit availed by the Appellant in their electronic credit ledger under Section 140 of the Act. Although, the Appellant had already reversed the said credit of Cess from their electronic credit ledger on being pointed out by the JRS and no amount was outstanding on this count but since the Appellant had reversed the credit under protest, the SCN was issued under Section 73 of the Act to vacate the protest lodged by them and to appropriate the said reversal of cess.

9.2 I have examined the relied upon decision of the Hon'ble Patna High Court passed in the case of Commercial Steel Engineering Corporation v State of Bihar & Others reported as 2019 (28) G.S.T.L. 579 (Pat.). I find that the said decision was rendered under the Bihar Goods and Service Tax Act, 2017. In the said case, the petitioner had inadvertently failed to avail VAT ITC in the years 2007-08 and 2011-12 and failed to report in respective returns. The said ITC was carried forward by them through GST TRAN-1 in the GST regime. The Department initiated proceedings under Section 73 seeking to recover the transitional credit as wrongly availed credit on the ground that the claim was not substantiated by returns. The High Court held that at best the claim could have been rejected but the same did not give jurisdiction to the authority to create tax liability when no outstanding liability existed. On examining the facts of the said case, I find that eligibility of disputed ITC was not decided yet and the same was pending before the statutory authority and in that backdrop the said decision was rendered as evident from para 35 of the said decision reproduced herein under:

> "35. Insofar as the present case is concerned, Annexure 2 series confirms that the petitioner has an input tax credit in his favour under the Value Added Tax Act and the Entry Tax Act. Now whether he is entitled for refund of this credit or entitled to carry it forward in the transitional credit, may be a subject matter of proceeding pending before the statutory authority but nonetheless, it is definitely a confirmation of the fact that there is no tax outstanding against the petitioner which is recoverable."

9.3 Whereas in the present case, the Appellant was not eligible to avail credit of Education Cess and SHE Cess in their electronic credit ledger and provisions contained in Section 73 of the Act empowers the adjudicating authority to recover any input tax credit wrongly availed or utilised for any reason. The adjudicating authority was justified in invoking provisions contained in Section 73. Thus, facts involved in the present case are on different footing and relied upon case law of Commercial Steel Engineering

Corporation is not applicable to the facts of the present case. I, therefore, discard the reliance placed on the said case law.

10. The Appellant has contended that the phrase 'eligible duties' defined under Explanation 1 to Section 140 of the Act applies only to sub-section (3), (4) and (6), since the amendment made vide Section 28((b)(i) of the Central Goods & Services Tax (Amendment) Act, 2018 is not notified yet and hence, the definition of 'eligible duties' will not apply in case of sub-section (1) as of now. That Explanation 2 defines the phrase 'eligible duties and taxes', which is nowhere used in Section 140(1). Hence, the provisions of Explanation 2 would be irrelevant for the purpose of Section 140(1), under which the Appellant has transitioned the credit in question. That Explanation 3 contains a stipulation in respect of the phrase 'eligible duties and taxes', whereas Section 140(1) uses the phrase 'eligible duties'. Hence, Explanation 3 inserted by the CGST (Amendment) Act, 2018 is irrelevant for determining the eligibility of credit under Section 140(1).

10.1 I find that phrase 'eligible duties' has been inserted in Section 140(1) of the Act retrospectively with effect from 1.7.2017 by virtue of Section 28(a) of the CGST (Amendment) Act, 2018. Though the phrase 'eligible duties' for the purpose of Section 140(1) has not been defined but the Board has clarified vide Circular No. 87/06/2019-GST dated 2.1.2019 issued from F.No. 267/80/2018-CX.8 that expression 'eligible duties' appearing in Section 140(1) will cover duties which are listed as "eligible duties" at sl. no. (i) to (vii) of explanation 1 to Section 140, and "eligible duties and taxes" at sl. no. (i) to (viii) of explanation 2 to Section 140. Notwithstanding above, Explanation 3 to Section 140 of the Act has provided that expression "eligible duties and taxes" excludes any cess which has not been specified in Explanation 1 or Explanation 2 to Section 140. Further, Explanation 3 to Section 140 could not be applied in a restricted manner only to the specified sub-sections of Section 140 of the Act mentioned in the Explanations 1 and 2 and as a tool of interpretation, Explanation 3 would apply to the entire Section 140 of the Act, as held by the Hon'ble High Court in the case of Sutherland Global Services Private Limited supra. Further, the expression 'eligible duties and taxes' used in Explanation 3 would grammatically mean 'eligible duties and eligible taxes'. So, 'eligible duties and taxes' contained in Explanation 3 effectively contains the expression 'eligible duties'. Apparently, the expression 'eligible duties' conspicuously occurs in both Explanation 3 as well as in Section 140(1) and it would have to have the same meaning at both places. I, therefore, discard this contention as devoid of merit.

11. I have also examined the relied upon decision of the Hon'ble Bombay High Court passed in the case of M/s Godrej & Boyce Mfg Co. Ltd reported at 2021-TIOL-2112-HC-MUM-GST. In the said case, the party was issued Show Cause Notice for availing inadmissible credit of Education Cess and SHE Cess in their electronic credit ledger through TRAN-1. The party challenged the said SCN before the Hon'ble High Court by way of filing writ petition. The Hon'ble Court allowed the writ petition by holding that (i) Explanation 3 in Section 140 of the Act is not applicable to sub-section (1) thereof because that explanation pertains to "eligible duties and taxes" while Section 140(1) deals only with "eligible duties" and (ii) The officer who issued the SCN lacked jurisdiction because he based his SCN on introduction of Explanation 3 to Section 140 of the Act read with Explanation 1 and 2 thereof without ascertaining whether Explanation 1 and 2 have been made operational or not as well as whether Explanation 3 would at all apply to sub-section(1) of Section 140 of the Act. In the present case, the Appellant was issued SCN on the ground that credit of Education Cess and SHE Cess carried forward as input tax credit through TRAN-1 appeared to be irregular and in contravention of the provisions of Section 140(1) and Section 2(62) of the Act. Thus, SCN issued in the present case was not based on retrospective amendment made in Explanation 1 and 2 of Section 140 of the Act or invoking provisions of Explanation 3 ibid. Since, facts of the present case are different, there is no question of examining whether there was any lack of jurisdiction in issuing SCN to the Appellant herein. It is also pertinent to mention here that the Hon'ble Bombay Court in the said case of M/s Godrej & Boyce Mfg Co. Ltd also held that the Revenue is free to issue a fresh SCN to the petitioner if it has reason to believe that the Education Cess is recoverable for reasons other than retrospective amendment. The said decision was, thus, rendered considering peculiar facts of the said case and cannot be universally applied to all cases. As regards observation of the Hon'ble Bombay High Court that *"Explanation 3 in Section 140 of the Act is not applicable to sub-section (1) thereof because that explanation pertains to 'eligible duties and taxes' while Section 140(1) deals only with 'eligible duties' "*, I rely on the decision of the Hon'ble Madras High Court rendered in the case of Sutherland Global Services Private Limited supra, wherein the Hon'ble Court has held that Explanation 3 to Section 140 could not be applied in a restricted manner only to the specified sub-sections of Section 140 of the Act mentioned in the Explanations 1 and 2 and as a tool of interpretation, Explanation 3 would apply to the entire Section 140 of the Act. After examining the facts involved in the present case as well as following the law laid down by the Hon'ble Madras High Court in the case of

Sutherland Global Services Private Limited *supra*, I hold that reliance placed on the case law of M/s Godrej & Boyce Mfg Co. Ltd is not sustainable.

12. The Appellant has contended that the Hon'ble Supreme Court in the case of SRD Nutrients Pvt Ltd - 2017 (355) ELT 481 (S.C.) has held that EC and SHE Cess, at the time of collection, takes the character of the parent levy. Therefore, the aforementioned Cesses are chargeable and collected as Excise duty/Service Tax. This being the case, transition of the said Cesses could not have been denied to them. The Appellant further submits that the reliance placed by the Respondent on the decision of the Apex Court in the case of Unicorn Industries Ltd. does not apply to the present case inasmuch as the same was a dispute in respect of the area based incentive scheme wherein Cesses were held to be non-refundable.

12.1 I have examined the relied upon judgement of the Hon'ble Supreme Court passed in the case of SRD Nutrients Pvt Ltd reported as 2017 (355) ELT 481 (S.C.). In the said case, the party was availing the benefit of area based exemption Notification No. 20/2007-Ex., dated April 25, 2007. The exemption was granted by way of refund of duties of excise paid by the assessee. The party challenged the denial of refund of Education Cess and SHE Cess. The matter reached before the Apex Court which ruled in favour of the party by holding that once the excise duty itself was exempted from levy, the appellants were entitled to refund of Education Cess and Higher Education Cess which was paid along with excise duty. I find that the Apex Court's said judgment passed in the case of SRD Nutrients Pvt Ltd has been held *per incuriam* by the Hon'ble Supreme Court in the case of Unicorn Industries reported as 2019 (370) E.L.T. 3 (S.C.). The relevant portion of the said judgement is reproduced as under:

> "41. ... ... The reason employed in *SRD Nutrients Private Limited* (supra) that there was nil excise duty, as such, additional duty cannot be charged, is also equally unacceptable as additional duty can always be determined and merely exemption granted in respect of a particular excise duty, cannot come in the way of determination of yet another duty based thereupon. The proposition urged that simply because one kind of duty is exempted, other kinds of duties automatically fall, cannot be accepted as there is no difficulty in making the computation of additional duties, which are payable under NCCD, education cess, secondary and higher education cess. Moreover, statutory notification must cover

held by this Court in several decisions such as Mahanagar Railway Vendors' Union v. Union of India & Ors., (1994) Suppl. 1 SCC 609, State of Maharashtra & Ors. v. Mana Adim Jamat Mandal, AIR 2006 SC 3446 and State of Uttar Pradesh & Ors. v. Ajay Kumar Sharma & Ors., (2016) 15 SCC 289. The decision rendered in ignorance of a binding precedent and/or ignorance of a provision has been held to be per incuriam in Subhash Chandra & Ors. v. Delhi Subordinate Services Selection Board & Ors., (2009) 15 SCC 458, Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129, and Central Board of Dawoodi Bohra Community & Ors. v. State of Maharashtra & Ors., (2005) 2 SCC 673 = 2010 (254) E.L.T. 196 (S.C.). It was held that a smaller bench could not disagree with the view taken by a Larger Bench.

43. Thus, it is clear that before the Division Bench deciding SRD Nutrients Private Limited and Bajaj Auto Limited (supra), the previous binding decisions of three-Judge Bench in Modi Rubber (supra) and Rita Textiles Private Limited (supra) were not placed for consideration. Thus, the decisions in SRD Nutrients Private Limited and Bajaj Auto Limited (supra) are clearly per incuriam. The decisions in Modi Rubber (supra) and Rita Textiles Private Limited (supra) are binding on us being of Coordinate Bench, and we respectfully follow them. We did not find any ground to take a different view."

12.2 In view of the above, I discard the reliance placed on the Apex Court's judgment of SRD Nutrients Pvt Ltd.

13. The Appellant has contended that there is no provision under the CGST Act or the erstwhile service tax law which prevents, blocks or specifically restricts the carry forward of CENVAT credit pertaining to EC and SHE Cess as transitional credit. That the transitional credit amounting to Rs. 2,39,22,525/- represents the vested right of the Appellant which cannot be taken away in the absence of explicit provisions for the same.

13.1 I find that the appellant had carried forward Education Cess and SHE Cess in GST era in terms of sub-section(1) of Section 140 of the Act. The said sub-Section (1) stipulates that a registered person is entitled to take the amount of CENVAT credit of eligible duties in his electronic credit ledger. Further, Explanation 3 of Section 140 of the Act stipulates that expression "eligible duties and taxes" excludes any cess which has not been specified in Explanation 1 or Explanation 2. Thus, on combined reading of provisions contained in sub-section(1) of Section 140 and Explanations 1, 2 and 3, it is apparent that credit

of Education Cess and SHE Cess cannot be carried forward in GST era through TRAN-1. I, therefore, discard this contention as devoid of merit.

14. The Appellant has contended that there is no infirmity in carry forward of the amount of Rs. 2,39,22,525/- under Section 140(1) of the CGST Act and consequently, there is no question of recovery of interest under Section 50 of the CGST Act.

14.1 I find that Section 73 of the Act, inter alia, provides that where input tax credit has been wrongly availed and utilized for any reason, the proper officer shall serve notice for recovery of tax along with interest payable under Section 50 of the Act. Since, the Appellant had wrongly availed credit of Education Cess and SHE Cess in their electronic credit ledger through TRAN-1 and utilized towards payment of GST, interest is chargeable under Section 50 ibid. I, therefore, hold that the Appellant is liable to pay interest under Section 50 of the Act from the date of availment of credit to date of reversal thereof.

15. In view of above, I uphold the impugned order and reject the appeal.

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

16. The appeal filed by the Appellant is disposed off as above.

सत्यापित,

विपुल शाह
अधीक्षक (अपील्स)

..31st March, 2022..

(AKHILESH KUMAR)
Commissioner (Appeals)

By R.P.A.D.

To, M/s Welspun Corp Ltd, Welspun City, Village Varsamedi - 370110, Taluka Anjar, District Kutch.	सेवा में, वेलस्पन कॉर्प लिमिटेड, वेलस्पन सिटि, वरसामेडी, तालुका अंजार, जिल्ला कच्छ ।

प्रतिलिपि :-

1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
3) संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।