



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- 20231264SW0000111EB6

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/2946/2023 -APPEAL 19269-72

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 169 /2023-24

दिनांक Date : 29.11.2023 जारी करने की तारीख Date of Issue : 06.12.2023

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. 286/AC/KEVIN PROCESS TECHNOLOGIES/ DIV-11/A'BAD -SOUTH/JDM/2022-23 dated 28.04.2023 issued by The Assistant Commissioner, CGST, Division II, Ahmedabad South.

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

Appellant	Respondent
Kevin Process Technologies Pvt Ltd, Plot No A-1-3706, GIDC Phase-IV, Vatva Industrial Area, Vatva, Ahmedabad- 382445	The Assistant Commissioner, CGST & CX, Div-II, Ahmedabad South

(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 admitted/accepted by the appellant, and

(ii) A sum equal to twenty five per cent 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 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.



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

M/s. Kevin Process Technologies Pvt. Ltd., Plot No. A-1-3706, GIDC Phase-IV, Vatva Industrial Area, Vatva, Ahmedabad - 382445 (hereinafter referred as 'Appellant') has filed the appeal against Order-in-Original No. 286/AC/Kevin Process Technologies/Div-II/A'bad-South/JDM/2022-23 dated 28.04.2023 (hereinafter referred as 'Impugned Order') passed by the Assistant Commissioner, CGST, Division - II, Ahmedabad South (hereinafter referred as 'Adjudicating Authority').

2(i). Briefly stated the facts of the case is that the 'Appellant' are engaged in the manufacturing and supply of pharmaceutical and chemical machinery, holding GST Registration - GSTIN No.24AAACK8850D1ZQ has filed the present appeal on 29.06.2023; as per appeal memorandum the order appealed against was communicated to *appellant* as on 10.05.2023.

2(ii). During the course of audit and verification and reconciliation of the Tran-1 and ER-1 return of June-2017 filed by the appellant, it was observed that the taxpayer has carried forward the ITC of Rs. 19,71,983/- on 26.08.2017 two times in Tran-1 as transitional credit of the closing balance of ITC of the ER-1 filed for the month of June-2017 under the provisions of Section 140(1) of the CGST Act, 2017 which resulted the excess availing of ITC of Rs. 19,71,983 and the taxpayer had utilized such excess credit on 28.08.2017; later on, the taxpayer paid the wrongly carried forward and utilized excess credit of Rs. 19,71,983/- on 17.07.2018. Further the appellant has paid the interest of Rs. 3,14,113/- on excess availed and utilized ITC of Rs. 19,17,983/- for the period between 28.08.2017 to 17.07.2018 vide DRC-03 dated 15.04.2023. However, the appellant refused to pay penalty of Rs. 1,97,198/- under the provisions of Section 73 of the Act read with provisions of Section 122(2)(a) of the Act.

3. A SCN was issued on 03.10.22 and further the adjudicating authority confirm the demand, interest and penalty. The adjudicating authority also appropriate the tax amount of Rs. 19,71,983/- and interest amount of Rs. 3,14,113/- as the same have been reversed/paid the appellant. As the appellant not ready to pay the penalty of Rs. 1,97,198/- under the provisions of Section 73 of the Act read with provisions of Section 122(2)(a) of the Act. The adjudicating authority had confirmed the penalty of Rs. 1,97,198/- on the following grounds:-

- that the appellant has carried forward the ITC of Rs. 19,71,983/- on 26.08.2017 two times in Tran-1 as transitional credit of the closing balance of ITC of the ER-1 filed for the month of June-2017 under the



provisions of Section 140(1) of the CGST Act, 2017 which resulted the excess availing of ITC of Rs. 19,71,983 and the taxpayer had utilized such excess credit on 28.08.2017;

- Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.-

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

(2)

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4)

(5)

(6)

(7)

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50" > section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

4. Being aggrieved with the impugned order the appellant has filed the present appeal on 29.06.2023 on the following grounds -



- *Ld.Asst. Commissioner of CGST, Division --II,Ahmedabad South has wrongly levied A Penalty amount of Rs.1,97,198 U/s 73 of the CGST Act read with provisions of Section 122 (2) (a) of the Act even though we our self-had paid full amount of Rs.19,71,983 by our own and well before GST Audit findings which is against Law.*
- *that GST Portal has some technical issues initially during July, 2017 to December,2017 and SCN is issued for same period of technical difficulties for which Taxpayer should not be penalised if intension is not malafied or bad;*
- *due to some technical issues on GST Portal, we could not filed TRANS- 1 in the month of JulyAugust,2017 . We have already approached Concerned GST Officer and highlighted our issued relating to difficulties in filing of TRANS- 1 to avail Carried forward closing balance of ITC Rs.19,71,983 as per ER- 1 filed for the Month of June' 2017*
- *After our numerous try and approach to the concerned GST Jurisdictional office, Credit of Rs.19,71,983 of Trans- 1 reflected on GST Portal. Hence , immediately we have reversed / paid same amount of Rs. 19,71,983 on dt. 17.07.2018 through Form 3B for the month of June,2018.*
- *we had no malafide / Fraudulent intention in claiming ITC twice as this happened in the initial period of GST Implementation where no technical guidance were available to GST department as well as to us*
Hence, Penalty Amounting to Rs.1,97,198 for excess ITC availed in Trans-1 should not be demanded as Tax payer has already paid the same amount before commencement of GST Audit
- *Considering bonafide & genuine mistake in ITC Claim twice ,you are requested to allow our this appeal for granting relief in Penalty amount of Rs.1,97,198 & Oblige.*

Personal Hearing:

5. Personal Hearing in the matter was held on 25,10,2023 wherein Mr. Divyang N. Patel, CA appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has reiterated the written submissions and requested to allow appeal.

Discussion and Findings :

6. I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeal Memorandum as well as through additional submission. It is observed that the 'Appellant' had availed the transitional credit of Total Rs.19,71,983/- by filing TRAN-1. A



Show Cause Notice was issued to the *appellant* in this regard. Thereafter, the *adjudicating authority* vide *impugned order* has rejected transitional credit of Rs.19,71,983/- on the ground that the taxpayer has carried forward the ITC of Rs. 19,71,983/- on 26.08.2017 two times in Tran-1 as transitional credit of the closing balance of ITC of the ER-1 filed for the month of June-2017 under the provisions of Section 140(1) of the CGST Act, 2017 which resulted the excess availing of ITC of Rs. 19,71,983 and the taxpayer had utilized such excess credit on 28.08.2017. Further, it is observed that the adjudicating authority had appropriate the tax amount of Rs. 19,71,983/- and interest amount of Rs. 3,14,113/- as the same have been reversed/paid by the appellant. As the appellant not ready to pay the penalty of Rs. 1,97,198/- under the provisions of Section 73 of the Act read with provisions of Section 122(2)(a) of the Act. The adjudicating authority had confirmed the penalty of Rs. 1,97,198/-

7. Further, as regards to imposition of penalty it is observed that the appellant had wrongly carried forward the ITC of Rs. 19,71,983/- on 26.08.2017 two times in Tran-1 as transitional credit of the closing balance of ITC of the ER-1 filed for the month of June-2017 under the provisions of Section 140(1) of the CGST Act, 2017 which resulted the excess availing of ITC of Rs. 19,71,983 and the taxpayer had utilized such excess credit on 28.08.2017. Accordingly, I hereby refer the relevant provisions.

Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.-

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50" >section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

Section 122. Penalty for certain offences.-

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



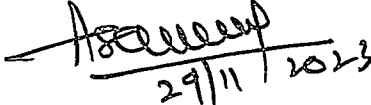
(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

In the present matter, as discussed in foregoing paras it is observed that the appellant has wrongly availed and utilized the input tax credit of amounting to Rs.19,71,983/- and therefore there is nothing wrong in penalty imposed upon appellant under Section 73 of the CGST Act, 2017 Act read with provisions of Section 122(2)(a) of the Act, by the adjudicating authority vide impugned order. Therefore, I do not find any force in the contention of the appellant.

8. In view of the above discussions, it is observed that the impugned order passed by the Adjudicating Authority is legal and proper. Therefore, I do not find any reasons to interfere with the decision taken by the Adjudicating Authority vide "impugned order" and accordingly, O-I-O is upheld being legal and proper.


9. अपीलकर्ताद्वारा दर्ज की गई अपील कानिपटाराउपरोक्त तरीके से किया जाता है।

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


29/11/2023
(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: 29.11.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)



By R.P.A.D.

To,
M/s. Kevin Process Technologies Pvt. Ltd.,
Plot No. A-1-3706, GIDC Phase-IV,
Vatva Industrial Area, Vatva,
Ahmedabad - 382445.

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-II, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File.

