



सत्यमेव जयते

**आयुक्त(अपील) का कार्यालय,**  
Office of the Commissioner (Appeal),  
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

07926305065- टेलीफैक्स 07926305136



DIN NO. : 20230864SW0000111DA2

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/COM/GSTP/38/2023 / मूग्स - कस ००

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-77-2023-24

दिनांक Date : 31-07-2023, जारी करने की तारीख Date of Issue : 16-08-2023

आयुक्त (अपील) द्वारा पारित

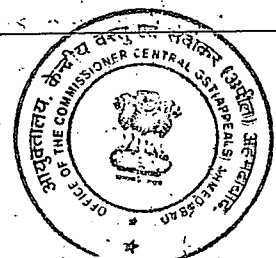
Passed by Shiv Pratap Singh, Commissioner (Appeals)

ग Arising out of Order-in-Original No 24/CGST/Ahmd-South/JC/MT/2022-23 dated 16.10.2022 issued by The Joint Commissioner, CGST, Ahmedabad South,

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

**M/s St. Jude Medical India Private Limited,**  
**C-10, 2nd Floor, Raghuvver Estate,**  
**Old National Highway No.8, Aslali,**  
**Ahmedabad-382427.**

(A)	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)	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

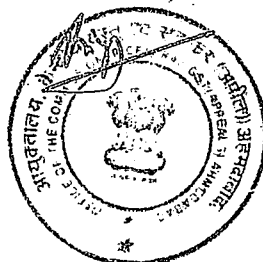
The present appeal has been filed by M/s. St. Jude Medical India Private Limited, C-10, 2<sup>nd</sup> Floor, Raghuvver.Estate, Old National Highway No. 8, Aslali, Ahmedabad – 382427 (hereinafter referred to as “the appellant”) against Order-in-Original No. 24/CGST/Ahmd-South/JC/MT/2022-23 dated 06.10.2022 (hereinafter referred to as “the impugned order”) passed by the Joint Commissioner, Central GST, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant are engaged in supply of various goods viz. medical Appliances under CTH 9021 and 9018 and at present they hold GSTIN 24AAICS9821J1ZO. The appellant have availed Transitional Cenvat Credit of Rs. 1,59,28,922/- on 27.12.2017 in respect of their TRAN-1 claim filed under Section 140(3) of the CGST Act, 2017 in entry 7A of table 7a of TRAN-I form.

2.1 From the TRAN-I form filed by the appellant, it is found that they have claimed TRAN-1 credit of Rs. 1,59,28,922 in table 7(a) of TRAN-1 form. Accordingly, in order to verify their TRAN-1 credit claim, they were requested vide various letters to submit the various documents for the purpose of verification of correctness of TRAN-1 credit availed by them.

2.2 As the appellant were not submit all the relevant documents called for, for verifying admissibility of transitional credit claimed by them. In the absence of the requisite documents, it was not possible to ascertain admissibility of transitional credit claimed by them. Therefore, the appellant were issued an intimation letter dated 08.09.2021 in Form GST DRC 01A, of tax ascertained as being payable under Section 73(5)/74(5) of the CGT Act, 2017 read with Rule 142(1A) of the CGST Rules, 2017 specifying an amount of Rs 1,59,28,922/-. Vide their letter dated 09.09.2021 and email dated 22.09.2021, the appellant replied that they have already submitted their compliance on 12.12.2019 in the subject matter and requested to withdraw the notice.

2.3 As the appellant had failed to submit all the required documents, admissibility or genuineness of the credit taken could not be verified. Therefore, the transitional credit amounting to Rs 1,59,28,922/- availed by them as Input Tax Credit in their electronic ledger, is not admissible as per sub-sections 140 of the CGST Act, 2017 read with the CGST Rules, 2017, and therefore, the same is requires to be recovered from them under the provisions of Section 74(1) of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017 along with applicable interest under Section 50, (1) of the CGST Act, 2017.

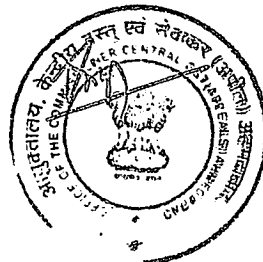


2.4 Subsequently, a show cause notice F.No. CGST/4-20/O&A/ST Jude/21-22 dated 29.03.2022 was issued to the appellant demanding recovery of wrongly claimed transitional credit of input tax amounting to Rs. 1,59,28,922/- under Section 140 of the CGST Act, 2017 read with the provisions of Section 74(1) of the CGST Act, 2017 along with Interest under the provisions of Section 50 of the CGST Act. The SCN also proposed imposition of Penalty on the appellant under the provisions of Section 74 of the CGST Act, 2017.

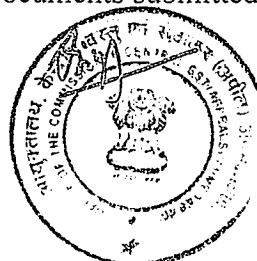
2.5 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the adjudicating authority disallowed the transitional credit Rs. 14,67,403/- out of total amount of Rs. 1,59,28,922/- taken in TRAN-1 under Section 140(3) of the CGST Act, 2017 and ordered for recovery of the same, under the provisions of Section 74(1) of CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017 along with Interest under Section 50(1) of the CGST Act, 2017 and also imposed penalty of Rs. 14,67,403/- under the provisions of Section 74(1) read with Section 122 (2)(b) of CGST Act, 2017.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- The impugned order is a non-speaking order and is passed in gross violation of principles of natural justice. The adjudicating authority has confirmed the demand along with interest and penalty without considering the submissions of the appellant and without giving any opportunity for submission of missing documents as per report of jurisdictional officer.
- During the course of proceedings, neither the adjudicating authority nor the jurisdictional officer informed that (i) what supporting documents were not submitted by the appellant out of the entire submissions made, while disallowing the transitional credit of Rs.8,18,896/-, despite complete co-operation from the appellant; (ii) what was the basis of arriving at the alleged excess quantity while disallowing the transitional credit amounting to Rs.6,48,507 /-.
- The appellant submitted that they have claimed credit under form TRAN-1 being transitional credit as per Section 140 of the CGST Act, 2017. As the appellant have imported goods and paid Custom Duty with CVD and SAD and based on the taxes paid on imports the appellant is in possession of all the invoices, BOEs, and other documents evidencing payment of duty and on that basis claimed credit in form TRAN-1, which is as per the provision of Section 140 of the CGST Act, 2017.



- The appellant further reiterated that all the requisite documents along with relevant information / explanation were submitted to the jurisdictional officer, as and when requested. Accordingly, the appellant submitted that there was an error on the part of the adjudicating authority in alleging that the relevant supporting documents were not submitted by the appellant, while disallowed the aforesaid credit. As there is an error apparent on face of records, the appellant submitted that the impugned order can be rectified by the adjudicating authority in terms of section 161 of the CGST Act, 2017. Therefore, the appellant submitted a letter dated 07.11.2022 to the adjudicating authority requesting rectification of the impugned order.
  - The appellant submitted that, they are in possession of all necessary documents and have already submitted such documents in 7 box files along with submission dated 25.04.2022 and post order they submitted missing documents as per order of the adjudicating authority in two box files vide letter dated 07.11.2022. The appellant have also submitted Import documents i.e., copies of invoices, BOEs, duty paid supporting documents, etc. along with appeal memorandum.
  - Section 50(1) deals with payment of interest on delayed payment of tax under the CGST Act. Section 50(3) pertains to imposition of interest where input tax credit has been wrongly availed and utilized. The appellant submitted that the alleged disallowance of transitional credits is not sustainable under the GST law, on the basis of the aforesaid grounds. Since, the appellant have all the documents based on which such credit was claimed and after verification of documents, if the claim of form TRAN-1 is allowed, then there is no question of any interest liability.
  - The appellant submitted that there is no suppression of facts with an intention to evade payment of tax in the present case. There must be some positive act from the side of the appellant to allege willful suppression. Thus, mere allegation of suppression in the impugned SCN is not sufficient. If any documents are missing or not submitted then the adjudicating authority could have given them an opportunity for submission of such missing documents, without giving any such opportunity for submission, passing of demand order with penalty under section 74(1) is bad in law.
4. Personal hearing in the case was held on 16.05.2023. Shri Priyam R. Shah, Chartered Accountant, appeared for personal hearing on behalf of the appellant and reiterated the submission made in the appeal memorandum. Due to change in authority, Personal hearing in the case was again held on 26.06.2023. Shri Priyam R. Shah, Chartered Accountant, appeared for personal hearing on behalf of the appellant and reiterated the submission made in the appeal memorandum and in the additional submissions/ documents submitted in two box files



along with the appeal memorandum and those at the time of earlier personal hearing. He requested to set aside the impugned order based on these submission.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, disallowing the Transitional credit of Rs. 14,67,403/- and order for recovered the said amount along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise.

6. It is observed that the main contention of the appellant in the appeal memorandum is that they have submitted all the documents required for the verification of Tran-1 in total 7 Box Files along with submission dated 25.04.2022. If any documents are missing or not submitted then the adjudicating authority could have given them an opportunity for submission of such missing documents, without giving any such opportunity for submission, the adjudicating authority passed the impugned order. I also find that the appellant have submitted Import documents i.e., copies of invoices, BOEs, duty paid supporting documents, etc. along with appeal memorandum.

7.1 It is also observed that the adjudicating authority has confirmed the demand of wrongly taken transitional credit of Rs. 14,67,403/- on the basis of a verification report dated 02.09.2022 and 03.10.2022 submitted by the Deputy Commissioner, Central Excise, Div-IV, Ahmedabad South. The amount of Rs. 14,67,403/- pertains to the 33 (Thirty Three) Bills of Entry as listed in Table of Para 13K of the impugned order.

8. In this regard, I find that the adjudicating authority not mentioned detail ground for disallowance of the transitional credit. The relevant portion of the impugned order passed by the adjudicating authority reads as under:

*"13I During the course of personal hearing on 22.07.2022, M/s. ST. JUDE MEDICAL INDIA PRIVATE LIMITED have submitted that they had imported goods and paid Customs duty and were in possession of all documents evidencing payment of duty and claimed credit in TRAN-1 accordingly. They have submitted that against SCN all the documents in 7 box files besides, they reiterated the written submission and requested for verification of documents.*

*13.J The jurisdictional Officer is the competent authority to examine/ verify the correctness / admissibility of documents submitted for taking credit. I observe, that if the taxpayer have provided all the documents for verification. The jurisdictional*



*Officer could have verified the same to ascertain admissibility of the input tax credit. However the taxpayer have submitted all the documents in 7 box files during the personal hearing held on 22.07.2022.*

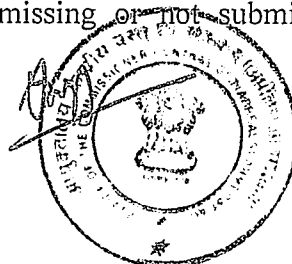
*13K In order to ascertain admissibility of credit mentioning in the Tran-I, the document submitted by the taxpayer were sent for verification to the Jurisdictional Assistant Commissioner, Central Excise Div-IV, Ahmedabad South on dt.22.07.2022. I find that the verification of document to ascertain admissibility of the credit was verified by the Deputy Commissioner, Central Excise Div.-IV, Ahmedabad South vide letter No. CGST/WS04/TRAN1/O&A/2021-22 dated 02.09.2022 and 03.10.2022, reported that during verification of claim of transitional credit of Rs. 15928922/- and ITC amounting to Rs. 1467403/- is found inadmissible. The inadmissible credit of Rs. 1467403/- involves ITC of Rs. 4,45,125/- as CVD and Rs. 10,22,278/- as SAD. Aforementioned undue availment of CVD of Rs. 4,45,125 involves credit of Rs .89,994/- availed over excess quantity and the remaining ITC of Rs. 3,55,131/- is availed without any supporting documentary evidence. Further undue availment of SAD of Rs. 10,22,278/- involves credit of Rs. 5,58,513/- availed over excess quantity and the remaining ITC of Rs. 4,63,765/- is availed without any supporting documentary evidence.*

*Calculation sheet/Summary sheet (Annexure-A) is mentioned as below :*

.....

*13.L It appears that as per verification report submitted by Deputy Commissioner, Central Excise Div.-IV, Ahmedabad South, taxable person did not submit the relevant documents for Credit of CVD of Rs. 3,55,131/- and Credit of SAD of Rs. 4,63,765/- called for by Jurisdictional Officer, as well as Credit of CVD of Rs. 89,994/- and Credit of SAD of Rs. 5,58,513/- availed over excess quantity."*

8.1 On verification of the Table of Para 13K of the impugned order, wherein the 33 (Thirty Three) Bills of Entry listed, I find that all the entry start with reference of Box file No. 1 to 7. Thus, the verification report that the appellant availed credit without any supporting documents does not seems correct as without the Bills of Entry the "Box File Reference No." cannot be happened. I also find that the adjudicating authority in the impugned order has also not clarified that what supporting documents were not submitted by the appellant, while disallowing the transitional credit of Rs. 8,18,896/- and on what basis he has arrived at the conclusion that the appellant claimed excess quantity, while disallowing the transitional credit amounting to Rs.6,48,507 /-. If any documents are missing or not submitted then the




adjudicating authority or by jurisdiction officer who verify the documents could have given them an opportunity for submission of such missing documents, which was not done in the present case as it appeared from the records. In my considered view that without giving any such opportunity for submission of any clarification or any short fall of documents the impugned order passed by the adjudicating authority without detail narration of the disallowance of the transitional credit is not proper and correct and also legally not sustainable.

9. In view of above discussion, I am of the considered view that the impugned order passed by the adjudicating authority is not legal and correct. Therefore, I hold that the impugned order passed by the adjudicating authority disallowing the Transitional credit of Rs. 14,67,403/- and order for recovered the said amount along with interest and penalty, is not legal and proper and deserve to be set aside. Since the demand of recovery of Transitional credit not sustainable, there does not arise any question of charging interest or imposing penalty in the case.


10. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

11. अपील कर्ता 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.

  
(Shiv Pratap Singh)  
Commissioner (Appeals)

Attested

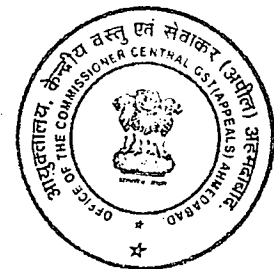
  
(R. C. Maniyar)  
Superintendent(Appeals),  
CGST, Ahmedabad

Date : 31-7-23

**By RPAD / SPEED POST**

To,  
M/s. St. Jude Medical India Private Limited,  
C-10, 2<sup>nd</sup> Floor, Raghuvver Estate,  
Old National Highway No. 8, Aslali,  
Ahmedabad – 382427

The Joint Commissioner,  
Central GST,  
Ahmedabad South



Appellant

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Joint Commissioner, Central GST, Ahmedabad South
- 4) The Assistant Commissioner, Central GST, Division-IV, Ahmedabad South
- 5) The Assistant Commissioner (HQ System), CGST, Ahmedabad South  
(for uploading the OIA)

6) Guard File

7) PA file

