



प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
 केंद्रीय जीएसटी अहमदाबाद दक्षिण आयुक्तालय
 Central GST, Commissionerate- Ahmedabad South,
 छठी मंजिल, अम्बावाड़ी अहमदाबाद ३८००१५.
 6th Floor, GST Bhavan, 380015



फा.सं. CGST/4-20/O&A/St Jude/2021-22

DIN- 20221064WS0000999EBA

आदेश की तारीख: Date of Order: 6.10.2022
 जारी करने की तारीख: Date of Issue : 6.10.2022

द्वारा पारित /Passed by: Shri Marut Tripathi, Joint Commissioner

मूल आदेश सं./Order-In-Original No.: 24/CGST/Ahmd-South/JC/MT/2022-23

यह प्रति उस व्यक्ति)यों (को ,जिसके)जिनके (लिए यह आदेश जारी किया गया है ,उसके)उनके (व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है।

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यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त)अपील , (केन्द्रीय जीएसटी ,केन्द्रीय जीएसटी भवन ,आंबावाड़ी ,अहमदाबाद- 15को प्रारूप इ.ए.-1 में अपील कर सकता है। उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए। इसपर रुपए -/2.00केवल का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this order in Form **S.T.4** to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00/- only.

उक्त अपील दो प्रतियों में प्रारूप सं .इ.ए 1- .में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क)अपील (नियमावली 2001 ,के नियम 3के उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए। इसकेसाथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. S.T-4 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 108 of the CGST Rules 2017. It shall be accompanied with the following:

उक्त अ की प्रति।

Copy of the aforesaid order.

निर्णय की दो प्रतियाँ) उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए जिसके विरुद्ध अपील की गई है (अथवा उक्त आदेश की अन्य प्रति जिसपर रु -/2.00का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए। Copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरुद्ध आयुक्त)अपील (में शुल्क के 7.5% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

BRIEF FACTS OF THE CASE

M/s. ST. JUDE MEDICAL INDIA PRIVATE LIMITED, situated at C-10, 2ND FLOOR, RAGHUVVEER ESTATE, OLD NATIONAL HIGHWAY NO.8, ASLALI, Ahmedabad, Gujarat, 382427 (hereinafter referred to as the "Tax Payer") are engaged in supply of various goods viz. medical Appliances under CTH 9021 and 9018 and at present they hold GSTIN 24AAICS9821J1Z0. As per credit ledger available in AIO system, the said Tax Payer 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-1 form.

(Table 1)

Amount in Rs.

SI No.	Table of Tran-1	Provision of CGST Act, 2017	Amount claimed
1	7A of 7(a)	140(3)	1,59,28,922
Total			1,59,28,922

2. In terms of Section 16 of the CGST Act 2017, tax payers are required to possess and produce the documents for verification, whenever called for by the Department. In absence of the same, admissibility of the credit cannot be established, and in absence of the same eligibility/admissibility of the credit cannot be established.

3. From the TRAN-1 form filed by the taxpayer, 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 letters dated 11.12.2018 and 09.09.2019 to submit the following documents for the purpose of verification of correctness of TRAN-1 credit availed by them:

1. ER-1 returns from October, 2016 to June, 2017 on the basis of which credit is taken in table 5(a).
2. Invoices on the basis of which credit is taken in table 6(a).
3. Credit Transfer of Documents/invoices/other documents in respect of credit is taken in 7A of table 7(a).
4. Procurement documents on the basis of which credit is taken in entry 7B of table 7(a).
5. VAT returns for October, 2016 to June, 2017.
6. Copy of TRAN-1 and TRAN-2 form.
7. Statement of purchases made during period from 1st Oct, 2016 to 30th June, 2017 in the prescribed format.

The taxpayer in their reply dated 12.12.2019 submitted that they have not taken any TRAN-1 credit under table 5(a), 6(a) and 7(b) and have availed TRAN-1 credit only in table 7(a) of TRAN-1 form. They submitted some sample copies of Bill of Entry and VAT returns for period from April'17 to June'17. However, they did not submit copy of TRAN-1 form, as requested vide office letter dated 11.12.2018 and 09.09.2019.

Another letter dated 16.03.2021 was issued to them requesting to submit copy of TRAN-1 form. Vide their email dated 30.03.2021, the taxpayer submitted screenshot of TRAN-1 stock statement wherein status is shown as 'filed' along with information that "the filing of declaration in TRAN-1 is not available now as the due date is over". Further, it is verified from the AIO system that TRAN-1 credit of Rs. 1,59,28,922/- is credited into their ITC ledger as CGST credit on 27.12.2017. Further, they submitted a worksheet having a list of 116 Bills of

Entry (BoE) along with amount of CVD and SAD claimed as TRAN-1 credit. Also, they have submitted only 5 (five) copies of BoE out of total entries of 116 as sample towards tax invoice documents. Further, other documents like tax payment proofs, stock ledger as on 30.06.2017, LR copies etc are not provided by the taxpayer.

4. It appeared that taxable person did 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, they 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 CGST 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, they replied that they have already submitted their compliance on 12.12.2019 in the subject matter and requested to withdraw the notice.

5. As the taxpayer has failed to submit all the required documents, admissibility or genuineness of the credit taken could not be verified. Therefore, it appeared that the transitional credit amounting to Rs 1,59,28,922/- availed by them as Cenvat Credit in their electronic ledger, is not admissible as per aforesaid sub-sections 140 of the CGST Act, 2017 read with the CGST Rules, 2017, and therefore, the same is required 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.

6. It further appeared that by not providing the documents called for, the Taxpayer has intentionally suppressed the information from the department. Thus, the taxable person appears to have violated the provisions of Section 140 of the CGST Act, 2017 and rendered themselves liable for penal action under the provisions of Section 74 of the CGST Act, 2017.

7. It appeared that in terms of the provisions of Section 155 of the CGST Act, 2017, the onus to prove admissibility of the credit availed lies on the taxable person. In view of the above position of law, the burden to prove admissibility of the credit availed under Tran-I rests on the taxable person and by not replying to the letter of the Range Officer and intimation under Form GST DRC 01A, the taxable person have not discharged the said burden.

8. The government has, from the very beginning, placed complete trust on the taxable person so far as tax is concerned and accordingly, measures like Self-assessment, based on mutual trust and confidence are in place. From the evidence, it appears that the said taxable person had deliberately taken transitional credit of Central Excise/Service Tax, amounting to Rs 1,59,28,922/- in their electronic Credit ledger without the necessary duty paying documents and there is suppression of facts involved. Therefore, the tax credit taken is required to be recovered invoking Section 74(1) of CGST Act, 2017 and they are also required to be imposed a penalty of equal amount of duty credit under said Section 74(1).

9. Therefore, a show cause notice F.No. CGST/4-20/O&A/ST Jude/21-22 dated 29.03.2022 was issued to M/s. ST. JUDE MEDICAL INDIA PRIVATE LIMITED, by which they were called upon to show cause to the Additional Commissioner, Central Goods & Services Tax, having his office at 1STFLOOR, GST BHAVAN, NR. POLYTECHNIC, AMBAVADI, AHMEDABAD-380015 as to why:

- 1) The transitional credit of input tax amounting to Rs. 1,59,28,922/- (Rupees One Crore Fifty Nine Lakhs Twenty Eight Thousand Nine Hundred Twenty Two Only) wrongly claimed to carry forward under Section 140 of the CGST Act, 2017 and utilized by them, should not be demanded and recovered from them, under the provisions of Section 74(1) of the CGST Act read with the provisions of Rule 121 of the CGST Rules;
- 2) Interest should not be charged and recovered from them under the provisions of Section 50 of the CGST Act; and
- 3) Penalty should not be imposed on them under the provisions of Section 74 of the CGST Act on the grounds discussed herein above.

10. It was further informed that in terms of **sub section (8) of Section 74** of CGST Act, 2017, where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

DEFENSE SUBMISSION

11. The tax payer submitted their defense reply vide letter dated 25.04.2022 wherein they submitted that they had received notice dated 09.09.2019 for verification of TRAN-1 from the office of Superintendent of CGST, AR-IV, Division-IV and they submitted the reply vide letter dated 12/12/2019. Thereafter, their consultant had personally visited the concerned officer. Thereafter a communication dated 16.03.2021 was received asking to submit copy of TRAN-1 and immediately submitted copy of the same to email range4division4@gmail.co. On 16.04.2021 they once again provided copy of TRAN-1 to the department. They submitted that on receipt of GST DRC-1A dated 08.09.2021, they immediately filed their reply on 09.09.2021.

11A. The tax payer submitted that the impugned DRC-01 cum show cause notice has wrongly invoked the provision of Section 74 of the CGST Act 2017. They 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.

11B. The tax payer submitted that Section 16 of CGST Act would come into force only for the credit of those transactions which are undertaken after implementation of GST Act and even referring to Section 16, they were complying with conditions mentioned therein. The tax payer submitted they were in possession of all the documents and also produced the documents for verification whenever called for by the department. They submitted that BOE wise details of imports are also available on ICEGATE portal.

11C. Regarding the burden of proof, they submitted that they had responded to each and every letter of department and due to COVID-19 restriction imposed by Government they had submitted sample copies of BOE.

11D. Regarding the proposal to charge interest under Section 50(1) of the CGST Act, the tax payer submitted that since they were having all the documents based on which credit claimed, there is no question of any interest liability.

11E. In respect of the proposal to impose penalty under Section 74 (1) and 74(8) of the CGST Act, the tax payer submitted that there is no suppression of facts with intention to evade payment of tax and they have not undertaken any position act to willfully suppress the facts with intention to evade payment of tax and hence penalty is not imposable on them. They have relied upon a plethora of decisions in this regard.

PERSONAL HEARING

12. Personal hearing was held in virtual mode on 22.07.2022 when Shri Priyam Shah, Chartered Accountant, Shri Hiren Mody and Kalpesh Bhatt, representatives of the company attended and stated that documents were asked on sample basis and they had submitted the same, during Covid time. They have submitted that against SCN all the documents in 7 box files have been submitted. Besides, they reiterated the written submission and requested for verification of documents.

DISCUSSION & FINDING

13. I have carefully gone through the facts of the case on record and the submissions made by the noticee. On recapitulating, I find that the issue involved in the present show cause notice, is related to admissibility of credit taken in TRAN-1 filed by the noticee. The issue is that the noticee has taken transitional credit of Rs. 1,59,28,922 under Section 140(3) in Tran-1 return. The said credit purportedly belonged to amount of CVD and SAD against their import vide 116 Bills of Entry (BoE) which was claimed as TRAN-1 credit.

13.A Before going into the merits of the case, I take up the submission of M/s. ST. JUDE MEDICAL INDIA PRIVATE LIMITED that no pre-show cause notice consultation was given to them not with-standing the same being mandatory for promoting voluntary compliance and to reduce the necessity of issuing show cause notice. In this regard, I find that, M/s. ST. JUDE MEDICAL INDIA PRIVATE LIMITED was first informed about verification of TRAN-1 vide letter 11.12.2018, and 09.09.2019 and again intimated in GST DRC 01A vide letter dated 08.09.2021 by the concerned Officer and their clarification was obtained. Thus, to that extent they were provided with an opportunity to explain their case.

Sub-Rule (1A) of Rule 142 ibid stipulates as under:

(1A) The proper officer may, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.

From the plain reading of the above provision, I am of the considered view that since the M/s. ST. JUDE MEDICAL INDIA PRIVATE LIMITED was communicated about the objection of the audit about improper availment of transitional credit by the concerned Range Officer, the requirement of giving information to the person chargeable with tax stands fulfilled.

13.B Further the taxpayer have submitted that the impugned DRC-01 cum show cause notice has wrongly invoked the provision of Section 74(1) of the CGST Act 2017. As 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.

Now on examining into the provisions of law that determine tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts.

Section 74(1) of the CGST Act provides as under:

Section 74(1) Where it appear 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 by reason of fraud, or any willful 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 and payable thereon under section 50 and a penalty equivalent to the specified in the notice.

Looking further in Section 74; as per explanation 2.- --- For the purpose of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to be declare in the return, statement, report or any other documents furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for in writing by the proper officer.

In the instant case, I observe, the noticee has taken TRAN-1 credit of Rs. 1,59,28,922/- into their ITC ledger as CGST credit on 27.12.2017, on basis of 116 Bills of Entry (BoE). As per Section 140(3) condition (iii) read with Section 16(2) a registered person must possesses the duty paying documents. It appeared that taxable person did not submit the relevant documents called for by proper officer, for verifying admissibility of transitional credit claimed by them. Therefore the non furnishing of information on being asked for in writing by the proper officer appears to amount to suppression of information. The submission of the tax payer that show cause notice has wrongly invoked the provision of Section 74(1) of the CGST Act 2017 is not sustainable.

13.C Now with regard to the demand of Rs. 1,59,28,922/- I find that the noticee has taken transitional credit of Rs. 1,59,28,922/- under Section 140(3) in Tran-1 return. As per Section 140, the transitional mechanism for carrying forward the credit pending with the erstwhile registered persons or who was not liable to be registered under the existing law, to the GST regime. The details of the Section 140 of the CGST Act 2017 are reproduced herewith:-

"140. (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit 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 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

(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or

(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act;

Explanation.—For the purposes of this sub-section, the expression “unavailed CENVAT credit” means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing work contract services and was availing of the benefit of notification No. 26/2012-Service Tax, dated 20th June, 2012 or the first stage dealer or a second stage dealer or a registered importer or a depot of manufacturer, shall be entitled to take in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi finished or finished [goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions namely :-

- (i) Such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
- (iv) Such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
- (v) The supplier of the services is not eligible for any abatement under this Act:

Provided that where a registered person other than manufacturer or supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty under the existing law in respect of such inputs, then, such registered person shall, subject to such conditions, limitations and safeguard as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

Now let me look into the provision of law that determines eligibility and conditions for taking input tax credit.

Section 16 of the CGST Act provides as under:

SECTION 16. Eligibility and conditions for taking input tax credit. — (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

[(aa) the details of the invoice or debit note referred to in) clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]

(b) he has received the goods or services or both.

[Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services —

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

(c) subject to the provisions of [section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39 :

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment :

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed :

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) *Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.*

(4) *A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or [* * *] debit note pertains or furnishing of the relevant annual return, whichever is earlier :*

[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]

13D. From the perusal of the above provision of law it is evident that under provision of Section 140 (3)(iii) a registered person, shall be entitled to take in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi finished or finished on the appointed day, subject to possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs.

Further under provision of Section 16 (2)(a) a registered person shall, be entitled to take credit of input tax subject to conditions that he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.

13.F In the instant case, I observe, the noticee has taken TRAN-1 credit of Rs. 1,59,28,922/- into their ITC ledger as CGST credit on 27.12.2017. The entire credit was taken on basis of 116 Bills of Entry (BoE). It appeared that taxable person did not submit the relevant documents initially when called for, to verify 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.

13.G M/s. ST. JUDE MEDICAL INDIA PRIVATE LIMITED, I observe, in their letter dated 12.12.2019 addressed to the Superintendent, CGST, Range-IV, Division-IV, Ahmedabad South they submitted a worksheet having a list of 116 Bills of Entry (BoE) along with amount of CVD and SAD claimed as TRAN-1 credit. but they have submitted only 5 (five) copies of BoE out of total entries of 116 as sample towards tax invoice documents, from the above reply given by the noticee itself, it is evident that they have not provided the relevant documents called for, for verifying admissibility of transitional credit claimed by them.

The law, as provided under Section 140 of CGST Act 2017 read with section 16 of CGST Act 2017, are unambiguous and crystal clear that the credit admissible is only when the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs.

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.

13J 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-1, 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/TRAN-1/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. Aformentioned 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 :-

Annexure A (Summary Sheet)										
Doc. Ref.	BE No	BE date	Qty claimed	Excess Qty found	CVD claimed	Excess CVD claimed	SAD claimed	Excess SAD Claimed	Total Credit claimed	Total Excess credit found
BX-01	8760991	3/3/2017	245	51	11715.31	5858.31	203656.2	37338.3563	215371.51	43197
BX-01	8386330	1/31/2017	1	1	0	0	1769	1769	1769	1769
BX-01	8385733	1/31/2017	356	95	95948	35981	285552	69191	381500	105172
BX-01	9343967	4/17/2017	538	57	59434	10863	422502	40317	481936	51180
BX-01	8925698	3/17/2017	565	42	239212	2866	580294	36745	819506	39611
BX-01	2183550	6/21/2017	407	21	416253	1110	573354	2420	989607	3530
BX-01	2200319	6/22/2017	324	1	615232	12908	887067	9155	1502299	22063
BX-01	9708862	5/16/2017	903	106	313578	19172	924611	139396	1238189	158568
BX-01	9699878	5/15/2017	55	55	352271	352271	306507	306507	658778	658778
BX-01	2080447	6/13/2017	350	21	0	0	544769	36565	544769	36565
BX-01	9342629	4/17/2017	62	62	0	0	61457	61457	61457	61457
BX-02	9336634	4/17/2017	150	10	0	0	263065	17539	263065	17539
BX-02	9699807	5/15/2017	1011	2	0	0	931627	2639	931627	2639
BX-02	9653931	5/11/2017	520	2	0	0	1154880	3458	1154880	3458
BX-02	9059723	3/27/2017	64	40	52451	0	121001	71608	173452	71608
BX-02	9433269	4/24/2017	135	19	0	0	123487	23892	123487	23892
BX-02	9890200	5/30/2017	79	4	11539	0	65967	5885	77506	5885
BX-02	9626207	5/9/2017	282	6	0	0	232572	6163	232572	6163
BX-02	8996183	3/22/2017	109	22	62953	0	152005	25715	214958	25715
BX-02	6641406	9/7/2016	24	24	0	0	86171	54973	86171	54973
BX-02	7948096	12/23/2016	83	4	0	0	100952	3548	100952	3548
BX-03	8699468	2/27/2017	56	16	25350	0	68677	17232	94027	17232
BX-03	8758726	3/3/2017	26	3	26825	0	41246	2778	68071	2778
BX-03	8556350	2/15/2017	39	4	0	0	76905	7267	76905	7267
BX-03	9537478	5/2/2017	52	8	3869	0	45637	6789	49506	6789
BX-03	9171423	4/4/2017	16	2	0	0	29558	4435	29558	4435
BX-03	6826603	9/22/2016	4	0	0	0	5205	5205	5205	5205
BX-03	8137810	1/10/2017	69	0	0	0	29767	80	29767	80
BX-03	8421832	2/3/2017	10	1	0	0	22220	3093	22220	3093
BX-03	8067445	3/1/2017	59	4	1783	35	14053	3670	15836	3705
BX-04	7275125	10/29/2016	21	8	0	0	25064	9549	25064	9549
BX-07	8596549	2/17/2017	47	12	15120	4059	36602	2878	51722	6937
BX-07	8556328	2/15/2017	34	2	0	0	54827	3019	54827	3019
Total ineligible/inadmissible credit										1467399

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. 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. The noticee has failed to prove that he is eligible for input tax credit as the burden to prove the eligibility is on the noticee as provided under Section 155 of the CGST Act 2017 which reads as under:

SECTION 155. Burden of proof. — *Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.*

When the noticee has failed to discharge the burden to prove the eligibility, the claim of ITC amounting to Rs.14,67,403/- of the noticee is not acceptable and, therefore, I hold that the noticee is not eligible to carry forward the CENVAT credit of inputs, where he could not provide tax paying documents or prove the eligibility of the credit. Thus the credit of Transitional credit of Rs.14,67,403/- taken in TRAN-1 under Section 140 are to be disallowed and required to be recovered from them under the provisions of Section 74(1) of CGST Act 2017 read with Rule 121 of the CGST Rules, 2017.

I rely upon the verification report submitted by the Deputy Commissioner, Central Excise Div.-IV, Ahmedabad South, I conclude that ITC amounting to Rs.1467403/- is inadmissible and remaining amount Rs.1,44,61,519/ out of Total amount of Rs. 1,59,28,922/- is admissible.

13.M I also find that the noticee was fully aware about the fact that they were availing and utilizing the ITC which was not available to them legally under the CGST Act, 2017. This appeared to have done with intent to evade the payment of

dues related to GST under the CGST Act, 2017. This fact of non-payment of dues related to GST would have remained unnoticed, if the Officers had not raised these issues. Since the noticee has carried forward Credit amount to Rs.14,67,403/-, in TRAN-1 in contravention of the provisions of Section 140, and Rule 121 of CGST Rules, 2017 with an intent to evade payment of tax, they have rendered themselves liable for penal action as per the provisions of Section 74(1) of CGST Act, 2017 read with Section 122 (2)(b) of CGST Act, 2017.

13N. In view of the above, I pass the following order:

ORDER

- (i) I disallow Transitional credit of 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 order to be recovered from them, under the provisions of Section 74(1) of CGST Act 2017 read with Rule 121 of the CGST Rules, 2017.
- (ii) I confirm the demand of interest at the applicable rate under Section 50 (1) of the CGST Act 2017 on the demand of (i) above;
- (iii) I impose penalty of Rs.14,67,403/-, under the provisions of Section 74(1) read with Section 122 (2)(b) of CGST Act, 2017. However, **in view of Section 74(11)** if the amount confirmed and interest thereon is paid **within period of thirty days from the date of receipt of this Order, the penalty shall be fifty percent** of the said amount, subject to the condition that the amount of **such reduced penalty is also paid within the said period of thirty days.**


(Marut Tripathi)

Joint Commissioner,
CGST, Ahmedabad South.

F No VI-CGST/4-20/ O&A/ST Jude/21-22.

Date: 06.10.2022

By Speed Post AD

M/s ST. Jude Medical India Private Limited,
C-10, 2nd Floor, Raghuveer Estate,
Old National Highway No.8, Aslali,
Ahmedabad 380054

Copy to :

- 1) The Principal Commissioner, CGST, Ahmedabad South.
- 2) The Deputy Commissioner, Central GST, Div-IV, Ahmedabad South.
- 3) The Asstt. Commissioner, Central Tax, TAR Section, HQ, Ahmedabad South
- 4) The Superintendent, Range-IV, CGST, Div-IV, Ahmedabad South.
- ✓ 5) The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website.
- 6) Guard file.