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
07926305065- टेलेफैक्स07926305136

DIN: 20221164SW0000712598

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/752,753,754 & 755/2021-APPEAL/4556-60

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-56, 57, 58 & 59/2022-23**
दिनाँक Date : **07-11-2022** जारी करने की तारीख Date of Issue 09.11.2022

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **04/REF/II/KMV/2021-22, 05/REF/II/KMV/2021-22, 06/REF/II/KMV/2021-22, 07/REF/II/KMV/2021-22** दिनाँक: **30.09.2021 / 05.10.2021**, issued by Deputy Commissioner, Division-III, CGST, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Aculife Healthcare Pvt. Ltd.,
Village- Sachana, Taluka- Viramgam,
Ahmedabad-382150

2. Respondent
The Deputy Commissioner, CGST,Division-III, Ahmedabad North , 2nd Floor, Gokuldham Arcade, Sarkhej-Sanand Road,Ahmedabad - 382210

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होंनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number 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 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, 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."

ORDER-IN-APPEAL

Four appeals have been filed by M/s.Aculife Healthcare Pvt. Ltd., Village Sachana, Taluka Viramgam, Dist. Ahmedabad – 382150 (hereinafter referred to as "the appellant") against Orders-in-Original (hereinafter referred to as "the impugned orders") passed by the Assistant Commissioner, Central GST & Central Excise, Division III, Ahmedabad North (hereinafter referred to as "the adjudicating authority"). The details of the appeals and the Orders-in-Original appealed against are given in table below. Since the issue involved in these four appeals are the same, they are being decided vide this OIA.

Sr. No.	Appeal No.	Order-in-Original No. & Date
1	GAPPL/COM/CEXP/752/2021	05/Ref/II/KMV/21-22 dated 30.09.2021 / 05.10.2021
2	GAPPL/COM/CEXP/753/2021	06/Ref/II/KMV/21-22 dated 30.09.2021 / 05.10.2021
3	GAPPL/COM/CEXP/754/2021	04/Ref/II/KMV/21-22 dated 30.09.2021 / 05.10.2021
4	GAPPL/COM/CEXP/755/2021	07/Ref/II/KMV/21-22 dated 30.09.2021 / 05.10.2021

2. Briefly stated, the facts of the case are that the appellant are engaged in manufacture and clearance of goods falling under Chapter 30 of the Central Excise Tariff Act, 1985. The appellant was earlier registered with the Central Excise Department having registration No. AAMCA8542QEM001. In the GST regime, appellant is registered under GSTIN No. 24AAMCA8542Q1Z0.

2.1 The appellant had obtained the various Advance Authorisation from DGFT for import of certain inputs duty free to be used in the manufacture of Pharma Products to be exported and had imported inputs vide various bills of entry. As per the Advance Authorisations, the appellant required to fulfill their export obligation within 18 months period. The detail of Advance Authorisations and the last date for fulfillment of export obligation is as under:

Sr. No.	Advance Authorisation No. & date	Last date for fulfillment of export obligation
1	0810119602 dated 20.03.2013	19.09.2014
2	0810131065 dated 05.05.2014	04.11.2015
3	0810133784 dated 12.11.2014	11.05.2016
4	0810119633 dated 21.03.2013	20.09.2014

2.2 However, due to non fulfillment of the export obligation within the time limit prescribed, the appellant was required to make payment of import duties along with applicable interest. On request of the Appellant, the customs department reassessed the bills of entry and differential customs duty payable, i.e. BCD, CVD, SAD and Cesses payable was worked out by the customs. Accordingly, appellant deposited the differential customs duties vide various Challans.

2.3 As, the goods imported by the appellant were to be used in the manufacture of finished goods in the factory, as per the erstwhile Central Excise Act, 1944 and under the Cenvat Credit Rules, 2004, in pre-GST period, in terms of Rule 3 of the Cenvat Credit Rules, 2004, the Cenvat credit of CVD and SAD paid on imported goods is admissible. Further, as per Rule 9 of the Cenvat Credit Rules, 2004, the Customs Challan under which the CVD and SAD is paid is a

valid document on strength of which the credit can be availed and appellant could have availed the credit of the said amount on the strength of Challan issued by the customs. However, the said differential CVD and SAD was paid after the implementation of GST and under the GST regime, there is no mechanism to avail the credit of CVD and SAD which is paid later on. Therefore, the appellant filed below mentioned refund applications with the jurisdictional Assistant Commissioner, CGST, Division-III, Ahmedabad-North under Section 11B of Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017 for refund of CVD & SAD paid.

Sr. No.	Refund Application dated	Amount of Refund
1	20.02.2021	Rs. 1,16,02,346/-
2	20.02.2021	Rs. 9,199/-
3	20.02.2021	Rs. 9,99,868/-
4	20.02.2021	Rs. 46,94,726/-

2.3 On scrutiny of refund claims, certain discrepancies were noticed. Hence, Show Cause Notices dated 27.05.2021 in all the four cases were issued to the appellant calling them to show cause as to why their refund claim should not be rejected. Subsequently, the adjudicating authority, vide the impugned orders, reject the refund claims under the provision of Sub-section 2 of Section 11B of Central Excise, Act, 1944 read with provision made under Sub-section 3 of Section 142 of CGST Act, 2017.

3. Being aggrieved with the impugned orders, the appellant preferred the present four appeals on the following grounds:

- The appellant submit that it is an admitted fact that the imported goods are used in the manufacture of excisable goods. In terms of Rule 2 and 3 of the Cenvat Credit Rules, the Appellant is eligible to avail the Cenvat credit of CVD and SAD paid on imported goods. In the pre-GST era, the appellant could have availed the Cenvat credit on CVD and SAD on the strength of Challan under which the duties were paid in terms of Rule 2 and 3 of Cenvat Credit Rules. However, appellant could not avail the Cenvat credit as the CVD and SAD was paid post implementation of GST i.e. on 30.09.2020 & 12.11.2020.

- To deal with such situation, the transitional provisions are enacted and as per section 142(3) of the CGST Act, 2017 to claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT Credit, duty, tax, interest or any other amount paid under the existing law and shall be disposed of in accordance with the existing law.

- As regard to satisfaction of Conditions / criteria as envisaged under Section 11B of the Central Excise Act, 1944, the appellant submits that the findings of the adjudicating authority under Para 10 of the impugned orders are erroneous and incorrect on the ground that Section 11B of the Central Excise Act, 1944 deals with the claim for refund of duty and interest, if any paid on such duty. They reproduce text of Section 11B as well as

Section 3 of the Central Excise Act, 1944. The appellant submits that on perusal of Section 3 of the Central Excise Act, 1944, it could be seen that the CENVAT is nothing but a duty of excise. On perusal of Section 11B of the Central Excise Act, 1944, it could be seen that any person can claim the refund of duty of excise and interest paid on such duty. Further, as per section 11B (2) (c), the "refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act". The Cenvat credit rules are framed to provide the credit of duty paid on the inputs used as input. Therefore, as per section 11B (2) (c), the refund of credit of duty paid on inputs can be claimed as inputs in accordance with the rules made.

- As regard to the finding of the adjudicating authority that CVD & SAD on imported material is not a duty prescribed under existing law, i.e. under Central Excise Act, 1944 and hence provision of Section 142 of CGST Act, 2017 is not applicable in the instant case, the appellant submitted that on imported goods Basic Customs duty is levied and paid as per Customs Act, 1962. Additional duty (CVD) is levied under Section 3 of Custom Tariff Act, equivalent to the duty of excise and also the Additional duty (SAD) is levied under Sub-section (5) of Section 3 of the Customs Tariff Act. The CVD and SAD is levied as Excise duty on imported goods. The CENVAT credit of CVD and SAD paid on imported goods is admissible as Cenvat credit as per Rule 3 of the Cenvat Credit Rules, 2004. Rule 3 of the Cenvat Credit Rules, 2004 allows Cenvat credit to a manufacturer or produced of final products the duties and taxes eligible as credit enumerated under clause (i) to (xi). As per clause (vii) the additional duty i.e. (CVD) and as per clause (viii) the additional duty i.e. (SAD) is eligible as Cenvat credit to the manufacturer. It is already explained in the foregoing para that as per Section 3 of Central Excise Act. The duties of Excise are called as Central Value added Tax (CENVAT). Therefore, the CVD and SAD paid at the time of import is equivalent to duties of excise and collected at the time of import of goods. The Cenvat credit is admissible of the said duties and so the refund of said CVD and SAD is admissible in Cash in terms of Section 11B of Central Excise Act, 1944 read with Section 142(3) of CGST Act, 2017. Therefore, the finding that the CVD and SAD paid on import of material is not a duty prescribed under existing law i.e. under Central Excise Act, 1944 is not legal and correct but contrary to the existing law and so could not be upheld.

- As regard the finding of the adjudicating authority that "one has to avail the Cenvat credit first under the Cenvat credit rule, the provision under Cenvat credit rules do not allow refund of Cenvat credit in cash, unless it is availed" is incorrect in as much as that after implementation of GST, under GST regime there is no mechanism to claim the Cenvat credit of CVD and SAD. However, the refund of Cenvat credit can be claimed under Section 142(3) of the CGST Act, 2017 read with existing Section 11B of Central Excise Act, 1944.

- As regard to the findings of the adjudicating authority that refund of customs duty i.e. (CVD and SAD), which was paid for non fulfilment of the condition of import under advance license, is not covered in Section 142 of the CGST Act, 2017. They have submitted that the section clearly provides for refund of any amount of CENVAT credit, duty, tax, and interest paid under the existing law.

- As per the discussions in the foregoing para it is explained that CVD and SAD is available as Cenvat credit under the existing law. There is no ban under the Cenvat credit rules that if the CVD and SAD is paid towards non fulfilment of export obligation is not admissible. In-fact the Rule 9 of the Cenvat Credit Rules, 2004 clearly provides that Customs Challan vide which the CVD and SAD is paid is a valid document to avail the Cenvat credit as allowed to the manufacturer under Rule 3 of the Cenvat Credit Rules, 2004.

- From the provisions of Section 142(3) of the CGST Act, 2017 under which, it has been provided that a claim of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law and any amount eventually accruing to him shall be paid in cash. In the present case, appellant has imported the goods and there is no dispute that the same was used in relation to the manufacture of pharmaceutical products. Therefore, as per the Rule 2 and 3 of the existing Cenvat Credit Rules, the amount is eligible as credit and therefore, the additional duty (CVD) paid is required to be refunded in cash. As per second proviso to sub-section142 (3) of the CGST Act, 2017, it could be seen that in case the amount of Cenvat credit has been carried forward under this Act, no refund is payable under Section 142 (3). Therefore, in case if the CVD and SAD would have been paid prior to implementation of GST, the same would have been availed by them and utilized towards payment of excise duty on final product and in case if the Cenvat is not utilized, the same would have been carried forward in the GST under Section 142 (1). This means that Section 142(3) specifically deals with a situation where the Cenvat credit could not have been carry forward in terms of Section 142(1), such cases fall under Section 142(3) of the CGST Act, 2017. Therefore, the finding recorded by the learned Adjudicating officer that Section 142 (3) of the CGST Act, 2017 is not applicable in the present case is not legal and correct. In fact, the instant claims of refund squarely fall under Section 142(3) of the CGST Act, 2017 read with Section 11B of the Central Excise Act, 1944 as saved by virtue of Section 174 of the CGST Act, 2017.

- As regard to the findings of the adjudicating authority that Section 142(6) of the CGST Act, 2017 is not applicable in the present case. They have submitted that under Sub-section (6)(a) of Section 142 of the CGST Act, 2017, it is clearly provided that the amount is to be refunded in cash. Form the provisions of Section 142 (6) (a) it is clear that once the amount is refundable under Section 142(3) than the said amount is required to be refunded in cash under the provisions of Section 142(6)(a).

- It is submitted that in the Ahmedabad zone and Vadodara zone, the department has already allowed the claim of CVD in identical issue. Since, the issue is already decided by the various decisions by the officer of the department and also by the Appellate authorities. Therefore, the said decisions were produced before the learned Adjudicating officer for consideration, which are not considered and incorrect findings is recorded that case are not identical to the fact of the present case, whereas the case are identical to the fact.

- The appellant relied on the following judgements in support of their case:

  a) Atul, Valsad- OIA CEESA-SRT(Appeal) /PS-913/2018-19 dated 29.03.2019 passed by the Commissioner(Appeals)
  b) Nirma Limited - Order-in-original No. Div-VII/North/ 115/Refund/ AshishlS-19 dated 31.12.2018
  c) R.R. Kabel Limited - OIO No. Div-VII/ 41/RR Kabel/ Ref/17-18 dated 20.06.2018
  d) OIA No. BHV-EXCUS-000-APP-223-2019 dtd.17.09.19 passed by the Commissioner (Appeals), CGST, Rajkot
  e) CESTAT, Mumbai in case of NSSL (P) Ltd, under Final order Nos. A/86639-86640/2021 dtd.03.08.21
  f) Koeleman India Pvt. Ltd reported in 2021 (51) GSTL 306 (T-Bang.)
  g) Punjab National bank as reported in 2021 {52) GSTL 421 (T-Bang),
  h) Order-in-Appeal No. MKK/397-398/RGD/APP/2018-19 dated 21.12.2018 passed by the Commissioner (Appeals), Raigarh

4. Personal hearing in the case was held on 20.10.2022 for the aforesaid appeals. Shri Vikram Singh Jhala, Authorised Representative, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandums. He also submitted additional written submission for each appeal and reiterated submission made therein.

4.1 In the additional submissions dated 20.10.2022, the appellant, inter alia, reiterated submission already made in the appeal memorandums and further submitted that the issue is no more *rest -- integra* and is already decided by the Hon'ble Tribunal and in the following decisions the tribunals have held that Cenvat credit of CVD / SAD paid by appellant on imported inputs was not availed due to erstwhile law being taken over by GST legislation; said entitlement could not be denied in view of Section 142 of CGST Act, the decision relied upon by them are as under:

a) Flexi Caps and Polymers Pvt. Ltd. – 2022 (58) GSTL 545 (Tri. Del)
b) Indo Tooling Pvt. Ltd. – 2022 (61) GSTL 595 (Tri. Del)
c) New Age Laminators Pvt. Ltd. – 2022 (381) ELT 88 (Tri. Del)
d) ITCO Industries Ltd. – Final Order No. 40259-40260/2022 of Delhi Tribunal
e) Mithila Drugs Pvt. Ltd. – Final Order No. 50157-50159/2022 of Delhi Tribunal

- In all the above cases it has been held that where CVD and SAD paid on imported inputs was not availed due to erstwhile law being taken over by GST, said Cenvat credit is required to be refunded in terms of Section 142 of the CGST Act. The facts in the present case are identical to the facts of the cited decision and hence, the ratio of the said decisions is squarely applicable in the present case and therefore the appeal is required to be allowed.

- Appellant further submitted that co-ordinate benches of Hon'ble Tribunal are consistently held that where service tax or excise duty of pre-GST regime was paid during post-GST regime under RCM or on purchase of raw material, consequent refund cannot be denied. In support of their views they relied on following decisions:

a) Circor Flow Technologies India Pvt. Ltd. – 2022 (59) GSTL 63 (Tri. Chennai)
b) Monochem Graphics Pvt. Ltd. – Final Order No. 50949/2022 of Delhi Tribunal
c) MS Terex India Pvt. Ltd. – Final Order No. 42366/2021 of Chennai Tribunal
d) Rawalwasia Ispat Udyog Pvt. Ltd. – 2019 (26) GSTL 196 (Tri. Chan.)
e) JMT Consultant Detailing – Final Order No. 21215/2019 of Bangalore Tribunal
f) NSSL (P) Ltd. – Mumbai Tribunal Final Order No. A/86639-86640/2021

5. I have carefully gone through the facts of the case, grounds of appeals, submissions made in the Appeal Memorandum as well as in the additional written submission, arguments put forth during the course of personal hearing and documents available on record. The issue to be decided in the present appeals is whether in the facts and circumstances of the case, the appellant's claims for refund of CVD and SAD paid in GST period, in respect of import made under Advance Authorisation during pre-GST period, is legally permissible as per the provisions of Section 11B of the Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017 or otherwise?

6. On going through the available case records, I find that the appellant had imported certain inputs under Advance Authorisation Scheme without payment of duties in pre-GST period but since the appellant could not fulfil the export obligation as required within stipulated period, they had paid applicable Basic Customs duty, CVD and SAD after implementation of GST i.e. 01.07.2017, on 30.09.2020 & 12.11.2020 vide various challans. Subsequently, the appellant filed four refund claims for an amount of Rs. 9,199/-; Rs. 1,16,02,346/-; Rs. 9,99,868/- and Rs. 46,94,726/- under Section 11B of Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017, in respect of CVD & SAD so paid.

7. The refund sanctioning authority rejected the refund claim mainly on the grounds that (i) CVD & SAD on input were paid from September-2020 to November-2020, i.e. after 01.07.2017 after enactment of GST law, when Cenvat Credit Rules, 2004 were not in force and hence, Cenvat credit has not accrued before the appointed day; (ii) the appellant paid CVD & SAD under Customs Act,1962, which does not appear to be covered under the

definition of existing law for the transition provisions; the amount paid towards CVD & SAD, while import of materials, is not a duty prescribed under existing law, i.e. Central Excise Act, 1944, hence, the provisions of Section 142 ibid is not applicable in the instant case; (iii) that the provisions under Cenvat Credit Rules do not allow refund of Cenvat Credit in cash, unless it is availed; (iv) the instant refund claim is not arising out of any appeal review or reference to a claim for Cenvat Credit, hence, the refund under Section 142(6)(a) is not applicable; (v) since, there is no such provisions under Cenvat Credit Rules, 2004 and under Section 142(3) of CGST Act, 2017 which allow to refund any such duty paid by the claimant and Cenvat credit of which could not be availed by them for any reason; (vi) the provisions under Section 54(3) of CGAT Act, 2017 does not permit any refund except for accumulated credit due to exports or accumulated credit due to inverted structure.

7.1 The Appellant mainly contended that to deal with the issues of transition from existing Central Excise Act to GST, under the CGST Act, 2017, transitional provisions are enacted under Section 140 to 143, which is to be read with section 174 of the CGST Act, 2017. In the present case, the refund claim is sought for the CVD, which is paid after the implementation of GST, therefore, the instant refund falls under transitional provisions under Section 143 of the CGST Act, 2017. Under the provisions of Section 142(3) of the CGST Act, it has been provided that a claim of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law and any amount eventually accruing to him shall be paid in cash as there is no dispute that the same is used in relation to the manufacture of pharmaceutical products. Therefore, as per the Rule 2 and 3 of the erstwhile Cenvat Credit Rules, the amount is eligible as credit and therefore, the additional duty (CVD) paid is required to be refunded in cash. As per second proviso to sub-Section142 (3), it could be seen that in case the amount of Cenvat credit has been carried forward under this Act, no refund is payable under Section 142 (3). Therefore, in case if the CVD and SAD would have been paid prior to implementation of GST, the same would have been availed by them and utilized towards payment of excise duty on final product and incase if the Cenvat is not utilized, the same would have been carried forward in the GST under Section 142 (1). This means that Section 142(3) specifically deals with a situation where the Cenvat credit could not have been carry forward in terms of Section 142(1), such cases fall under Section 142(3) of the CGST Act. In support of their aforesaid view, they along with other judgements also relied upon identical case in Order-in-Appeal No. MKK/397-398/RGD APP/2018-19 dated 21.12.2018 passed by the Commissioner (Appeals), Raigarh in the case of M/s. Sudarshan Chemical Industries Ltd.

8. I find that the Appellant had imported inputs to be used in the manufacture of Pharma Product to be exported, under Advance Authorisation Scheme in pre-GST period i.e. before 01.07.2017 without payment of BCD, CVD and SAD. As the appellant could not fulfill export obligation as required within stipulated period, they have paid BCD, CVD and SAD on the said imported inputs in GST era i.e. after 01.07.2017 on 30.09.2020 & 12.11.2020. As per the facts available on records, I find that the Cenvat Credit Rules, 2004 were not in existence, when the

appellant had paid CVD.& SAD during the period from September-2020 to November-2020 and Cenvat credit of such CVD & SAD in question is allowable as credit in the erstwhile Cenvat Credit Rules, 2004.

8.1 In this regard, I find that in the identical situation the Hon'ble New Delhi Tribunal in the case of Flexi Caps and Polymers Pvt. Ltd., vs. Commissioner, CGST & Central Excise, Indore - 2021 (9) TMI 917-CESTAT, New Delhi, held that as the appellant was entitled to Cenvat credit under Cenvat Credit Rules, which is now not available due to GST regime, they are entitled to refund under Section 142 read with Rule 146 of the CGST Act.

8.2 I also find that the issue involved in the instant case has already been decided by various tribunals recently in favour of the various appellants. The Hon'ble CESTAT, Principal Bench New Delhi in the case of M/s. Mithila Drugs Pvt. Ltd. vs. Commissioner, CGST, Udaipur reported in 2022-VIL-454-CESTAT-DEL-CE, while allowing appeal, has held as under :

> *"7. Having considered the rival contentions, I find that the payment of CVD and SAD subsequently during GST regime, for the imports made prior to 30.06.2017 is not disputed under the advance authorisation scheme. It is also not disputed that the appellant have paid the CVD and SAD in August, 2018 by way of regularisation on being so pointed out by the Revenue Authority. Further, I find that the Court below have erred in observing in the impugned order, that without producing proper records of duty paid invoices etc. in manufacture of dutiable final product, refund cannot be given. I further find that refund of CVD and SAD in question is allowable, as credit is no longer available under the GST regime, which was however available under the erstwhile regime of Central Excise prior to 30.06.2017. Accordingly, I hold that the appellant is entitled to refund under the provisions of Section 142(3) and (6) of the CGST Act.*
>
> *8. Accordingly, I direct the jurisdictional Assistant Commissioner to grant refunds to the appellant of the amount of SAD & CVD as reflected in the show causes notices and also in the orders-in-appeal. Such refund shall be granted within a period of 45 days from the date of receipt of order alongwith interest under Section 11BB of the Central Excise Act. The impugned orders are set aside."*

8.3 The Hon'ble CESTAT, Principal Bench New Delhi in the case of M/s. New Age Laminators Pvt. Ltd. vs. Commissioner, CGST, Surya Nagar, Alwar reported in 2022-TIOL-694-CESTAT-DEL, while allowing appeal, has held as under :

> *"7. Having considered the rival contentions, I find that the payment of CVD and SAD subsequently during GST regime, for the imports made prior to 30.06.2017 is not disputed under the advance 4 E/A Nos. 50991-50992/2021 authorisation scheme. It is also not disputed that the appellant have paid the CVD and SAD in May, 2018 & May, 2019, by way of regularisation on being so pointed out by the Revenue Authority. Further, I find that the Court below have erred in observing in the impugned order, that without producing proper records of duty paid invoices etc. in manufacture of dutiable final product, refund cannot be given. I further find that refund of CVD and SAD in question is allowable, as credit is no longer available under the GST regime, which was however available under the erstwhile regime of Central Excise prior to 30.06.2017. Accordingly, I hold that the appellant is entitled to refund under the provisions of Section 142(3) and (6) of the CGST Act.*

8. Accordingly, I direct the jurisdictional Assistant Commissioner to grant refunds to the appellants of the amount of SAD & CVD as reflected in the show causes notices and also in the orders-in-appeal. Such refund shall be granted within a period of 45 days from the date of receipt of this order alongwith interest under Section 11BB of the Central Excise Act. The impugned orders are set aside."

8.4 The Hon'ble CESTAT, Regional Bench Chennai in the case of M/s. ITCO Industries Ltd. vs. Commissioner of GST & Central Excise, Salem reported in 2022-VIL-456-CESTAT-CHE-CE, while allowing appeal, has held as under :

"11. From the narration of facts, it can be seen that Department has rejected the claims invoking Rule 9 (1) (b) of Cenvat Credit Rules, 2004. The said provision has already been reproduced above. The Department is of the view that credit is not eligible as appellant has paid the duties only after issuing a demand notice. On perusal of the alleged demand notice, it is merely in the nature of an intimation letter and has not been issued invoking any provisions of Customs law or Excise law. Further, in such intimation also, there is no allegation of any fraud, collusion or suppression of facts with intent to evade payment of duty. There is no evidence placed before me to establish that the duties were paid after adjudication and rendering a finding of fraud, collusion or suppression of fact with intent to evade payment of duty. In such circumstances, the credit cannot be denied. I hold that the appellant is eligible for credit of CVD and SAD paid by them. The Tribunal in the case of Circor Flow Technologies (supra) and Mithila Drugs Pvt. Ltd. (supra) had analysed a similar issue. In M/s. Mithila Drugs Pvt. Ltd., the facts are identical to that of the instant case. The relevant paragraphs read as under :

> *"5.1 Learned Counsel further relies on the precedent ruling of this Tribunal in Flexi Caps and Polymers Pvt. Ltd., vs. Commissioner, CGST & Central Excise, Indore -2021 (9) TMI 917-CESTAT, New Delhi, wherein also pursuant to demand of service tax under reverse charge mechanism after 30.06.2017, for transaction related prior to the said date (01.07.17), this Tribunal held that as the appellant was entitled to cenvat credit under Cenvat Credit Rules, which is not now available due to GST regime, is entitled to refund under Section 142 read with Rule 146 of the CGST Act.*
>
> *6. Learned Authorised Representative Sh. Mahesh Bhardwaj appearing for the Revenue relies on the impugned order.*
>
> *7. Having considered the rival contentions, I find that the payment of CVD and SAD subsequently during GST regime, for the imports made prior to 30.06.2017 is not disputed under the advance authorisation scheme. It is also not disputed that the appellant have paid the CVD and SAD in August, 2018 by way of regularisation on being so pointed out by the Revenue Authority. Further, I find that the Court below have erred in observing in the impugned order, that without producing proper records of duty paid invoices etc. in manufacture of dutiable final product, refund cannot be given. I further find that refund of CVD and SAD in question is allowable, as credit is no longer available under the GST regime, which was however available under the erstwhile regime of Central Excise prior to 30.06.2017. Accordingly, I hold that the appellant is entitled to refund under the provisions of Section 142(3) and (6) of the CGST Act.*
>
> *8. Accordingly, I direct the jurisdictional Assistant Commissioner to grant refunds to the appellant of the amount of SAD & CVD as reflected in the show causes notices and also in the orders-in-appeal. Such refund shall be granted within a period of 45 days from the date of receipt of order 9 Excise Appeal No.40303 of 2021 Excise Appeal No.40304 of 2021 along with interest under Section 11BB of the Central Excise Act. The impugned orders are set aside."*

12. After appreciating the facts and evidence as well as applying the principles of law laid down in the above decisions, I am of the view that the rejection of refund claims cannot be

justified. The impugned orders are set aside. Appeals are allowed with consequential relief, if any, as per law."

9. Thus, I find that the issue involved in the instant case has already been decided by various tribunals as enumerated above. By respectfully following above orders, I hold that the appellant is eligible for refund of CVD and SAD as claimed by them under Section 11B of the Central Excise Act, 1944 read with Section 142(3) of the Central GST Act, 2017. I find that the adjudicating authority has already examined the aspect of unjust enrichment and already given finding in the impugned orders, wherein he held that refund claims does not attract unjust enrichment clause.

10. In view of the above discussion, I set aside the impugned orders and allow the appeals filed by the appellant.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stands disposed of in above terms.

(Akhilesh Kumar)
Commissioner (Appeals)

Attested

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

Date : 07.11.2022

By RPAD / SPEED POST

To,

M/s.Aculife Healthcare Pvt. Ltd., — Appellant
Village Sachana, Taluka Viramgam,
Dist. Ahmedabad – 382150

The Assistant Commissioner, — Respondent
CGST & Central Excise,
Division-III, Ahmedabad North

Copy to :

1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2) The Commissioner, CGST, Ahmedabad North
3) The Assistant Commissioner, CGST, Division III, Ahmedabad North
4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North (for uploading the OIA)
5) Guard File
6) PA file