



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20230364SW000061186D

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2159/2022 -APPEAL

18724-29

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-ADC-169/2022-23**
दिनांक Date : **20-03-2023** जारी करने की तारीख Date of Issue : **20-03-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZR2405220420618 DT. 30.05.2022** issued by The Deputy Commissioner, CGST & CX, Division-III, Ahmedabad North

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**M/s. Aculife Healthcare Pvt Ltd., Village Sachana,
Taluka Viramgam, Dist. Ahmedabad-382150**

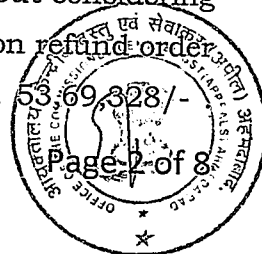
(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .



ORDER-IN-APPEAL**BRIEF FACTS OF THE CASE :**

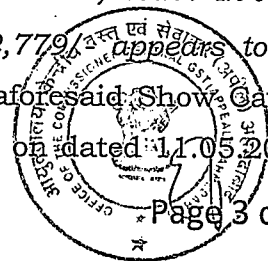
M/s Aculife Healthcare Pvt Ltd., Village Sachana, Taluka Viramgam, Dist. Ahmedabad : 382 150 (hereinafter referred to as the 'Appellant') has filed the present appeal against the Order No. ZR2405220420618 dated 30.05.2022 (hereinafter referred to as the 'impugned order') rejecting non-payment of interest on delay payment of refund amounting to Rs. 4,22,779/- passed by the Deputy Commissioner, CGST & C. Ex., Division- III [Sanand], Ahmedabad North Commissionerate (hereinafter referred to as the 'adjudicating authority').

2. Briefly stated the facts of the case are that the 'Appellant' is holding GST Registration No. 24AAMCA8542Q1Z0 is engaged in manufacture and supply of taxable pharmaceutical products. Appellant is indigenously procured coal which chargeable to CGST / SGST in case of intra-state supply and IGST in case of Inter-state supply as the case may and also attract Compensation Cess. Coal is used in outward taxable goods, therefore, the appellant availed Input Tax Credit (ITC) and Compensation Cess paid on coal in terms of section 16 of the CGST Act, 2017. The outward taxable goods are supplied in the domestic market as well as exported to foreign countries under LUT / Bond in terms of provisions of the CGST Act and Rules made thereunder. Appellant availed ITC of CGST/SGST/IGST paid on domestically procured Coal and utilized the said credit for payment of GST on supply of finished goods. Due to lack of clarify in the initial two years i.e. 2017-18 & 2018-19 and on bona fide belief that finished pharmaceutical products do not attract the Compensation Cess so ITC of Compensation Cess is not admissible. Therefore, the appellant did not avail the ITC of compensation cess on procured coal though eligible to avail ITC in terms of section 16 of CGST Act, 2017 as clarified by the Department under Circular No. 45/16/2018-GST and on the basis of this, the appellant availed ITC of compensation cess in the month of July 2020 for the financial year 2019-20. Vide above circular, it has been clarified that refund of accumulated ITC of compensation cess on account of zero-rated supplies (export) made under Bond / LUT of Undertaking is available even if the export is not subject to levy of Compensation Cess. Since, the pharmaceutical products do not attract the compensation cess, therefore, the ITC availed of compensation cess gets accumulated. On the basis of this and as per Section 54(3) of the CGST Act, 2017 and Sub-rule (4) of Rule 89 of CGST Rules, 2017, the appellant filed refund claim amounting to Rs. 53,69,328/- bearing ARN No. AA240920100713Q dated 29.09.2020 towards accumulated ITC of compensation cess pertaining to zero rated supplies made without payment of tax for the period April 2019 to March 2019. Which was subsequently rejected by the adjudicating authority without considering the facts and legality of the case, and passed incorrect, illegal rejection refund order dated 10.11.2020, wherein, they rejected entire refund claim of Rs. 53,69,328/-



Being aggrieved and dis-satisfied with the impugned order, appeal was filed before the H'ble Additional Commissioner, CGST Appeals, Ahmedabad under section 107 of the CGST Act, 2017. Further, vide Order in Appeal (OIA) NO. AHM-CGST-002-APP-ADC-100/2021-22 dated 22.03.2022, the appellate authority allowed the appeal and held that the refund claim is admissible.

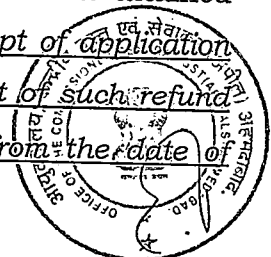
2.1 Consequent to the favorable appellate order, the appellant vide their letter dated 07.04.2022 requested the jurisdictional Assistant Commissioner, CGST & C.Ex, Division-III, Sanand, Ahmedabad North Commissionerate, to sanction and pay the refund amounting to Rs. 53,69,328/- alongwith interest of Rs. 4,22,779/- in terms of Section 56 of the CGST Act, 2017. As per section 56 of the CGST Act, 2017, interest is payable in respect of refund from the date immediately after the expiry of sixty days from the date of receipt of application. As the refund was already sanctioned and paid beyond sixty days (i.e from the date of application made on dated 29.09.2020), accordingly, the appellant made request to pay interest for the delay beyond sixty days from the date of application which worked out to Rs. 4,22,779/- of such refund. The adjudicating authority under their office letter dated 08.04.2022 issued under F. No. III/GST-Appeal-Refund/Aculife/02/22-23, that the refund claim is to be filed electronically in the system in Form RFD-01 under the appropriate category under Section 54 of the CGST Act, 2017 and accordingly, the appellant again applied for the refund claim in Form RFD-01 under ARN No. AA2404220578762 on dated 16.04.2022. Thereafter, the appellant was issued a Show Cause Notice No. ZS2405220086407 dated 6.5.2022 in the Form of GST-RFD-08 by proposing that the refund claim amounting to Rs. 53,69,328/- appears to be admissible, however, the claim for interest amounting to Rs. 4,22,779/- appears to be not admissible as the appellant has not mentioned the provisions of Act and Rules under which they made claim of interest amount and for what period and how the interest is admissible in the present application. Further, they proposed the rejection of interest on the ground that, it is apparently clear that the OIA passed by the appellate authority or Appellate Tribunal or the Court shall be deemed to be an order passed under the sub-section (5) of the Section 54 of the CGST Act, 2017 and accordingly interest on delayed refund is payable under Sec. 56 of the CGST Act, 2017 only after expiring of *period of sixty days from the date of receipt of fresh refund application consequent to such Appellate Order.* In the present case, the application of refund is filed on 16.4.2022 in pursuance to the OIA No. AHM-CGST-002-APP-ADC-100/2021-22 dated 22.03.2022, under Section 54(1) of the CGST Act, 2017 and the subject application is under process and within time limit of sixty days and therefore question of granting any interest does not arise under the proviso to Section 56 of the CGST Act, 2017. In view of the above, the refund claim filed for interest of Rs. 4,22,779/- appears to be inadmissible and seems liable for rejection. In reply to the aforesaid Show Cause Notice, the appellant filed their reply in form of GST-RFD-09 on dated 11.05.2022



and submitted / uploaded documents related to the subject claim filed for refund interest. Subsequently, the adjudicating authority rejected the claim for refund interest under impugned order no. ZR240522040420618 dated 30.05.2022.

3. Being aggrieved with the impugned order the appellant has filed the present appeal on 27.06.2022 mainly on the following reasons-

- The present refund for interest claim has arisen from the Order-In-Appeal dated 22.03.2022 and consequent to the said OIA, refund application has been filed on 16.4.2022 under Section 56 of the CGST Act, 2017 i.e within the sixty days from the date of receipt of application filed on 16.4.2022, then interest is required to be paid in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application consequent to the said O-I-A till the date of refund.
- The appellant submits that it is an undisputed fact that initially the refund application was filed on 12.10.2020 under ARN No. AAA240920100713Q. After following the due process of law the entire refund claim of Rs. 53,69,328/- was rejected under order dated 10.11.2020 and being aggrieved with this the appellant had preferred appeal before the appellate authority and the appellant authority has passed OIA dated 22.03.2022 in the favour of the appellant. The operative part of the order is as under :
"Considering the above, I am of the opinion that the refund sanctioning authority erring in rejecting the refund claim solely on the ground that they have not availed the ITC of Compensation Cess during the period April 2019 to March 2020 resulting into zero 'Net ITC'. The refund sanctioning authority, is therefore, directed to process the refund claim in view of the above deliberations and in accordance with Section 54(3) of the CGST Act. In view of the above, I hereby allow the appeal and set aside the impugned order."
- The appellant only disputed the non-payment of interest. Section 56 of the CGST Act, 2017 provides for interest on delayed refunds. As per the proviso to Sec. 56, if any tax ordered to be refunded under section 54 is not refunded within sixty days on the receipt of the application, interest shall be payable in respect of such refund from the date after expiry of sixty days from the date of receipt of application.
- The appellant submits that proviso under Sec. 56 speaks about claim of refund arising from an order passed by an adjudicating authority or appellate authority or appellate tribunal or the Court, which has attained finality and same is not refunded within sixty days of receipt of application filed consequent to such order, interest is payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.



- The appellant submits that in the erstwhile Central Excise Act, 1944, the provisions for payment of interest on delayed refund are provided under Section 11BB. The Section 56 of the CGST Act, 2017 is peri materia to the Section 11BB of Central Excise Act, 1944 with which the adjudicating authority is not agreed upon. For better appreciation of the facts, Section 11BB of Central Excise Act, 1944 is reproduced hereunder :

"Section 11BB. Interest on delayed refunds – If any duty ordered to be refund under sub-section(2) of Section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section(1) of that section, there shall be paid to that applicant interest at such rate not below five percent and not exceeding thirty percent per annum as is for the time being fixed by the Central Government, by notification in the official gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:

Provided that where any duty ordered to be refunded under sub-section(2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation – where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any Court against an order of the Assistant or Deputy Commissioner of Central Excise, under sub-section (2) of the Section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or, as the case may be, by the Court shall be deemed to be order passed under the said sub-section (2) for the purposes of this section."

The main body of section 11BB is peri materia to main body of Section 56 of the CGST Act, 2017. The explanation is also same worded in the both the statute and conveys the same intent. The Explanation to section 11BB of the Central Excise Act, 1944 and Section 56 of the CGST Act, 2017 are identically worded and conveys the same intent.

- So far as provisions of payment of interest on delayed payment of refund claim under the erstwhile Section 11BB of the Central Excise Act, 1944 are *pari material* with the interest provisions enacted under Section 56 of the CGST Act, 2017. Therefore, the appellant rely upon the following decisions :
- a) Aculife Healthcare Pvt Ltd – Order-In-Appeal No. AHM-EXCUS-002-APP-351-17-18 dated 28.02.2018
 - b) Aculife Healthcare Pvt Ltd – Order-In-Appeal No. AHM-EXCUS-005-APP-374-17-18 dated 16.03.2018
 - c) Aculife Healthcare Pvt Ltd – Order-In-Appeal No. AHM-EXCUS-002-APP-84-18-19 dated 25.10.2018
 - d) 2004 (170) ELT 13(LB) – Rama Vision Ltd
 - e) 2008 (233) ELT 607 – Jayanta Glass Industries P. Ltd.



- f) 2008 (227) ELT 247 (Tri.) – Tirupati Pipe & Allied Ind.
- g) 2011 (273) ELT 3 (SC) –Ranbaxy Laboratories Ltd
- h) H.C Order No. O/12139/2016 dtd 02.04.2016 – Purnima Advertising Agency P. Ltd.

➤ Based on the above findings, the impugned order is not sustainable in law and required to be quashed to the extent of non-payment of interest.

PERSONAL HEARING :

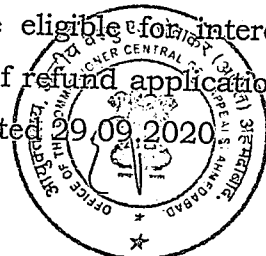
3. Personal Hearing in the matter was held on 27.12.2022, wherein Shri Vikramsinh Zala, appeared in person on behalf of the 'Appellant' as Authorized Representative. During Personal Hearing, they have submitted written documents dated 27.12.2022. They have reiterated that they have nothing to add more to their written submission till date.

3.1 The appellant made their written submission dated 27.12.2022, wherein they submitted that it is settled law under Central Excise Act that interest is payable beyond three months from the date of refund application till the refund is sanctioned and paid. Since the provisions for interest are same under section 56 of the CGST Act, the ratio of the decisions under Central Excise Act are squarely applicable in the present case. The case laws are mentioned in their grounds of appeal, which may kindly be referred and considered while deciding the present appeal.

DISCUSSION AND FINDINGS :

4(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeal, I find that the 'Appellant' had preferred the refund for interest application before the refund sanctioning authority. The dispute involved in the present appeal relates to non-payment of interest in terms of Section 56 of the CGST Act, 2017. Therefore, the issue before me is to decide whether non-payment of interest on refund claim sanctioned and paid beyond sixty days, in terms of Section 56 of the CGST Act, 2017 from the date of original application date or otherwise? And the impugned refund order is justifiable or otherwise?

4(ii). I find that in the present appeal from the material available on record, it is observed that the appellant contended that they are eligible for interest for delayed payment of refund from the expiry of sixty days of refund application filed in the present case i.e vide ARN No. AA240920100713Q dated 29.09.2020



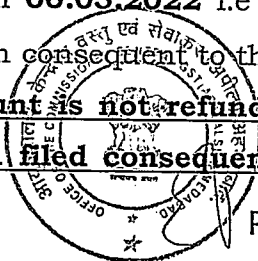
4 (iii). In terms of the provisions of Section 56 of the CGST Act, 2017, where the amount claimed is not refunded within the sixty days from the date of receipt of the application, interest at the rate notified by the Government is required to be paid to the applicant from the date immediately after the expiry of the sixty days from the date of receipt of the application till the date on which refund is granted. In the instant case, the applicant was sanctioned the refund claim on 6.5.2022 consequent to the O-I-A passed by the Appellate Authority vide OIA No. AHM-CGST-002-APP-ADC-100/2021-22 dated 22.03.2022, wherein in para-14 the Appellate Authority has stated that:

"14. Considering the above, I am of the opinion that the refund sanctioning authority erred in rejecting the refund claim solely on the ground that they have not availed the ITC of Compensation Cess during the period from April, 2019 to March 2020 resulting into zero "Net ITC". The refund sanctioning authority is, therefore, directed to process the refund claim in view of the above deliberations and in accordance with Section 54(3) of the CGST Act."

I find that in the above OIA the appellate authority has not mentioned in respect of any consequential relief to the appellant, simply directed to process the refund claim of the appellant which was rejected by the refund sanctioning authority. Further, I find that in the present case, the refund application was filed by the appellant for amounting of Rs. 57,91,107 (Rs. 53,69,328/- Cess along with interest of Rs. 4,22,779/-) on 6.4.2022. The interest on delayed payment of refund is governed by the Section 56 of the CGST Act, 2017.

As per proviso to Section 56 of CGST Act, 2017, where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or Court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine percent as may be notified by the Government to the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

5. In the present claim, the refund application consequent to the Order-in-Appeal No. AHM-CGST-002-APP-ADC-100/2021-22 dated 22.03.2022 passed by the Additional Commissioner (Appeals) Ahmedabad, has been filed on 16.04.2022 and in view of the proviso to Section 56 of CGST Act, 2017, the refund sanctioning authority has sanctioned the present refund claim on 06.05.2022 i.e within the sixty days from the date of receipt of refund application consequent to the said OIA passed by the Appellate Authority, in case the amount is not refunded within sixty days from the date of receipt of application filed consequent to such



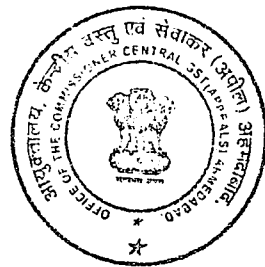
order i.e within sixty days from the date of receipt of application filed on 16.04.2022, then interest is required to pay from the date immediately after the expiry of sixty days from the date of receipt of application consequent to the said OIA, has been filed on 16.04.2022 till the date of refund. I find that the refund sanctioning authority has sanctioned the present refund claim on **06.05.2022** i.e within the sixty days from the date of receipt of refund application consequent to the said OIA passed by the Appellate Authority, therefore, question of payment of interest under proviso to Section 56 of the CGST Act, 2017 does not arise at all. Hence, I do not find any inference in the order passed by the adjudicating authority, and the interest on refund payment amounting to Rs. 4,22,779/- under section 56 of the CGST Act, 2017 as requested by the appellant is not proper and justifiable and liable for rejection under Section 54(5) of the CGST Act, 2017 read with Rule 92(3) of the CGST Rules, 2017.

6. In view of above discussions, I am of the considered view that the appellants are not entitled to interest on refund under Section 56 of the CGST Act, 2017. I uphold the *impugned order* passed by the *adjudicating authority* and find it legal and proper and accordingly, I reject the appeal of the "Appellant" in terms of Section 56 of the CGST Act, 2017.

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

(Mahir Rayka)
Additional Commissioner (Appeals)
Date: 26.3.2023

Attested
(Tejas J Mistry)
Superintendent (Appeals)
Central Tax, Ahmedabad.



By R.P.A.D.

M/s Aculife Healthcare Pvt Ltd. [GSTIN - 24AAMCA8542Q1Z0],
Village Sachana, Taluka Viramgam, Dist. Ahmedabad : 382 150

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad North Comm'te.
4. The Additional Commissioner, Central Tax (System), Ahmedabad North Commissionerate.
5. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-III, Sanand, Ahmedabad North Commissionerate.
6. Guard File.
7. P.A. File.

