



सत्यमेव जयते

आयुक्तकाकार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजम्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.  
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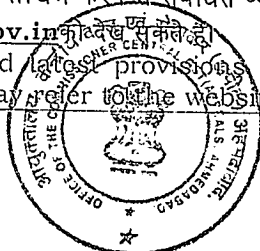


**By Regd. Post**

DIN NO.: 20230764SW0000174935

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/910,912/2023 / 1050-56
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-ADC-30-31/2023-24 and 28.07.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	31.07.2023
(ङ)	Arising out of Order-In-Original No. ZJ2401230077604 dated 06.01.2023 and ZI2401230112304 dated 10.01.2023 passed by The Deputy Commissioner, CGST, Division-III, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Aculife Healthcare Pvt. Ltd. (GSTIN-24AAMCA8542Q1Z0), Village - Sachana, Taluka - Viramgam, At - Sachana, Ahmedabad, Gujarat-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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to <u>twenty five per cent</u> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> पर जाकर लेटेस्ट प्रोविजनस relating to filing of appeal to the appellate authority, the appellant may refer to the website <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



ORDER-IN-APPEALBRIEF FACTS OF THE CASE:

M/s. Aculife Healthcare Private Limited, Village – Sachana, Taluka – Viramgam, At – Sachana, Ahmedabad, Gujarat – 382 150 (hereinafter referred to as “the appellant”) has filed the following appeals against Refund Rejection Order(s) (hereinafter referred to as “the impugned order”) passed by the Deputy Commissioner, CGST & C.Ex, Division – III, Ahmedabad North Commissionerate (hereinafter referred to as “the adjudicating authority”) rejecting refund claims filed by the appellant on time limitation factor:

Sr. No	Appeal File Number	Date of filing of appeal	Refund rejection Order (Impugned Order ) No. & Date	Amount of Refund ( in Rs.)	Tax period
1	GAPPL/ADC/GSTP /910/2022	07.02.2023	ZJ2401230077604, dated 06.01.2023	13,91,114/-	July 2017 to August 2018
2	GAPPL/ADC/GSTP /912/2022	07.02.2023	ZI2401230112304, dtd 10.01.2023	31,23,186/-	Sept -2018 to July - 2022

2. Brief facts of the case in both these appeals is that the appellant registered under GSTIN 24AAMCA8542Q1Z0, are engaged in manufacture and clearance of goods falling under Ch 30 and their final products are taxable under GST. The appellant, under the erstwhile Service Tax regime, as a result of Audit objection, in several group companies, on notice pay recovery / Bond recovery, service tax was demanded by treating the notice pay recovery as consideration towards service of “*tolerating an act or refraining from an act*”, as declared service under Section 66E of the Finance Act, 1994 and the appellant was issued show cause notice under which service tax was demanded and confirmed. Being aggrieved, appeals were filed before the appellate authority and in the decisions of the appellate authority held that **service tax is not payable and appeals were allowed and the demand of service tax was set aside, consequent to these decisions**, the appellant followed the said decisions and did not pay service tax. In appellant case appellant case also the Audit department took the same stand and demanded the service tax on notice pay recovery, which was disputed. For the subsequent period as confusion was prevailing and litigation was pending with the appellate authorities and courts, therefore, to avoid the burden of interest, appellant paid service tax “under protest”. Meanwhile, for the past period, in appellant own case, the appeal is decided by the Commr (Appeals), Ahmedabad holding that service tax is not payable under OIA No. AHM-EXCUS-002-APP-09-2022-23 dtd 17.06.2022, the department refunded the amount of service tax paid under protest.

In the GST regime also, provisions governing the chargeability of GST on notice pay recovery / Bond recovery are identical to the provision of service tax regime. The consideration towards notice pay recovery cannot be treated as supply under the CGST Act, 2017 as well in terms of Schedule-II & Schedule-III appended to the CGST Act, 2017. Therefore, the consideration in the form of notice pay recovery was never taxable under the service tax regime and also not under the GST regime, therefore, Appellant under GST also continue to pay the tax “under protest”, just to avoid the litigation and interest pending

clarification by the CBIC and appellate authority. Further, the taxability of notice pay recovery / bond recovery is clarified by the CBIC under Circular No. 178/10/2022-GST dtd 03.08.2022, wherein, it has also clarified that such amount is not chargeable to GST. Appellant in the GST regime deposited the CGST and SGST just to avoid the burden of interest and awaiting the clarification from the CBIC. Consequent to the said circular, the appellant, has filed refund claim(s) for towards GST paid inadvertently on notice pay recovery under Section 54 of the CGST Act, 2017 for the period from (i) July 2017 to August 2018 for Rs. 13,91,114/- vide ARN NO. AA241122016444V dated 05.11.2022 and (ii) from September 2018 to July 2022 for Rs. 31,23,186/- respectively under Section 54 of the CGST Act, 2017 vide ARN No. AA241122018249N dated 07.11.2022.

The appellant was issued Show Cause Notice(s) proposing rejection of refund on the ground that *subject refund claim(s)* is/are liable to be rejected as the same is/are filed beyond the stipulated period of 2 years from the relevant date respectively. Subsequently, the appellant was issued Refund Rejection Order(s) on dated 06.01.2023 and 10.01.2023 proposing rejection of refund on the grounds that

**I. REFUND ORDER (GST-RFD-06) NO. ZJ2401230077604, dated 06.01.2023:**

*“the claim is liable for rejection due to submission of refund claim after limitation of time, prescribed under Central Goods and Services Tax Act, 2017. Further there is no provision under the Central Goods and Services Tax Act, 2017 to sanction time barred refund cases.”*

**Table -A**

Refund rejection Order (Impugned Order ) No. & Date	Amount of Refund claimed ( in Rs.)	Refund claimed for Tax period	Refund amount rejected (In Rs.)	Rejected tax period on time limitation
ZJ2401230077604, dated 06.01.2023	13,91,114/-	July 2017 to August 2018	13,91,114/-	July 2017 to August 2018

**II. REFUND ORDER (GST-RFD-06) NO. ZI2401230112304, dated 10.01.2023:**

*“.. the claim for Sept. 2018 to Nov. 2018 amounting to Rs. 1,99,174/- is liable for rejection due to submission of refund claim after limitation of time, prescribed under Central Goods and Services Tax Act, 2017. As there is no provision under the Central Goods and Services Tax Act, 2017 to sanction time barred refund cases. Hence, the remaining claimed amount i.e Rs. 29,24,012/- (Rs. 31,23,186 – Rs. 1,99,174/-) is found refundable. ”*

Refund rejection Order (Impugned Order ) No. & Date	Amount of Refund claimed ( in Rs.)	Refund claimed for Tax period	Refund amount rejected (In Rs.)	Rejected tax period on time limitation	Refund amount sanctioned (In Rs.)
ZI2401230112304, dtd 10.01.2023	31,23,186/-	Sept 2018 to July 2022	1,99,174/-	Sept 2018 to Nov 2018	29,24,012/-

3. Being aggrieved with the impugned order(s), the appellant preferred appeal(s) on the following grounds, contending that:

I. the rejection of entire refund claim amounting to Rs. 13,91,114/- and refund amounting Rs. 1,99,174/- respectively under section 54 of the CGST Act, 2017 on the grounds of limitation (time barred) is justifiable or otherwise?

II. On perusal on allegation made in the Show Cause Notice(s) and refund order(s), the refund is/are admissible on merits and also the refund is not hit by provisions of unjust enrichment that only on the grounds of limitation (time barred) the refund claim is rejected.

III. Appellant submit that

(i) in para 1 of the impugned refund order (i.e Refund Order No ZJ2401230077604, dated 06.01.2023), the relevant provisions under Section 54 of CGST Act, 2017 is quoted and recorded the allegations made in the Show Cause Notice as under :

*“But, it is noticed that the claimant has submitted the claim after expiry of two years from the relevant date. However, reference is made to Notification No. 13/2022-Central Tax dated 05.07.2022, wherein it excludes the period from the 1<sup>st</sup> day of March, 2020 to the 28<sup>th</sup> day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act. In view of the notification, the refund claim is time barred for the period July, 2017 to August, 2018 for the refund amount of Rs. 13,91,114/-. Therefore, no amount appears to be refundable.”*

(ii) in para 2 of the impugned refund order (i.e Refund Order No ZI2401230112304, dated 10.01.2023), the relevant provisions under Section 54 of CGST Act, 2017 is quoted and recorded the allegations made in the Show Cause Notice as under :

*“But, it is noticed that the claimant has submitted the claim after expiry of two years from the relevant date. However, reference is made to Notification No. 13/2022-Central Tax dated 05.07.2022, wherein it excludes the period from the 1<sup>st</sup> day of March, 2020 to the 28<sup>th</sup> day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act. In view of the notification, the refund claim amounting to Rs. 2,46,660/- is time barred for the period Sept. 2018 to December 2018 And the balance amount claimed i.e Rs. 31,23,186/- - Rs. 2,46,660/- = Rs. 28,76,526/- appears to be refundable.”*

IV. As regard to rejection of refund claim of Rs. 13,91,114/- and Rs.1,99,174/- respectively on time limitation (time barred), before the learned adjudicating authority, appellant has made detailed explanation, which are not considered by the said authority. Therefore, the submissions are made for kind consideration:

As regard to time limit prescribed under section 54 of the CGST Act, 2017, it is submitted that as held by the H'ble Courts and tribunal and by virtue of the Circular issued by the CBIC, the amounts recovered by the appellant as notice pay recover are not taxable as consideration for the service of agreeing to tolerate an act or a situation. Thus,

not chargeable to CGST. Appellant submits that Article 265 of the Constitution of India, provides that no tax shall be levied or collected except by Authority of law. Since, the amount of CGST collected by the government is without authority of law, the Department is obliged to refund the amount erroneously collected. The amount collected by mistake of law and so without authority of law could not be considered as tax collected by them and therefore, the time limit prescribed under section 54 is not applicable and the amount is required to be refunded as per Section 17 of limitation Act, 1963. The above views are supported by the various decisions of the courts. It is submitted that the Section 54 of the CGST Act, dealing with refund of tax is similar to section 11B of Central Excise Act, 1944. Therefore, the ratio of the decisions delivered by the court on limitation aspect in case of refund of excise duty and service tax under section 11B of Central Excise Act, squarely applies to the facts of the present case. For this, they relied upon following case laws:

- (i) 2021 (55) GSTL 390 (Guj.) – Comsol Energy Pvt. Ltd
- (ii) AIR 1964 SC 1006 – Bhailal Bhai and others
- (iii) 2013 (288) ELT 193 (Guj.) – Binani Cement Ltd
- (iv) 2016 (339) ELT 21 (Guj) – Joshi Technologies International
- (v) 2018 (18) GSTL 410 (Mad.) – 3E Infotech Ltd
- (vi) 2022 (65) GSTL 122 (Tri.-Del) – RattanIndia Power Ltd.
- (vii) 2022 (61) GSTL 349 (Kar.) – Way2wealth Brokers PVt Ltd
- (viii) 2021 (50) GSTL 500 (All.) – Choubay and Company (Agencies)
- (ix) 2017 (3) GSTL 97 (Bom) – In House Productions Ltd
- (x) TS-648-HC (KER)-2022-GST – Manappuram Finance Ltd.

From the above submission, the refund claim(s) for Rs. 13,91,114/- and Rs. 1,99,174/- is/are admissible not hit by limitation prescribed u/s 54 of CGST Act, 2017. And the allegations made in the SCN and findings recorded in the impugned refund order(s) are erroneous, incorrect and illegal and so impugned refund order(s) are not sustainable in law and required to be quash and set aside.


**PERSONAL HEARING:**

4. Personal hearing in the matter on both appeals held on 13.07.2023, Shri Vikramsingh Jhala, Authorised Representative appeared personally on behalf of the appellant in both appeals. During P.H. he submitted that the refund(s) was/were solely rejected on ground of limitation. The amount eligible as per time limitation and refund(s) has been sanctioned by the Learned Adjudicating Authority. He further submitted that in the instant case time limitation specified in the CGST Act, for refund case(s) is/are not applicable in the instant case as the taxability on "Notice Pay Recovery" was under doubt since service tax era. They further submitted that for Service Tax, the issue was decided in their favor by the Commissioner (Appeals), Ahmedabad, which is mentioned in appeal memo. Further, the issue was clarified by CBIC vide Circular No. 178/10/2022 dtd 03.08.2022, accordingly after issuance of the above circular, they applied for refund. Detailed grounds have been mentioned in appeal memo and requested to allow appeal.

**Discussion and Findings :**

5. I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum and submissions made during the personal hearing. I find that the 'Appellant' had preferred the refund application(s) for the period from (i) July 2017 to August 2018 for Rs. 13,91,114/- vide ARN No AA241122016444V dated 5.11.2022 and (ii) from September 2018 to July 2022 for Rs. 31,23,186/- respectively under Section 54 of the CGST Act, 2017 vide ARN No. AA241122018249N dated 07.11.2022, towards GST paid inadvertently on notice pay recovery under Section 54 of the CGST Act, 2017.

5.1 Thereafter, they were issued show cause notice(s) dated 19.12.2022 and 23.12.2022 respectively proposing rejection of refund(s) on the ground that *subject refund claim is liable to be rejected due to submission of refund claim after limitation of time, prescribed under the Central Goods and Services Tax Act, 2017. Further, there is no provision under the Central Goods and Services Tax Act, 2017 to sanction time barred refund cases.* In this regard, I find that the appellant had filed replies to SCN(s) under Form RFD-09 both dated 03.01.2023 for refund application(s) for the period from (i) July 2017 to August 2018 for Rs. 13,91,114/- vide ARN No AA241122016444V dated 5.11.2022 and (ii) from September 2018 to July 2022 for Rs. 31,23,186/- respectively towards GST paid inadvertently on notice pay recovery under Section 54 of the CGST Act, 2017 consequent to the issuance of CBIC's Circular No. 178/10/2022-GST dated 3<sup>rd</sup> August 2022.



Further, I find that the adjudicating authority vide impugned order(s) has rejected the aforesaid refund claim(s) as time barred and reject the same in accordance with the Section 54(1) of the CGST Act, 2017 and as per the Notification No. 13/2022- Central Tax dated 5<sup>th</sup> July 2022 and rejected refund amount Rs. 13,91,114/- for the period July-2017 to August-2018 and Rs. 1,99,174/- (Out of Rs. 31,23,186/-) for the period September 2018 to November 2018, certain period is beyond two years from the relevant date prescribed under Explanation (2) to Section 54 of the CGST Act, 2017 and hence beyond time limit prescribed under Section 54(1) of the CGST Act, 2017 and as per Notification No. 13/2022-CT, dtd 5<sup>th</sup> July 2022. However, the adjudicating authority has sanctioned refund amount of Rs. 29,24,012/- (Out of Rs. 31,23,186/-), for the period December 2018 to July 2022 as per Section 54(1) of the CGST Act, 2017 and Notification No. 13/2022-CT, dated 5.7.2022.

5.2 In the above context, it is pertinent the mention here that the Hon'ble Supreme Court in Misc. Application No. 665/2021 in SMW(C) No. 3/2020 vide Order dated 23.09.2021 ordered for computing the period of limitation for any suit, appeal, application or proceedings the period from 15.03.2020 till 02.10.2021 shall stand excluded and consequently balance period of limitation remaining as on 15.03.2020 if any, shall become

available with effect from 03.10.2021 and that in cases where the limitation would have expired during period from 15.03.2020 till 02.10.2021 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. Subsequently, Hon'ble Supreme Court vide order dated 10.01.2022 ordered that in continuation of order dated 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.3 Further, I find that on the subject matter Notification No. 13/2022-Central Tax dated 05.07.2022 has been issued by the CBIC. The relevant para is reproduced as under:

***“(iii) excludes the period from the 1<sup>st</sup> day of March, 2020 to the 28<sup>th</sup> day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.***

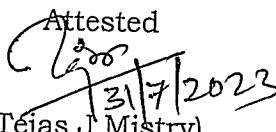
2. *This notification shall be deemed to have come into force with effect from the 1<sup>st</sup> day of March, 2020.*

5.4 In view of foregoing facts, I find that in respect of refund claims for which due date for filing refund claim(s) are falls during period from 01.03.2020 to 28.02.2022, two years time limit under Section 54 of the CGST Act, 2017 is to be reckoned, excluding said period. In the subject case, the claim was/were filed for the period (i) July 2017 to August 2018 and (ii) September 2018 to November 2018 on 05.11.2022 & 07.11.2022 respectively considering for computation of period of limitation for filing refund claim under Section 54 the claim period for which the due date falls during 01.03.2020 to 28.02.2022, are hit by the time limitation in the instant case(s) under Section 54 of the CGST Act, 2017 and as per Notification No. 13/2022-CT dated 5<sup>th</sup> July 2022, hence, the adjudicating authority has lawfully rejected the refund claim(s) filed by the appellant, following the issuance of CBIC Circular No. 178/10/2022-GST, dated 3.8.2022. However, I find that the adjudicating authority has not discussed anything about the merits of the case or admissibility of the refund claims in the impugned order(s), I do not find any force to discuss here it and do not find any force to decide the same, which will beyond the scope of the order.

5.5 I find that in the present matter the claim was/were filed for the period for the period (i) July 2017 to August 2018 and (ii) September 2018 to November 2018, consequent to the CBIC Circular No. 178/10/2022-GST, dated 3.8.2022 on 05.11.2022 and 07.11.2022, I hold that the rejection of refund claim(s) of Rs. 13,91,114/- for the period July-2017 to August-2018 and Rs. 1,99,174/- (Out of Rs. 31,23,186/-) respectively on the ground of time limitation is found legal, proper and as per the law. Hence, the appeal(s) filed and contention made in the appeal memorandum by the appellant ~~are~~<sup>do</sup> not succeeds on time limitation ground.

6. In view of the above discussions, the *impugned order(s)* passed by the *adjudicating authority* is/are legal and proper to the extent of rejection of refund claim(s). Accordingly, I reject the appeal(s) of the "*Appellant*" without going into merit of all other aspects, which are required to be complied by the claimant in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

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

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

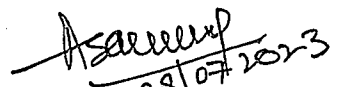
By R.P.A.D.

To

M/s. Aculife Healthcare Private Limited [GSTIN 24AAMCA8542Q1Z0],  
Village – Sachana, Taluka – Viramgam, At – Sachana,  
Ahmedabad, Gujarat – 382 150

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Ahmedabad North Commissionerate.
4. The Dy / Assistant Commissioner, CGST & C.Ex, Division- III, Ahmedabad North Commissionerate.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File / P.A. File.

  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)  
Date: .07.2023

