

	केंद्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय उत्पाद शुल्क भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावादी, अहमदाबाद-380015	7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
 079-26305065		टैलेफैक्स : 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(30)31 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 351-17-18

दिनांक (Date): 28-Feb-2018 जारी करने की तारीख (Date of issue): 9/4/2018

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by **Shri Uma Shanker** , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No 13-18/Ref/II/17-18 Dated: 19/07/2017

issued by: Assistant Commissioner Central Excise (Div-III), Ahmedabad North

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Aculife Healthcare Pvt. Ltd.

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 an 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:

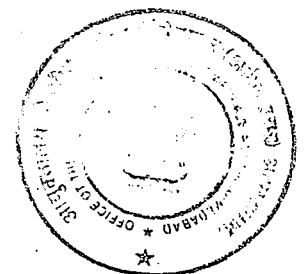
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए ।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो ।

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

(ख) 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है ।



Cont...2

- (c) 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 ड्यूटी क्रेडिट 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।

- (d) 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 होनी 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 रुपये या उससे कम हो तो रुपये 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 अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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

- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) 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 ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्ट्रार के नाम से



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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. Registrar 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 आदेश 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 है।

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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील 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।

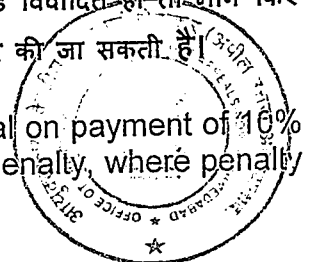
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 सन्दर्भ में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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

The subject appeal is filed by M/s Aculife Healthcare Pvt. Ltd (formerly known as Nirma Limited) Vill. Sachana, Tal. Viramgam, Dist. Ahmedabad-382150, (hereinafter as the Appellant) against OIO No. 13 to 18/REF/II/17-18 (hereinafter referred to as 'the impugned order') Passed by The Asstt. Commissioner, Central Excise, Division-III, Ahmedabad-II, (hereinafter referred to as 'the adjudicating authority')

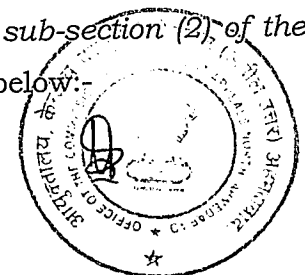
2. The facts in brief of the case is that earlier the appellant has filed six refund claims total amounting to Rs.26,20,075/- with Jurisdictional Assistant Commissioner. Six SCNs were issued to the Appellant and adjudicated vide OIO No.1525 to 1530/R/2007 dated 28.12.2007 by rejecting all six refund claims. Being aggrieved by the said OIOs, the Appellant has filed an Appeal before the Commissioner (Appeals-II), Ahmedabad which was remanded back to the original adjudicating authority for de-novo proceedings, rejected all the six refund claims under OIO No.1382/Reb/2008 dated 01.09.2008. Being aggrieved, the Appellant again filed Appeal before Commissioner (Appeals), vide OIA dated 17.03.2009, found the refund claim admissible but ordered to credit the same in to the consumer welfare fund. Being dissatisfied with the said OIA, Appellant filed an Appeal before Hon'ble CESTAT, Ahmedabad, who set aside the impugned order and remand back the matter vide order no.A/10997/2016 dated 16.09.2016. to the Commissioner (Appeals). In the denovo proceeding, the Commissioner (Appeals) vide OIA No.AHM-EXCUS-002-APP-108-16-17 dated 30.03.2017 (issued on 10.04.2017) allowed the refund claim. The Assistant Commissioner has sanctioned & paid refund vide above order dated-19.07.2017. However, he has not paid interest on delayed payment of refund claim. Therefore, Appellant filed letters dated 26.07.17 and 10.08.2017, and requested to pay the interest amount & also requested to pass a speaking order. Vide letter dated 11.08.17, he has informed to the Appellant, 'to approach Appellate forums. Any queries/Communication regarding this issue will not be entertained as order has already been passed.'

3. Being aggrieved with the said order to the extent for nonpayment of interest, this appeal is filed on the main ground as under;

i. That the Appellant filed the Refund claim, which is sanctioned & paid vide order No. 13-18/Ref/II/17-18 Dated-19.07.2017. They specifically requested to pay the interest amount in light of the various decisions of the Hon'ble Tribunal & also requested to pass a speaking order.

ii. That as per the provisions under Section 11BB of the Central Excise Act, the department is bound to pay the interest amount if refund is not paid within three months from the date after three months from the date of receipt of the application till the date of payment of refund. Further in the explanation below section 11BB of the Central Excise Act it has been clarified that "*where any order of refund is made by commissioner (appeals), an order passed under the said sub-section (2) of the purpose of this section*" They relied on Some of the decisions as below:-

- 1) 2004 (170) ELT 13 (LB) – Rama vision Ltd.
- 2) 2008 (233) ELT 607 – Jayanta Glass Industries P. Ltd.



3) 2008 (227) ELT 247 (Tri.) – Tirupati Pipe & Allied Ind.

4) 2011(273)ELT 3 (SC) -RANBAXY LABORATORIES LTD vs. UoI

5. The Hon'ble High Court of Gujarat, at Ahmedabad in the case of M/s.Purnima Advertising Agency Pvt ltd. Vide order no. O/12139/2016 dated 02.04.2016 .

iv. That the Adjudicating Officer has ignored the instructions issued by the Board under circular No. 670/61/2002-CX dated 1.10.02.

v. They rely on the following decisions in the matter of appellant's own case.

1. Order No A/747-749/WZB/AHD/2011 Dated 22-03-2011- CESTAT (Ahd)

2. OIA No 176 to 178/2012(Ahd-II)CE/AK/Commr(A)/Ahd dated 17.07.12

vi. That adjudicating officer ignored the settled law and does not pay interest on delayed refund compelling the appellant to approach appellate forum again and again for each case. Therefore, The Hon'ble Commissioner (Appeal) may be pleased to allow the Appeal and oblige.

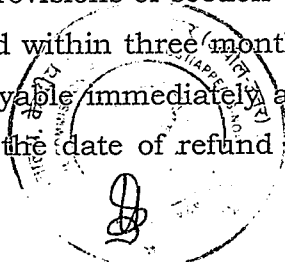
4. Personal hearing in this case was accorded on 10-01-2018 wherein Shri Vikramsinh Jhala, AGM [EXCISE] appeared on behalf of the appellant and reiterated the submissions made under their appeal memorandum. He submitted copies of the relevant case laws. He has filed written submission during the P.H. I have carefully gone through the case records, facts of the case, OIO, copies of various case laws, and written submission made by the appellant at the time of personal hearing.

5. I Find That, The refund Application was filed in the year 2005-06. originally it was rejected by the department and the Hon'ble tribunal had remanded the matter to the commissioner (Appeals) and vide OIA dated 30-3-2017, he has allowed the refund claim. Accordingly, the refund was paid by the original Authority but interest is not paid. The appellant has contended that, they are entitled for interest on delayed payment of refund claim as per the provision of section 11BB of the central Excise Act.1944.

6. I find that, The section 11BB deals with the interest on delayed refund and it has been provided that if any duty ordered to be refunded 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 as fixed by the government 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. An Explanation is provided to the section 11BB which read as:

"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 Commissioner of Central Excise or Deputy Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate tribunal, National tax tribunal or, as the case may be, by the courts shall be deemed to be an order passed under the said sub-section (2) for the purpose of this section."

7. I also find that, there is no dispute about the admissibility of refund claim as the same is refunded to the appellant. Therefore, as per the provisions of section 11BB of the central Excise Act 1944, if the amount is not refunded within three months from the date of receipt of Application, then the interest is payable immediately after the expiry of three months from the date of application till the date of refund of such



duty. In the present case the order passed for refund shall be deemed to be an order passed under the said sub-section (2) for the purpose of section 11BB. Therefore, the interest is legally due from the date of application till the date of refund was sanctioned, which is not paid to the appellant. I find that, It is a settled principle of law that the interest is payable on delayed payment of duty. I rely upon the decision of Hon'ble High court of Gujarat, in the case of M/s. Purnima Advertising Pvt. Ltd vide Order No. O/12139/2016 dtd. 02.04.2016 has held that interest is payable from the date of Application.

8. I find that, the adjudicating authority has taken a view in the impugned OIO that the commissioner (Appeals) in his OIA has not mentioned anything about the payment of interest. and also directed them to approach the appellate authority. In this regard, I find that, the views taken by original authority are not tenable on two grounds, first, as discussed in foregoing paras, the refund if not paid within three months the interest is automatic and required to be paid on belated sanction of refund as per the provisions of section 11BB of the CEAct, and second, The C.B.E.C. vide circular No.670/61/2002-CX. Dated 01.10.02 has clarified that payment of interest is automatic in case if the refund is not paid within a period of three months. I rely upon the judgment of Hon'ble Supreme court in the case of Ranbaxy Laboratories Ltd. 2012 (27) S.T.R. 193 (S.C.)

9. In view of above, I find that the original Authority has committed a grave error is not paying the interest in spite of the clear provisions of law, for the payment of interest as the refund is due and is required to be paid along with interest beyond three months from the date of Application. There is neither justification nor any valid ground to deny the interest.

10. In view of above discussion and findings, I allow the appeal with consequential relief.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

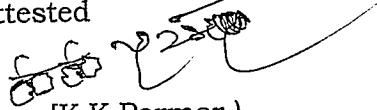
The appeals filed by the appellants stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Attested



[K.K.Parmar)

Superintendent (Appeals)
Central tax ,Ahmedabad.

Date- /02/18

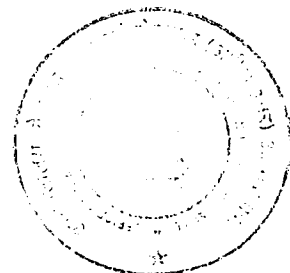
By Regd. Post A. D

M/s. Aculife Healthcare Pvt. Ltd

Vill. Sachana,

Tal. Viramgam,

Dist. Ahmedabad-382150



Copy to :

1. The Chief Commissioner, CGST Central Excise, Ahmedabad.
2. The Commissioner, CGST Central Excise, Ahmedabad-north
3. The Asstt. Commissioner, CGST Central Ex. Div-III, Ahmedabad-north
4. The Asstt. Commissioner (Systems), CGST Central Ex. Ahmedabad-north
5. Guard file.
6. PA file.



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