

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

रजिस्टर डाक ए .डी .द्वारा

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क फाइल संख्या (File No.): V2(30)24 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 360-17-18**

दिनांक (Date): **28-Feb-2018** जारी करने की तारीख (Date of issue): **23-3-2018**

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/Ref/II/17-18** Dated: **14/07/2017**

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

(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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) 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.

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

(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.

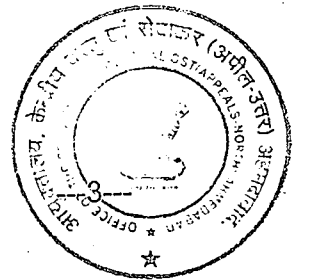
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) 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, मेघानी नगर, अहमदाबाद-380016

(a) 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.



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।

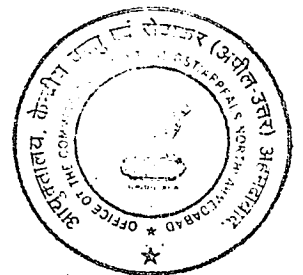
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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

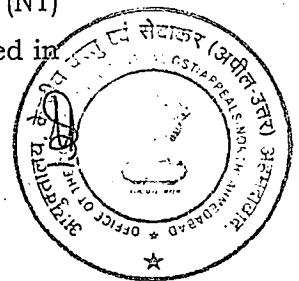
The subject appeal is filed by M/s Aculife Healthcare Pvt. Ltd. (formerly known as Nirma Limited) Vill. Sachana, Tal. Viramgam, Dist. Ahmedabad (hereinafter as the Appellant) against OIO No. 13/REF/II/17-18 (hereinafter referred to as 'the impugned order') Passed by The Asstt. Commissioner, Central Excise, Division-III, Ahmedabad-II, (hereinafter referred to as 'the adjudicating authority') arc engaged in the manufacture of finished goods falling under Chapter 30 of the Central Excise Tariff Act, 1985.

2. Briefly stated facts of the case are that the appellant is engaged in the manufacture of dutiable as well as exempted goods for domestic sale as well as export. They have been taking CENVAT credit on inputs procured for use in both dutiable as well as exempted products. They maintained common record for CENVAT inputs consumed in both kinds of goods. Under Rule 6(3)(l) of CCR'2004, they have reversed credit availed by them on inputs consumed in manufacture of exempted products at the end of each month, amounting to Rs.2,53,894/- goods exported in August, 2012 to February, 2013 and Rs.6,23,390/- for goods exported from April, 2013 to August, 2013. The appellant vide letters dated 27.9.2013/26.11.2015, requested for re-credit of said amount, The Appellant upon realizing the mistake that they are not required to pay an amount in terms of Rule 6(3) of CCR, 2004, made an application for refund u/s 11B of the CE Act. SCN was issued, and vide above order application for refund/ re-credit was rejected.

3. Being aggrieved with the above impugned order, the appellant filed the appeal on the following main grounds as under;

a. That during the material time, as provided under Rule 6 (3) of the CENVAT credit Rules 2004, for the domestic clearance they used to pay an amount of *six per cent* of the value of exempted goods cleared. However while doing so inadvertently; they had paid *six per Cent in case of exports of Exempted goods*. In fact such payment of *six per cent* is not required to be made in case of goods exported in terms of the Rule 6 (6) of CENVAT credit Rules. They have paid Rs.2,53,894/- for goods exported during the period August-2012 to February -2013 and Rs.6,23,390/- for the goods exported during the period from April-2013, to August-2013, Therefore, vide letter dated 27.09.2013 and 28.04.14, they made Application under section 11 B of the Central Excise Act, to allow them to take re-credit by way of refund claim.

b. That the Scheme of rebate of duty or Export without payment of duty is provided under Rule 18 and 19 of the Central Excise Rules 2002, that where any goods are exported grant rebate on such excisable goods or duty paid on materials used in the manufacture or processing of such goods. Accordingly, Rule 19 of CE Rules, 2002, Notification No 19/2004-CE (NT) 06.09.04 and Notification No.21/2004-CE (NT) dtd.06.09.04 for procedure for payment of rebate of duty on Excisable goods used in goods exported.



c. they refer to The term "*excisable goods*" under section 2 (d) of the Central Excise Act, 1994, The term "*exempted goods*" under Rule 2 (d) of CENVAT credit Rules, 2004 and The term "*final Products*" under Rule 2 (h) of CENVAT Credit Rules, 2004 as under;

:"Final Products" means excisable goods manufactured or produced from input or using input service"

d. That, the Rule 6 of CENVAT credit Rules, 2004, and sub Rule 6(1), 6(2), 6(3) and 6(4) prescribes the manner and method for calculation of CENVAT credit which is eligible for credit and reversal of credit pertaining to exempted goods cleared. However, sub Rule 6(6) of CENVAT credit Rules provides that provisions of sub-Rules (1), (2) (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty.

e. it is clear that provisions of Rule 6 (1) (2) (3) (4) are not applicable by virtue of Rule 6(6) on the grounds that for export purposes or clearance made to SEZ/EOU etc, the words used are "final goods" and "Excisable goods" . From the definition provided under Rule 2 (h) of CCR, 2004, it is evident that the Final products means *excisable goods manufactured or produced from input or using input service*. Therefore, the Excisable goods include both dutiable goods as well as exempted goods. The issue of 'Excisable goods' has been settled by the Hon'ble high court of Madras in case of Tamil Nadu (Madras State) Handloom Weavers Cooperative Society Ltd reported in 1978 ELT (J.57) . This view has been approved by the Hon'ble Supreme court in case of Wallace Flour Mills reported in 1989 (004) ELT 0598 (S.C)

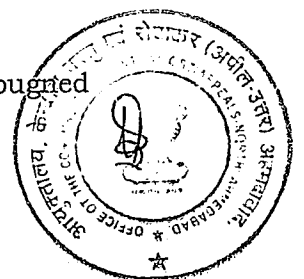
f. If the exempted product are exported outside India the provisions of Rule 6(6)(v) of the CENVAT Credit Rules are applicable, therefore, the bar provided under Rule 6(1) and the liability created under Rule 6(3) of CENVAT Credit Rules are not attracted.

g. That the provisions now contained in Rule 6 of the CENVAT Credit Rules, 2004 were contained in Rule 57C and 57CC of the Central Excise Rules, 1944 as they stood prior to 1 "April, 2000. The relevant portion of the Circular No.F232/1 0/01 - Central Excise dtd 8th November, 2001 reads as under.- "*Further, it is now clearly and specifically mentioned in Rule 57AD(4) that an amount of 8%/10% of the price of the goods exported is not required to be paid irrespective of whether the exported goods are exempted or otherwise.*"

h. That, the Board has vide letter dated 08- 11.2001 has specifically clarified that even the exempted goods can be cleared for export under bond in terms of Rule 13 of erstwhile Rule which is par material with Rule 19 of the Central Excise Rules, 2002.

i. The issue is finally settled by various decisions .They relied upon following decisions: i.Repro India Ltd 2009 (235) ELT 614 (Bom) ii.Drish Shoes Ltd 2010 (254) ELT417(H.P.) iii. Sharp Menthol India Ltd 2011(270)ELT212(Bom)iv.Arvind Ltd 2016(334)ELT146(Tri-Ahmd) v.Punjab Stainless Steel Industries 2009 (234)ELT605(Del)

That the ratio of aforesaid decisions is applicable in the present case, impugned order is not sustainable.



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 in their appeal memorandum. He has filed additional written submission /copies of case laws 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 appellant is engaged in the manufacture of dutiable as well as exempted goods for domestic sale as well as export. They have been taking CENVAT credit on inputs procured for use in both dutiable as well as exempted products. They maintained common record for CENVAT inputs consumed in both kinds of goods. under Rule 6(3)(1) of CCR'2004, they have reversed credit availed by them on inputs consumed in manufacture of exempted products at the end of each month, amounting to Rs.2,53,894/- goods exported in August, 2012 to February, 2013 and Rs.6,23,390/- for goods exported from April, 2013 to August, 2013. The appellant vide letters dated 27.9.2013/26.11.2015 requested for re-credit of said amount under an application for refund u/s 11B of the CE Act. SCN was issued for rejection of refund claim, and vide above order application for refund of re-credit was rejected.

6. I find that, this is a case where the excisable goods are exported. In terms of rule 6 (1) (2) (3) of the Cenvat credit rules, the credit is not admissible on the inputs and inputs service which are exclusively used in the manufacture of exempted goods. The Rule 6 further provides appropriation of credit to the extent used in the manufacture of exempted goods, by way of payment of an amount of 6% of the value of exempted goods or else to follow the formula based reversal as provided under rule 6 (3) of CCR, 2004. However, in case if goods are exported or cleared to SEZ, EOU, etc. by virtue of rule 6(6) of CCR, 04 the credit is not required to be reversed, in simple terms Rule 6(1), (2), (3) will not apply.

7. I find that, The Appellant is manufacturer of both dutiable as well as exempted goods and so far as domestic clearance of excisable goods is concern, in terms of rule 6(3) Appellant pay an amount of 6% on the value of clearance of exempted goods. However, due to inadvertence mistake appellant paid 6% on the value of exempted goods which were exported and realizing their mistake, the present claim for refund by way of re-credit in cenvat register was made, which is rejected by the Original Authority.

8. I find that, the learned Authority has grossly erred in holding the above views in as much as that rule 18 and 19 of Central Excise rules deals with export on payment of duty and exports without payment of duty. In rule 18 of CE Rules it has been provided that rebate can be claimed on excise duty paid on excisable goods which are exported, rule further provides that rebate can be claimed on input stage excise duties and service tax paid on input services. Rule 19 deals with the export of excisable goods without payment of duty under LUT/ bond.

9. I find that, it is undisputed fact that finished goods which are exported are exempt from the duty. However, it is equally important to note that though the goods are exempt, the input and input service used in manufacture of these products have



suffered the duty. In Rule 6(6) of CCR, 04 it has been provided that in case of export, such appropriation to the extent of used in exempted goods is not required. On perusal of language of rule 6(6) of CCR, 2004 words used in rule 6(6) are "Final goods" and "excisable goods" Therefore, the excisable goods include both dutiable goods as well as exempt goods so far as export is concern. Moreover, I find that the export goods are not exempted goods, but export goods are zero rated, hence, they are not exempted goods but they are excisable goods. The Cenvat credit rules are framed, in case of export of excisable goods provisions of rule 6(6) will not apply and so, there is no need to appropriate the cenvat to the extent of used in the export of excisable goods which are exported, and thereby the provisions of rule 6(1) (2) (3) are not attracted.

10. Further, I find that It is a settle law by the various decisions of the higher Appellate authorities and courts that in case of export the provisions of rule 6(1), (2) (3) are not attracted .I rely on the following judgments;

i. Repro India Ltd reported in 2009 (235) ELT 614 (Bom) it is held that;

Cenvat/Modvat - Inputs used in dutiable as well as exempted final products - If exempted products are exported outside India the provisions of Rule 6(6)(v) of the Cenvat Credit Rules, 2004 applicable - Bar provided under Rule 6(1) ibid and liability created under Rule 6(3)(b) ibid not attracted - Department's direction to pay the 10% even though printed books were exported, legally not sustainable - Only if petitioners does not export the printed goods and do not maintain the account as contemplated by Rule 6(2) ibid the petitioner would be required to pay 10% on the sale price of printed goods not so exported. [para 7]

Cenvat/Modvat - Inputs used in exempted goods - Cenvat credit available in respect of inputs used in manufacture of final products being exported irrespective of the fact that the final products are otherwise exempt - Rule 6(6)(v) of Cenvat Credit Rules, 2004. - Rule 6(6)(v) has been consciously and expressly enacted with the specific objective to ensure that duty is not levied even on inputs going to the export products. [para 7]

Words and Phrases - Expression 'excisable goods' under Rule 6(6) of Cenvat Credit Rules, 2004 is wider to include both dutiable as well as exempted goods - Minor change in wordings of Rule 6(6) ibid by using the term "excisable goods" instead of exempted goods is that the term "exempted goods" may not cover dutiable goods which are exported under bond. [para 9]

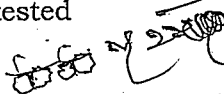
2. 2017 (50) S.T.R. 131 (Bom.) Jolly Board Ltd.

11. In view of above discussion and findings, I allow the appeal filed by the appellant.

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

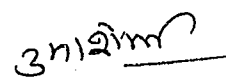
The appeals filed by the appellant stand disposed off in above terms.

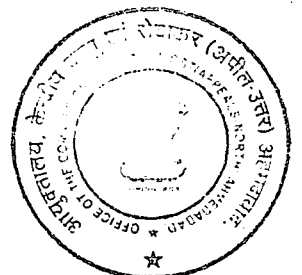
Attested



(K.K.Parmar)

Superintendent (Appeals)
Central tax, Ahmedabad.


(उमा शंकर)
आयुक्त (अपील्स)



By Regd. Post AD.

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.

