

	<b>केंद्रीय कर आयुक्त (अपील)</b>	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय उत्पाद शुल्क भवन, 7 <sup>th</sup> Floor, Central Excise Building, Near Polytechnic, आम्बावाडी, अहमदाबाद-380015	Ambavadi, Ahmedabad-380015
079-26305065		टेलिफैक्स : 079-26305136

रजिस्टर डाक ए .डी .द्वारा

2013 to  
2017

क फाइल संख्या (File No.): V2(30)67 /North/ Appeals/ 2017-18  
 ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 374-17-18**  
 दिनांक (Date): **16-Mar-2018** जारी करने की तारीख (Date of issue): 5/4/2018  
 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 **31/Ref/II/17-18** Dated: **12/12/2017**  
 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।



- (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 मेटल हॉस्पिटल कम्पाउण्ड, मेघानी 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 रजिस्टार 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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।

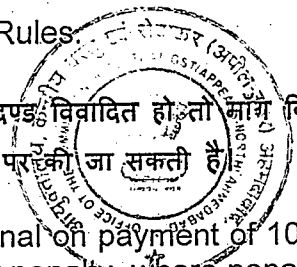
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 होता 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. 31/REF/II/17-18 (hereinafter referred to as 'the impugned order') Passed by The Asstt. Commissioner, CGST, Division-III, Ahmedabad-North (hereinafter referred to as 'the adjudicating authority') are 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 had filed refund application dated 03.01.08 pertaining to CVD amount for Rs. 822.89 lakhs with the Assistant Commissioner, as a result of decision by the Settlement Commission Mumbai, vide Final Order No.434-435/Final Order/Cus/MGR/2007 dated 27.11.2007. Said refund claim was rejected by the Assistant Commissioner vide OIO No. 238/09 dated 24.02.2009. The appeal was filed before the Commissioner (Appeals) Ahmedabad, the order in adjudication was upheld vide OIA dated 23.09.09. The Appellant filed an appeal against the OIA dated 23/09/2009 before the Hon'ble CESTAT, Ahmedabad, and Hon'ble Tribunal under order no. A/10246/2015 dated 18.03.2015 has remanded the case back to the Adjudicating authority for reconsideration. The Adjudicating authority again rejected refund claim vide OIO No.8/refund/2016-17 dated 05.08.2016. The Appellant filed an appeal before the Commissioner (Appeals) Ahmedabad and in the decision Commissioner (Appeals) allowed the Appeal vide OIA No. AHM-CEXCUS-002-APP-42-17-18 dated 29.08.17, in which it is held that the Appellant is eligible to get the refund pertaining to CVD amount. The appellant requested vide letter dtd.14-09-17, to the jurisdictional Assistant Commissioner to refund the amount of CVD along with interest due thereon, as per order of the Commissioner (Appeals). The Adjudicating authority vide OIONo.31/Ref/II/17-18 dated 12.12.17 has sanctioned the refund amount of Rs. 75,22,0000/- but instead of making payment to the Appellant, the same is paid to the Commissioner of Customs, Mumbai towards pending interest liability by the Appellant. the Adjudicating authority has also not sanctioned/ not paid interest amount for the said refund claim filed on 03.01.08 for the period after 3 months from the dated of filing refund application, after the order of the Settlement Commission.

3. Being aggrieved and dissatisfied to the extent of non-payment of interest as well as non-payment of sanctioned refund amount to the Appellant this appeal is filed on the main grounds stated herein below ;

i. the dispute is that instead of payment of sanctioned amount to the Appellant the Adjudicating authority has paid the sanctioned amount to Customs Mumbai, as per

provisions u/s 142 (I)(d)(ii) of the Customs Act, and nonpayment of Interest on delayed payment of refund amount from the 3 months after the date of filing refund claim. That as per the above provisions, it is mandatory on the part of the sanctioning authority to give a notice to the concerned party directing him as to why the sanctioned amount should not be adjusted to the outstanding dues of the Government. In the present case no notice has been given to the Appellant. Therefore, non-payment of the sanctioned refund amount is arbitrary, without authority and jurisdiction.

ii. That as per the provisions u/s 142 of Custom Act, the Department has power to adjust the outstanding Government dues which are legally payable as confirmed by both the parties. In the present case the Officer of the Customs Mumbai, intimated the working of interest liability for Rs. 2204.81 lakhs under his letter dated 9.3.2017 and 4.12.17. In response to the above the appellant have contested the Liability on the ground that interest amount worked out by the Customs is on total amount of Custom duty and CVD amount., whereas the Customs has worked the interest liability including CVD amount, which is contrary to the order of the Hon'ble Settlement Commission in as much as that no interest to be paid on the CVD amount. Therefore, the Appellant under its letter dated 12.12.17 informed the Customs Mumbai to re-worked out the correct amount of interest to be paid by the Appellant and to intimate the same

iii. As regards to non-payment of interest on delayed payment of refund amount, it is submitted that it is undisputed fact that in the present case the Appellant filed the refund application for the amount of Rs.822.89 lakhs with the Assistant Commissioner on 3.1.08 after the order of the Settlement Commission. This fact also accepted and stated in para 3 of the impugned order. Therefore, as per the provisions u/s 11BB of the Central Excise Act, it is mandatory on the part of the Department to sanction and pay the refund amount along with interest due after 3 months from the date of filing the refund application till the date of payment. It has also been further clarified under explanation below to the section 11BB that:

**"Explanation.** where any order of refund is made by the Commissioner (Appeals), .....by the Court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section "

iv. 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
5. M/s.Purnima Advertising Agency p. ltd. Vide H.C. order no. O/12139/2016 dated 02.04.2016
6. The Board circular No. 670/61/2002-CX dated 1.10.02. Therefore, the Appellant request to make the payment of interest amount for the delayed period from 04.04.2008 to 12.12.2017.



4. Personal hearing in this case was accorded on 02-02-2018, wherein Shri Vikramsinh Jhala, AGM [Excise] appeared on behalf of the appellant and reiterated the submissions made in their appeal memorandum. He submitted few copies of the relevant case laws. 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. I find that, the appellant had filed appeal against OIO No.8/refund/2016-17 dated 05.08.2016, before the Commissioner (Appeals) Ahmedabad and in the decision the Commissioner (Appeals) allowed the Appeal of the appellant. The Appellant vide letter dated 14.09.17 requested the jurisdictional Assistant Commissioner to refund the amount of CVD along with interest due thereon. The Adjudicating authority vide OIO dtd.12-12-17 has sanctioned the refund amount, but instead of making the payment to the Appellant, the same is paid to the Commissioner of Customs, Mumbai towards pending interest liability by the Appellant. the Adjudicating authority has not sanctioned/not paid interest amount for the said refund filed with the Department on 03.01.08 for the period after 3 months from the date of filing refund application till the date of payment of refund amount.

5. I find that, the dispute is that instead of payment of sanctioned amount to the Appellant, the Adjudicating authority has paid the sanctioned amount to Customs Mumbai, as per provisions u/s 142 (l)(d)(ii) of the Customs Act, and also nonpayment of Interest on delayed payment of refund amount from the 3 months after the date of filing refund claim. That as per the above provisions, it is mandatory on the part of the sanctioned authority to give a notice to the concerned party directing him as to why the sanctioned amount should not be adjusted to the outstanding dues of the Government. In the present case no notice has been given to the Appellant. Therefore, I find that, non-payment of the sanctioned refund amount is arbitrary without authority and jurisdiction.

6. Further, I find that as per the provisions u/s 142, the Department has power to adjust the outstanding Government dues which are legally payable as confirmed by both the parties. In the present case the Officer of the Customs Mumbai, intimated the working of interest liability for Rs. 2204.81 lakhs under his letter dated 9.3.2017 and 4.12.17. Since the matter is between appellant and customs, it is not proper on my part to interfere with the order.

7. As regards to non-payment of interest on delayed payment of refund amount, I find that it is undisputed fact that in the present case the Appellant had filed refund application for the amount of Rs. 822.89 lakh with the Assistant Commissioner on 3.1.08, after the order of the Settlement Commission. This fact also accepted and stated in para 3 of the impugned order. Therefore, as per the provisions u/s 11BB of the Central Excise Act, it is mandatory on the part of the Department to sanction and pay the refund amount along



with interest due after 3 months from the date of filing the refund application till the date of payment. It has also been further clarified under explanation below to the section 11BB that:

**"Explanation.** where any order of refund is made by the Commissioner (Appeals), .....by the Court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section "

8. further, 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 CE Act, and second, The C.B.E.C. vide circular No.670/61/2002-CX. Dtd.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 also rely upon the judgment of Hon'ble Supreme court in the case of Ranbaxy Laboratories Ltd. 2012 (27) S.T.R. 193 (S.C.) and allow the appeal on this point and appeal is allowed with consequential relief with respect to non payment of interest.

9. In view of the discussion in para 6 and 7, the appeal is partially allowed.

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

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

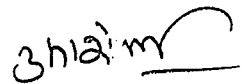
Attested



[K.K.Parmar )  
Superintendent (Appeals)  
Central tax, Ahmedabad.

By Regd. Post A. D

M/s. Aculife Healthcare Pvt. Ltd  
(formerly known as Nirma Limited)  
Vill. Sachana, Tal. Viramgam,  
Dist. Ahmedabad-382150,



(उमा शंकर)

आयुक्त (अपील्स)

Date- /3/18



Copy to-

1. The Chief Commissioner, CGST Central Excise, Ahmedabad zone.
2. The Commissioner, CGST Central Excise, Ahmedabad- North.
3. The Asstt. Commissioner, CGST C.EX Div-III, Ahmedabad- North.
4. The Asstt. Commissioner (Systems), CGST C.EX. Ahmedabad-North.
5. Guard file.
6. PA File.