



आयुक्त का कार्यालय, (अपीलस)  
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय  
Central GST, Appeal Commissionerate- Ahmedabad  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
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क फाइल संख्या (File No.) : **V2(30)100 /North/Appeals/ 2018-19**  
ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-84-18-19**  
दिनांक (Date): **25-Oct-18** जारी करने की तारीख (Date of issue): 20/11/2018  
श्री उमा शंकर, आयुक्त (अपील) 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 **08/Ref/III/18-19** Dated: **25/06/2018**  
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



(b) In case of rebate or duty or 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 है।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो इयूटी 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 (न.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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(१) 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. के 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.

(२) 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 रुपये से ज्यादा हो तो रुपये 1000/- फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील :-  
Appeal to Customs, 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 सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक न. 3. आर. के. पुरम, नई दिल्ली को एवं  
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification valuation and





रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सावधानिक क्षेत्र के बैंक को 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 रू.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।

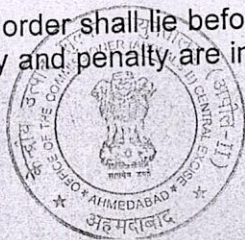
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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."





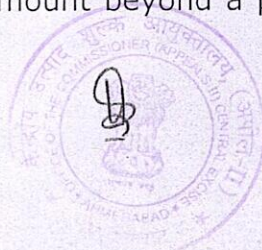
**ORDER-IN-APPEAL**

M/s Aculife Healthcare Pvt. Ltd., Vill. Sachana, Tal. Viramgam, Dist. Ahmedabad-382150, (hereinafter as the Appellant) has filed the appeal against OIO No. 08/REF/II/18-19 dtd. 25.06.2018 (hereinafter referred to as 'the impugned order') Passed by The Asstt. Commissioner, CGST, Division-III, Ahmedabad-North (herein after referred to as 'the adjudicating authority').

2. The facts in brief of the case are that the appellant, vide their letters dtd. 27.09.2013 and 26.11.2013, requested the jurisdictional Assistant Commissioner for re-credit of cenvat credit reversed on goods exported as per provisions of Rule 6 (3) (1) of Central Excise Rules, 2004 (for brevity 'CER') on the ground that they were not liable to reverse the cenvat credit availed on the inputs used in the manufacture of goods meant for export. The jurisdictional Assistant Commissioner rejected their request vide OIO No. 13/Ref/II/17-18 dtd. 17.07.2017 in view of the fact that the appellant had not fulfilled the conditions laid down in Rule 6 (6) of the CER. Being aggrieved by the order dtd. 17.07.2017, the appellant filed appeal before the Commissioner (Appeal) where Commissioner (Appeals) vide OIA no. AHM-EXCUS-002-APP-360-17-18 dated 28.02.2018 allowed the appeal. Consequent to the said OIA, appellant filed the refund claim of Rs. 8,77,284/- on 18.04.2018. The adjudicating authority, vide the impugned order, sanctioned the refund. However, the adjudicating authority has not considered the payment of interest on delayed payment of refund claim on the ground that it was a request for re-credit of cenvat credit wrongly debited by the appellant and does not pertain to refund under Section 11B of the Central Excise Act, 1944 (for brevity 'CEA'). Being aggrieved by the denial of the interest on the refund, the appellant has filed the present appeal on the following grounds:

a) that the refund has been sanctioned under Section 11B and therefore interest will have to be paid for the delayed payment of refund claim beyond a period of three months from the date of receipt of application till the date of payment of refund amount under Section 11BB of the CEA;

b) that the interest payment is mandatory on the part of the department for delayed payment of refund amount beyond a period of three months;





c) that the copies of the OIA's No. AHM-EXCUS-002-APP-351-17-18 dated 09.04.2018 and AHM-EXCUS-002-APP-374-17-18 dated 05.04.2018 are enclosed herewith in which interest has been ordered to be given.

3. The personal hearing was held on 11.10.2018 in which Shri Vikramsingh Jhala, authorized representative of the appellants appeared and reiterated the grounds of appeal. He also made additional written submission in which he submitted that as per provisions of Section 11B read with sub-section 2(c) of the CEA, refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made is also included so the contention of the adjudicating authority is not correct. He also submitted a copy of the Hon'ble Gujarat High Court's order in the case of Purnima Advertising Agency Pvt. Ltd. vs. Union of India - 2016 (42) S.T.R. 785 (Guj.) in which it has been held that interest is to be paid from the date of filing of application for refund if there is delay beyond three months.

4. I have carefully perused the documents pertaining to the case and the arguments given by the appellant in the grounds of appeal and also made during the course of personal hearing. I find that the short issue to be decided in the present appeal is whether the adjudicating authority is right in holding that since the initial matter involved in the issue is for re-credit of cenvat credit wrongly debited by the appellant and not pertaining to refund under Section 11B, the interest under Section 11BB of the CEA is not applicable. 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), or any court against order of Assistant commissioner of Central Excise under sub-section (2) section 11B, the order passed by the commissioner (Appeals), Appellate Tribunal, or as the case may be by the court shall be deemed to be an order passed under the said sub-section (2) of the purpose of this section*" According to this Department is bound to pay interest after three months from the date of filing of original refund application. I have also perused the provisions of sub-section 2 (c) of Section 11B which provides that "*(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or*





*any notification issued, under this Act;..*" meaning thereby that the refund of credit of duty paid on excisable goods used as inputs is also covered under the provisions of Section 11B and therefore I find no reason to agree with the findings of the adjudicating authority.

5. Now coming the question of payment of interest on the refund which is not paid beyond three months from the date of application for the refund, 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 court shall be deemed to be an order passed under the said sub-section (2) for the purpose of this section."* (emphasis supplied).

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 and therefore, the interest is payable from the date beyond three months from the date of Application. I find that it is a settled principle of law that the interest is payable on delayed payment of duty. I find support from the Hon'ble High court of Gujarat's case. In the recent decisions in the identical issue in case of **M/s. Purnima Advertising Pvt. Ltd vide Order No. O/12139/2016 dtd. 02.04.2016** cited at 2016 (42) S.T.R. 785 (Guj.) has held that *"on a plain reading of the provisions of Section 11BB of the Central Excise Act, it is evident that the same provides for payment of interest from the date immediately after the expiry of three months from the date of receipt of the refund application till the date of refund of such duty"*. Further I also find support from the decision of the Hon'ble Supreme Court in the case of M/s Ranbaxy Laboratories Ltd. vs. Union of India

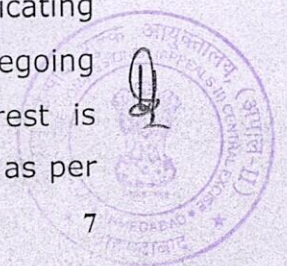




cited at 2011 (273) ELT-3 (S.C.) in which the apex court has held and I quote the relevant part as:

*"9. It is manifest from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below Proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act. Manifestly, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under sub-section (1) of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable."*

6. I further find that, that the views taken by the adjudicating authority are not tenable on two counts firstly as discussed in foregoing para, 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 Excise Act. Secondly, The C.B.E.C. under circular No.670/61/2002-CX. Dated 01.10.02 has already clarified that payment of interest is automatic in case if the refund is not paid within a period of three months. In view of above discussion and findings, I hold that the appellant is eligible to the interest on delayed payment of refund after three months from the date of application for refund.

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

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

*उमा शंकर*

(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक:

सत्यापित

*धर्मेंद्र उपाध्याय*  
(धर्मेंद्र उपाध्याय)  
अधीक्षक (अपील्स),  
केंद्रीय कर, अहमदाबाद

**By R.P.A.D.**

To:  
M/s Aculife Healthcare Pvt. Ltd.,  
Vill. Sachana,  
Tal. Viramgam,  
Dist. Ahmedabad-382150

**Copy to:-**

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (North),
- (3) The Dy./Astt. Comm'r, CGST, Div.-III, Ahmedabad (North),
- (4) The Dy./Astt. Comm'r(Systems),CGST, Ahmedabad (North),
- (5) Guard File,
- (6) P.A.File.

