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

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
. ☎: 079-26305065 **टेलेफैक्स** : 079 - 26305136

Post Speed By **द्वारा**

क फाइल संख्या (File No.) : **V2(30)170/North/Appeals/ 2018-19** /10835 to 10839

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-16-19-20**
दिनांक (Date): **22/05/2019** जारी करने की तारीख (Date of issue): 31/05/2019
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 **16/Ref/II/18-19** Dated: **10/04/2018**
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 पूवोक्त 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 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 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 क्रेडीट 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 रूपये या उससे कम हो तो रूपये 200/- फ़ीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000/- फ़ीस 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, केंद्रीय 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

(ख) उक्तिलखित परिच्छेद 2(1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघाणी नगर, अहमदाबाद-380016.

(b) To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para-2(1) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए.-3 में निर्धारित किए अनुसार अपीलीय न्यधिकरण की गई अपील के विरूद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फ़ीस भेजनी होगी । जहां उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए 5 लाख या ५० लाख तक हो तो रुपए ५०००/ फीस भेजनी होगी । जहां उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए ५० लाख या उससे ज्यादा हो तो रुपए १००००/ फीस भेजनी होगी । फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप ,में संबंध में की जाए । यह ड्राफ्ट उस स्थान के किसी नामित सार्वजिनक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है । स्टे के लिए आवेदन-पत्र रुपए ५००/- फीस भेजनी होगी ।

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.5000/-, 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 crossed bank draft in favour of Asst. Registrar of 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. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(3) यदि इस आदेश में कई मूल आदेशो का समावेश होता है तो प्रत्येक मूंल आदेश के लिय फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिये इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय 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 not withstanding 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 १९७० यथा संशोधित की अनुसूची-१ के अंतर्गत निर्धारित किये अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रुपए ६.५० पैसे का न्यायलय शुल्क टिकट लगा होना चाहिय ।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall beer 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 सम्बंधित मामलो को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एंव सेवाकर अपीलीय न्याधिकरण (कार्यावधि) नियम, १९८२ में निहित है ।

(6) Attention in invited to the rules covering these and other related matter contended in Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

ORDER-IN-APPEAL

This appeal has been filed by M/s Aculife Healthcare Pvt Ltd, Village Sachana, Taluka Viramgam, Dist Ahmedabad [for short-"the appellant"] against Order-in-Original No.16/Ref/II/18-19 dated 04.10.2018 ["impugned order"] passed by the Assistant Commissioner of C GST, Division-III, Ahmedabad North ["the adjudicating authority"].

2. Briefly stated, the fact of the case is that the appellant has filed a refund claim of Rs.1,58,16,072/- on 27.04.2018 which was later on revised to Rs.1,95,17,370/- on 29.06.2018 towards excess reversal of CENVT credit made by them on common inputs/input service as per Rule 6(3A) © of CCR for the final year 2016-17. After proper scrutiny of the claim and pre-audit verification, it was noticed that the refund claim of Rs.1,82,83,760/- does not merit sanction/appeared to be inadmissible. Therefore, a show cause notice dated 18.07.2018 was issued to them. Vide the impugned order, the adjudicating authority has rejected the said claim and sanctioned the remaining of amount of Rs.12,33,610/-.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that:

- The re-calculation made by the department is not correct as per provisions of Rule 6(1), 6(2) and 6(3) of CCR; that in case of export of excisable goods, the attribution of credit under the said Rule is not required and so the amount of credit is not required to be reversed to the extent of export.
- It is an undisputed fact that finished excisable goods which are exported are both exempt and dutiable. However it is equally important to note that though goods are exempt, the input and input service used in manufacture of finished goods suffered duty. Therefore, in Rule 6(6) of CCR, it has been provided that in case of export, such appropriation of Cenvat credit to the extent of used in exempted goods is not required. If the value of exempted goods which are exported is added, as held by the adjudicating authority, in that case the credit pertaining to exempted goods exported will also be reversed, which is not the requirement under Rule 6. The appellant has relied on various citation of Hon'ble Court/Tribunal and OIAdated 23.03.2018, wherein it has been held that in case of export of excisable goods, provisions of Rul 6(6) will not apply and there is no need to appropriate the credit to the extent of goods used in the export.
- The adjudicating authority's contention for rejecting clearance value of Rs.12,74,15,471/- as exempted service under notification No.12/2012-CE and not as clearance value under captive consumption is not correct; that majority of goods i.e plastic granules manufactured out of plastic scrap were used again in the manufacture process and only small quantity was cleared for home consumption by availing exemption under notification supra. However due to oversight, whole clearance value were shown in ER-1return as cleared by availing exemption notification.

- The appellant has filed the refund claim within the time limit stipulated under Section 11B of CEA, hence rejecting the claim of Rs.1,48,98,291/- as time barred is not correct.
- The amount of credit of Rs.93,75,221/- held as ineligible instead of Rs.29,62,620/- by the adjudicating authority is not correct; that the credit used exclusively in exempted goods and service shall be paid and the credit used exclusively in non-exempted goods and service shall not be required to be paid; thus out of total credit of Rs.93,75,221/-, it is correct that an amount of Rs.29,62,620/- is credit attributable to exempted goods. The remaining amount is used in both exempted goods cleared for home consumption and exempted goods which are exported, therefore, it is required to be considered as common credit and not required to be deducted from the common credit as held by the adjudicating authority.

4. A personal hearing in the matter was held on 09.05.2019. Shri Vikram Jhala, Authorized Representatives of the appellant appeared for the same and reiterated the grounds of appeal. He further submitted a written submission dated 14.05.2019.

5. I have carefully gone through the facts of the case and submissions of made by the appellant in the appeal memorandum as well as at the time of personal hearing. The limited point to be decided in the instant case is regarding eligibility of refund claim towards excess reversal of CENVT credit made by them on common inputs/input services as per Rule 6(3A) © of CCR for the final year 2016-17.

6. At the outset, I find that the instant case is relating to a refund claim of Rs.1,95,17,370/- filed by the appellant on 29.06.2018 towards excess amount reversed on common inputs/inputs service during 2016-17. The appellant were engaged in manufacturing of dutiable as well as exempted goods for domestic sales as well as export clearance. They were taking Cenvat credit on inputs procured for use in both dutiable as well as exempted products. Since it was not feasible for them to maintain separate records for Cenvatable inputs in both kinds of goods, they were maintaining common records for the same and therefore, they opted for payment as per Rule 6(3A)(b) of CCR on inputs and inputs services attributable to exempted goods. Accordingly, they reversed Cenvat credit involved in inputs and input services attributable to exempted goods for the year 2016-17 at Rs.7,40,09,219/- on 30.06.2017. As the appellant noticed that during the calculation of reversal amount, they were not considered the export turnover for both exempted and taxable and also they wrongly considered value of goods captively consumed at Rs.11,78,37,396/- and Rs.95,78,075/- added twice as exempted service, they revised the Cenvat credit amount to be paid/reversed as Rs.5,44,91,849/- finally on 29.06.2018. In the above said circumstances, the appellant has filed the refund claim of Rs.1,95,17,370/- paid in excess.

8. I find that the adjudicating authority, after scrutiny of the claim, has sanctioned only to Rs.12,33,610/- and rejected the claim of Rs.1,82,83,760/-. I further find that the adjudicating authority has rejected the said refund claim by discussing eligibility on time barred as well as on merit. Regarding refund claim rejected as time barred under Section 11B of CEA, the adjudicating authority has stated that the appellant has reversed/paid an amount of Rs.6,93,90,141/- on or before 31.03.2017 and an amount of Rs.46,19,079/- on 30.06.2017; that since the appellant had filed the refund claim on 24.04.2018, the amount paid prior to one year from the filing of refund claim is time barred. The said contention of the adjudicating authority appears to be not correct, looking into the provisions of Rule 6(3A) of CCR and Section 11 B of CEA.

8.1 I find that as per provisions of Rule 6(3A) © of CCR, the appellant shall determine the amount of CENVAT credit attributable to exempted goods removed and provision of exempted services for the whole of financial year, out of the total of inputs and input services taken during the whole year as prescribed therein. Further, provisions of Rule 6(3A)(d) of CCR states that the appellant shall pay on or before the 30th June of the succeeding financial year, an amount equal to difference between the total of the amount of Annual ineligible credit and Annual ineligible common credit and the aggregate amount of ineligible credit and ineligible common credit for the period of whole year. The appellant submits that the amount paid monthly by them is provisionally and at the end of the yeàr 2016-17, they determined the total amount and paid finally on 30.06.2017. Since the provisions of Rule 6(3A) © and (d) of CCR clearly prescribes the manner of determination and payment of amount equal to difference between the total of the amount of Annual ineligible credit, Annual ineligible common credit and the aggregate amount of ineligible credit and ineligible common credit for the period of whole year on or before the 30th June of the succeeding financial year, the amount finally paid by the appellant for the financial year 2016-17 to be considered as relevant date for filing refund claim. As stated above, in the instant case, the appellant had determined the total amount and paid finally on 30.06.2017. In the circumstances, the date on which the appellant finally determined the amount i.e 30.06.2017 is required to be taken as relevant date for the purpose of refund in question. Therefore, I hold that the refund claim filed by the appellant does not hit by limitation.

9. Looking into the eligibility of refund claim on merits, I find that the adjudicating authority has rejected the claim on the grounds that [i] the appellant has not properly included the value of export clearance of exempted goods in the formula prescribed under Rule 6(3A)© of CCR; [ii] the appellant has shown clearance value of Rs.11,78,37,396/- under notification No.12/2012-CE as exempted service in the ER-1 return and not as captive consumption and [iii] Total

Cenvat credit availed on inputs exclusively used in or in relation to manufacture of exempted goods is Rs.93,75,221/- instead of Rs.29,62,620/-.

10. As regards [i] above, I find that the formula given under Rule 6(3A)© of CCR to determine the amount of CENVAT credit attributable to exempted goods removed and provision of exempted services for the whole of financial year reads as under:

D (Annual) = (H/I) x C (Annual)
Where H is sum of total of –
(a) Value of exempted services provided; and
(b) Value of exempted goods removed; during the financial year
Where I is sum of total of –
(a) Value of non-exempted service provided;
(b) Value of exempted services provided;
© Value of non-exempted goods removed; and
(d)Value of exempted goods removed; during financial year.

I find that in the formula given above, the numerator 'H' stipulates total value of exempted service provided and total value of exempted goods removed and 'I' stipulates value of non-exempted service, non exempted goods and value of non exempted and exempted goods. In the instant case, as per given formulae, as per contention of the adjudicating authority, the appellant has not included the value of export clearance of exempted goods in the numerator 'H' which is required for determining annual ineligible credit.

10.1. As per Rule 2 of CCR "exempted goods" means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty and goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 or under entries at serial numbers 67 and 128 of Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed. The said Rule also define the definition of "exempted service" which states that (1) taxable service which is exempt from the whole of the service tax leviable thereon; or (2) service, on which no service tax is leviable under section 66B of the Finance Act; or (3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;[but shall not include a service - (a) which is exported in terms of rule 6A of the Service Tax Rules, 1994].

10.2 From the submissions made by the appellant and records, I find that the annual turnover of the appellant includes total value of dutiable as well as exempted goods in respect of domestic clearance + Export. I find that there is no dispute in respect of calculation derived in the numerator 'I' above as the total value mentioned in the said numerator includes total of all clearances of excisable

goods as well as exempted goods in respect of domestic and exported goods. The only dispute is with regard to value of exempted goods mentioned at (b) of numerator 'H'. The appellant has only mentioned value of exempted goods domestically cleared in the numerator 'I". The adjudicating authority has contended that the said calculation is wrong; that the appellant should be included value of exempted goods cleared for export also in the numerator 'I" as included in the numerator 'H'. The appellant has argued that in case of export of exempted goods, the provisions of Rule 6(1), (2) and (3) is not applicable and therefore the reversal of credit to that extent is not required and accordingly, the value of exempted goods which are exported is not required to be added in the numerator 'H'. The appellant has further argued that if the value of exempted goods which are exported is added in the numerator 'H', the Cenvat credit of exempted goods exported will also be reversed which is not the requirement under Rule 6 of CCR.

10.3 I find merit consideration in the argument of the appellant. Rule 6 (6) of CCR provides that in case of excisable goods removed without payment of duty to SEZ unit/100% EOU, UN/International Organization etc., Foreign Diplomatic missions etc and cleared for export under Bond in terms of provisions of CER, 2002, provisions of sub rule (1), (2) and (3) of Rule 6 i.e restriction for availing of credit or reversal of credit is not applicable. Now the question arises whether execution of bond is required in respect of goods excisable goods exported as well as exempted goods exported and refund of duty incurred on raw materials used for exported goods, whether excisable or exempted, is admissible. In respect of execution of bond for removal of goods (excisable or exempted) for export, I find that the issue has been settled by the Hon'ble CESTAT, Ahmedabad in case of M/s Nemlaxmi Books (India) Pvt Ltd [2009 (36) ELT 260]. The Hon'ble CESTAT, by upholding Commissioner (Appeals) decision, has held that:

> *5.5 In view of above, it is clear that the all goods specified in the Central Excise Tariff are excisable goods whether it is dutiable or exempted. The Letter of Undertaking in the Form UT-1 is therefore valid for the export of all excisable goods i.e. dutiable as well as exempted goods. The validity of the LUT therefore cannot be restricted for the export of exempted goods i.e. goods attracting "nil" rate of duty in the Central Excise tariff. The letter issued by the Range Superintendent is therefore not maintainable in law.*

The above decision makes it clear that in respect of export of goods provisions of Rule 6(1), (2), (3) of CCR is not applicable. In view of above, I further observe that the intention of the 6(6) of CCR and Rule 18 and 19 of Central excise Rules, 2002 that in case of export of exempted goods, the assessee should not suffer the duty paid at the input/raw material stage and they should get back such duty. Therefore, the department has prescribed procedure for filing rebate of duty paid in respect of

finished goods stage for excisable goods exported vide ARE-1 and rebate of duty paid in respect of raw material stage for exempted goods exported vide ARE-2. In such circumstances, not including value of exempted goods exported in the numerator 'H' is absolutely acceptable and correct as the appellant is only required to be included the value of manufacturing goods or taxable service where Cenvat is not admissible in the numerator 'H'. Therefore, the contention of the adjudicating authority is not correct and the value declared by the appellant is required to be accepted for considering the refund claim in question.

10.4 Further, it is a settled law by the various decisions of the higher Appellate Authorities and Hon'ble Courts that in case of export, the provisions of Rule 6(1), (2) , (3) are not attracted. I rely the decision of Hon'ble High Court of Mumbai in the case of M/s Report India Ltd [2009 (235) ELT 614]. The hon'ble Court 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."*

The above decision was followed by the Hon'ble CESTAT in the case of M/s Arvind Ltd [2016 (334) E.L.T. 146 (Tri. - Ahmd.)]. In view of above discussion, I do not find any merit in the contention of the adjudicating authority. Hence, the value declared by the appellant is required to be accepted.

11. As regards [ii] mentioned at para 9 above, regarding clearance value of Rs.11,78,37,396/- under notification No.12/2012-CE as exempted service in the ER-1 return, the appellant has contended that the majority of goods i.e plastic granules manufactured out of plastic scrap were used captively in the manufacturing process of their finished goods and only small quantity was cleared for home consumption by availing exemption under notification supra. However due to oversight, whole clearance value were shown in ER-1return as cleared by

availing exemption notification. The appellant further contended that at the time of verification of refund claim they have furnished relevant documents viz RG-1 and invoices etc to the adjudicating authority but he neither verified nor demanded any further documents. Vide letter dated 14.05.2019, the appellant has submitted details of clearance/transaction of re-processed granules under exemption notification and they also submitted copy of invoices issued for captive consumption, as a documentary evidence. I find that all the above documents submitted by the appellant showing their above contention is correct and acceptable. From the above, I feel that the appellant has inadvertently shown the value under exemption notification 12/2012-CE. In the circumstances, the value mentioned by the adjudicating is not acceptable and correct and needs to be rectified. However, I direct the appellant to furnish all such details of value in respect of captive consumption before the adjudicating authority for his verification again for his satisfaction. The adjudicating authority may verify the same with the value mentioned in the ER-1 return for the relevant period and if found in order he may rectify the same in the formulae as per contention of the appellant and my discussion above.

12. Finally, ineligible Canvat credit held by the adjudicating authority as Rs.93,75,221/- instead of Rs.29,62,620/-as mentioned [iii] above. I find that the said figures were worked out by the adjudicating authority on the basis of date provided by the appellant to the Range Superintendent. The appellant has given following data to the Range Superintendent.

S No	Amount of credit on exempted goods	Credit pertains to	Credit Reverse details
1	29,62,620/-	Exempted goods cleared domestically	Reversed as ineligible
2	59,60,955	Exempted goods cleared for export as well as domestically	Considered as common credit in formula reversal
3	4,51,646	Exempted goods cleared for export	Considered eligible

13. It is an admitted fact by the appellant that the credit of Rs.29,62,620/-is attributable to exempted goods and accordingly they shown the said amount as ineligible credit in the formulae. Therefore, the only dispute is with the amount shown at sr.no.2 and 3 of above table. As regards Rs.59,60,955/-, the appellant has contended that since the said amount is pertaining to both exempted goods cleared for home consumption and goods exported, it is required to be considered as common credit. As such, it is not required to be deducted. Since the credit on inputs used in exempted goods is not considered as ineligible credit, as per foregoing discussion, the credit taken as common cannot be considered exclusively for pertaining to exempted goods. In the circumstances, I do not find any merit in the contention of the adjudicating authority that the amount in question is required to be deducted as ineligible credit. As regards the amount of Rs.4,51,646/- pertains

to exempted goods cleared for export, I find that the appellant has considered as eligible credit. As I have already held that value of exempted goods exported is not included in the numerator 'H' in the formulae prescribed, the amount cannot be treated as ineligible credit.

13. In view of above discussion, I allow the refund claim and direct the adjudicating authority to consider the refund claim in view of my discussion in above paras. Therefore, I allow the appeal filed by the appellant. The appeal stands disposed of in above terms.

(उमा शंकर)
प्रधान आयुक्त (अपील्स)
Date : .05.2019

Attested

(Mohanan V.V)
Superintendent (Appeal),
Central Tax,Ahmedabad.

By RPAD.

To,
M/s Aculife Healthcare Pvt Ltd,
Village Sachana, Taluka Viramgam,
Dist Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad North.
3. The Assistant Commissioner, System, CGST, Ahmedabad North
4. The Assistant Commissioner, CGST, Dn.III, Ahmedabad North
5. Guard File.
6. P.A