



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)17/North/Appeals/ 2019-20 / 11345 to 11349
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-73-19-20
दिनांक (Date): 25/06/2019 जारी करने की तारीख (Date of issue): 09/07/2019
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 23/Ref/II/18-19 Dated: 03/12/2019
issued by: Deputy 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 प्रक्रिया 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 हैं।



- (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 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



One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल हैं

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
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.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) 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।

(6)(i) 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

This appeal has been filed by M/s Aculife Healthcare Pvt Ltd, Village Sachna, Taluka Viramgam, Dist. Ahmedabad [for short-"appellant"] against Order-In-Original No.23/Ref/II/18-19 dated 12.03.2019 [for short-"impugned order"] passed by the Assistant Commissioner of Divison-III, Ahmedabad North Commissionerate [for shot-"the adjudicating authority"].

2. Briefly stated, the appellant, vide letter dated 27.09.2013 and 26.04.2014, had claimed before the jurisdiction Assistant Commissioner for re-credit of Rs.2,53,894/- and Rs.6,23,894/- which was wrongly reversed on inputs consumed in goods meant for export as per Rule 6(3) of Cenvat Credit Rules, 2004. The said claim was rejected vide OIO No.13/Ref/II/17-18 dated 14.07.2017 for non-fulfillment of condition of Rule 6(6) of CCR, 2004 which was later on allowed by the Commissioner (Appeals), vide OIA No.AHM-EXCUS-002-APP-360-17-18 dated 28.02.2018. Accordingly, the refund claim filed by the appellant vide letter dated 17.04.2018 was sanctioned by the jurisdictional Assistant Commissioner, vide OIO No.08/Ref/II/18-19 dated 25.06.2018. The appellant further approached the Commissioner (Appeals) for non-payment of interest on refund sanctioned and vide OIA No.AHM-EXCUS-002-APP-84-18-19 dated 25.10.2018, the appellate authority has allowed the interest. Vide impugned order, the adjudicating authority has rejected the interest claim by holding that the letter dated 27.09.2013 and 26.04.2014 under which the appellant had claimed re-credit of Cenvat credit in question were not refund applications under Section 11B of CEA but a request letter for re-credit of Cenvat credit wrongly reversed by them as per provisions of Rule 6(3) of CCR.
3. Being aggrieved, the appellant has filed the instant appeal on the grounds that:
 - The adjudicating authority was specifically directed by the appellate authority to pay the interest after three month from the date of filing of application dated 27.09.2013 and 26.04.2014, instead the adjudicating authority has rejected the same which is apparently a case of dis-obedience of order passed by the higher appellate authorities.
 - The order passed by the adjudicating authority, rejecting the re-credit application was not under Section 11 B of CEA is not only contrary to the fact and mis-leading but also incorrect and illegal; that vide order dated 26.06.2018, the jurisdictional Assistant commissioner has ordered the re-credit under Section 11 B of CEA. Hence, interest is eligible under Section 11BB of CEA.
4. Personal hearing in the matter was held on 20.05.2019. Shri Vikram Jhala and Shri M.A.Patel, Authorized Representatives appeared for the same and



reiterated the grounds appeal. They further submitted relevant case laws and order passed by the Commissioner (Appeals).

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The issue to be decided in the matter is as to whether the appellant is eligible for interest on delayed sanction of re-credit of Rs.2,53,894/- and Rs.6,23,894/- which was wrongly reversed on inputs consumed in goods meant for export as per Rule 6(3) of CCCR, 2004.

6. I find in the instant case that the eligibility of refund/re-credit of amount in question and interest on delayed sanction of such amount of expiry of three month is not disputed by the adjudicating authority as the same was upheld by the Appellate Authority vide OIA dated 28.02.2018 and 25.10.2018. In the instant case, the adjudicating authority has rejected the interest claim of the appellant on the grounds that since the original issue pertains to re-credit of Cenvat credit wrongly reserved is based on letter dated 27.09.2013 and 26.04.2014 and not a case of refund of duty under Section 11B of CEA, the provision of interest under Section 11BB of CEAT does not attract.

7. By quoting the provisions of Section 11B (1) of CEA, the adjudicating authority has further contended that mere submission of letter cannot be considered as refund application under Section 11B of CEA as any person claiming refund has to make an application for refund in such a form and such a manner as prescribed under Section ibid and the appellant has not complied with the same. However, he conveniently ignore the provisions of Section 11B (2)(c) of CEA. I hereby re-produce both the provisions under Section 11B of CEA.

SECTION [11B. refund of [duty and interest, if any, paid on such duty]. — (1) Any person claiming refund of any [duty of excise and interest, if any, paid on such duty] may make an application for refund of such [duty and interest, if any, paid on such duty] to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of [one year] [from the relevant date] [[in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of [duty of excise and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such [duty and interest, if any, paid on such duty] had not been passed on by him to any other person :

(2) If, on receipt of any such application, [the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] is satisfied that the whole or any part of the [duty of excise and interest, if any, paid on such duty] paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided that the amount of [duty of excise and interest, if any, paid on such duty] as determined by the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

(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;



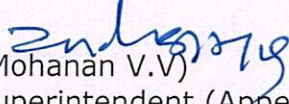
From the provisions of Section 11B (2) (c) supra, it is very clear that the refund credit of duty paid on excisable goods used as inputs is also covered under Section 11B ibid. Therefore, any claim of refund of credit (in the instant case re-credit) of duty paid needs to be dealt under the provisions of Section 11B of CEA. Further, I find that the jurisdictional Assistant Commissioner has disallowed the re-credit, initially vide OIO 14.07.2017 on the ground of non-fulfillment of provisions of Rule 6(3) of CCR, considering the application as refund claim (para 5 of said OIO). Further, vide OIO dated 25.06.2018, the claim in dispute was finally sanctioned by the Assistant Commissioner under Section 11B of CEA. In the circumstances, the contention of the adjudicating authority that the request of re-credit of Cenvat credit wrongly reserved is based on letter dated 27.09.2013 and 26.04.2014 and not a case of refund of duty under Section 11B of CEA is not correct and I find no reason to agree with the said finding.

8. It is surprising that though the Appellate Authority has already been given above findings, vide his OIA dated 25.10.2018 supra, the adjudicating authority has not bothered to consider such order while passing the order, which is apparently a case of dis-obedience of order passed by the higher appellate authorities.

9. In view of above discussion, I upheld that the appellant is eligible for interest on delayed refund/ re-credit of Cenvat credit after three months of date of original application. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

10. The appeal stands disposed of in above terms.

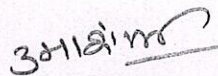
Attested


(Mohanan V.V)
Superintendent (Appeals)
CGST, Ahmedabad
By R.P.A.D

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

Copy to:

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, CGST, Gandhinagar. *सिवा*
3. The Deputy/Assistant Commissioner, CGST, Division-III, Ahmedabad North
4. The Assistant Commissioner, System-CGST Gandhinagar. *सिवा*
5. Guard File.
6. P.A. File.



उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date: /06/2019

