



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate

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आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240164SW0000922875

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3846/2023 / 851 - 55
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-187/23-24 and 16.01.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	17.01.2024
(ङ)	Arising out of Order-In-Original No. 05/Ref/VM/22-23 dated 21.3.2023 passed by The The Deputy Commissioner, CGST, Division-III, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Aculife Healthcare Pvt. Ltd. Village Sachana Taluka Viramgam Dist: Ahmedabad - 382150

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person 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:-

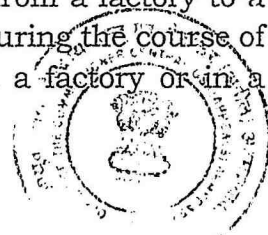
Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतः नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक 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 Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार 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 का पैकेजिंग या उत्पादन शुल्क नद्धे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

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।

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 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।

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.

(2) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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.

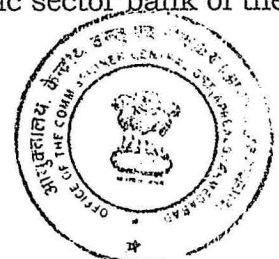
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(2) उक्तलिखित परिच्छेद 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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 और 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) एके प्रति अपील के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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।

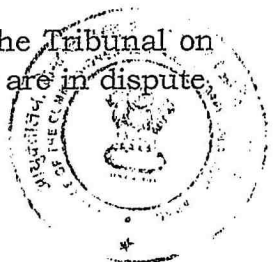
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

(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।

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, Village –Sachana, Taluka Viramgam, Ahmedbad-382150 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 05/Ref//VM/2022-23 dated 21.03.2023 (in short '*impugned order*') passed by the Deputy Commissioner, Central GST, Division-III, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable service and were holding Service Tax registration No.AAMCA8542QEM001.

2. The facts of the case, in brief, are that the appellant had imported duty free inputs under Advance License Scheme for supply of the resultant products for export out of India. Due to pending export remittance in respect of goods exported against inputs imported under Advance Authorisation License, they were required to pay applicable Customs Duty which included payment of CVD and SAD. The total payments amounted to Rs.1,73,06,139/- was made by the appellant. As in the pre-GST era the appellant could not avail the Cenvat credit of CVD and SAD, paid post implementation of GST, they subsequently filed four claims on 20.02.2021, seeking refund of said credit in terms of the transitional provisions of Section 142(3) of the CGST Act, 2017.

2.1 All the four refund claims were rejected by the adjudicating authority, vide the orders as detailed below; stating the provisions of sub-section (2) of Section 11B of Central Excise Act, 1944 read with provisions made under Section 142(3) of the COST Act, 2017.

Sr.No.	OIO No. & Date of Order/Issue	Amount
01	04/Ref/II/KMV/21-22 dated 30.09.2021/05.10.2021	Rs.9,199/-
02	05/Ref/II/KMV/21-22 dated 30.09.2021/05.10.2021	Rs. I, 16,02,346/-
03	3 06/Ref/II/KMV/21-22 dated 30.09.2021/05.10.2021	Rs.9,99,868/-
04	07/Ref/II/KMV/21-22 dated 30.09.2021/05.10.2021	Rs.46,94,726/-
	Total	Rs. I, 73,06, 139/-

2.2 The appellant went in appeal and the Commissioner (Appeals) vide O-I-A No. AHM-EXCUS-002-APP-56 to 59/2022-23 dated 07.11.2022, held that the appellant in respect of the imported goods/inputs used in final products exported under Advance Authorization Scheme in pre-GST period, is eligible for refund of CVD and SAD paid on such imports in post GST regime. In consequence to said OIA, the appellant had filed the refund claims on 22.11.2022 totaling to Rs.1,73,06,139/- alongwith applicable interest. The adjudicating authority vide the impugned order, sanctioned the refund to the appellant.

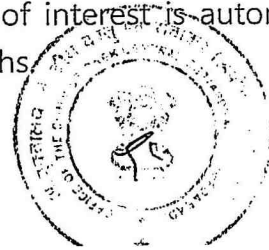
3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant preferred the present appeal on the grounds elaborated below:-

- All the four refund applications were filed on 20.02.2021, which was initially rejected and against the rejection appeals were filed, these appeals were subsequently allowed by the Commissioner (Appeals). As a result, under the impugned Order dated 21.03.2023, the refund was sanctioned and paid under



Section 11B of the Central Excise Act. However, this refund is paid beyond a period of three months from the date of receipt of application till the date of payment of refund amount under section 118B of the CEA. Hence, the interest payment is mandatory on the part of department for delayed payment of refund amount beyond a period of three months.

- Section 11BB of the Central Excise Act, deals with the interest on delayed refund and it has been provided that if any duty ordered to be refunded under subsection (2) of section 11B of the CEA to any applicant is not refunded within 3 months from the date of receipt of application under sub-section (1) of that section, there shall be paid to the applicant interest at such rate as fixed by the Government from such duty from the date immediately after the expiry of 3 months from the date of receipt of such application till the date of refund of such duty. Therefore, as per the provisions u/s 11BB of the Central Excise Act, the Department is bound to pay the interest amount if the refund is not paid within 3 months from the date of application. Further, an explanation is provided to Section 11BB which states that the order passed for refund by the Commissioner (Appeals) shall be deemed to be an order passed under the sub-section (2) for the purpose of section 11BB and therefore, the interest is payable from the date beyond 3 months from the date of application. Accordingly, the department is bound to pay interest after 3 months from the date of filing of the original refund application i.e. 20.02.2021 till the date refund is paid.
- The Appellant has calculated the interest payable in the present case on account of delayed sanction of refund claim beyond 3 months from the date of application. As per the calculation they claim they are eligible for interest of Rs.19,03,201/-. They placed reliance on following decisions;
 - 2004 (170 ELT 13 (LB) - Rama vision Ltd.
 - 2008 (233) ELT 607 - Jayanta Glass Industries P. Ltd.
 - 2008 (227) ELT 247 (Ti.)- Tirupati Pipe & Allied Ind.
- Appellant submits that, Hon'ble High Court of Gujarat in the case of Purnima Advertising Pvt. Ltd. vide Order No. O/12139/2016 dated 2.4.2016 cited as 2016 (42) STR 785 (Guj), held that "*on a plain reading of the 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 the 3 months from the date of receipt of refund application till the date of refund of such duty*". The authoritative decision on the subject matter by the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. vs Union of India cited at 2011 (273) ELT 3 (SC) may kindly be referred) wherein the Hon'ble Court has held that in terms of section 11BB interest under the said section becomes payable on the expiry of the period of 3 months from the date of receipt of application under sub section (1) of section 11B of the Act. The ratio of the aforesaid decision is squarely application in the present case. Even CBEC under circular No. 670/61/2002-CX dated 01.10.2002 has already clarified that payment of interest is automatic in case if the refund is not paid within a period of 3 months.



- On earlier occasions in similar set of facts in appellant own case, wherein initially the refund claim was rejected against the original refund application and subsequently, on the basis of the favorable order by the Hon'ble Commissioner (Appeals) refund was sanctioned by the original authority, however, interest was not paid. Being aggrieved to the extent of non-payment of interest appeals were filed before the Hon'ble Commissioner (Appeals). In the decision Hon'ble Commissioner (Appeals) consistently held that interest is payable u/s 11BB on delayed refund beyond 3 months from the original date of refund application. Accordingly, interest was sanctioned and paid, few of the decisions are cited below:

(a) OIA NO. AHM-EXCUS-002-APP-351-17-18 dated 09.04.2018

(b) OIA NO. AHM-EXCUS-002-APP-374-17-18 dated 05.04.2018

(c) OIA No. AHM-EXCUS-002-APP-84-18-19 dated 20.11.2018

In all the above cases the Commissioner (Appeals) has allowed interest on delayed payment of refund claim.

- The appellant under letter dated 19.11.2022 requested the learned Adjudicating Authority to sanction the refund claim along with interest, in the said letter, all the above cited decisions and Board's circular were produced before the learned Adjudicating Authority. However, he has not considered the same nor he has given any findings as to why interest is not payable on belated refund claim.
- The Adjudicating authority ignored the settled law and appellate Commissioner (Appeals) orders and does not pay interest on delayed refunds compelling the appellant to approach appellate forum again and again for each case. The lower authorities are duty bound to follow the judicial discipline and follow the decisions of the higher authorities, which lower authorities fails to do so and Appellant has to face unnecessary hardships and to enter into avoidable litigations in each case. Therefore, most respectfully, your honor is requested to directed the Original Authority to pay interest due thereon in case refund claim is sanction and paid beyond 3 months from the date of application.
- There is neither justification not any valid ground to deny the interest. Therefore, the appeal may be allowed directing the learned adjudicating authority to sanction and pay the interest from the date beyond three months from the date of application till the date refund amount was sanction.

4. Personal hearing in the matter was held on 11.01.2024. Shri Vikramsingh Jhala, Authorized Representative appeared on behalf of the appellant. He reiterated the submissions made in the Appeal Memorandum and requested to allow the appeal.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum and the submissions made during personal hearing. The issue to be decided in the present appeal is as to whether the appellant is entitled for interest on the refund sanctioned by the adjudicating authority.



6. In consequent to OIA dated 07.11.2022, the appellant vide letter dated 22.11.2022, filed refund claim of Rs.1,73,06,139/- alongwith interest. The adjudicating authority however only sanctioned the refund without passing any order on the interest sought by the appellant. The appellant is therefore in appeal claiming interest after three months from the date of filing of original refund application (filed on 20.02.2021) till the date of refund sanctioned vide the impugned order.

6.1 Provisions of Section 11BB, governs the question relating to payment of interest on belated payment of refund and as per the said provisions the liability to pay interest arises on the non-payment of refund to the claimant within three months from the date of such application. Section 11BB is reproduced below;

SECTION [11BB. Interest on delayed refunds — *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, [not below five per cent] and not exceeding thirty per cent per annum as is for the time being fixed [by the Central Government, by Notification in the Official Gazette], 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 :*

Provided *that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.*

Explanation. - *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 purposes of this section.]*

6.2 I find that Hon'ble Supreme Court in the case of *M/s. Ranbaxy Laboratories Ltd. v. UOI* reported on [2011-TIOL-105-S.C.-CS = 2011 (273) E.L.T. 3 (S.C.) = 2012 (27) S.T.R. 193 (S.C.)] has categorically held that interest shall accrue after expiry of three months from the date of refund application. Relevant extract of the judgment is reproduced as under;

"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. ...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.

(Emphasis Supplied)

6.3 In view of legal pronouncements and provisions of Section 11BB, the liability of the Revenue to pay interest under the said provision commences from the expiry of three months from the date of receipt of the application for refund.

7. The appellant are claiming that they are eligible for interest from three months from the date of receipt of original refund claim filed on 20.02.2021 till the date of refund granted.

7.1 Hon'ble High Court of Judicature of Bombay in the case of **Lavino Kapur Cotton Pvt. Ltd.** - 2023 (70) G.S.T.L. 229 (Bom.) / (2023) 2 centax 306 (Bom.) held that;

"13. The question which arises for our consideration is whether the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of the application for refund under Section 11B(1) of the Act or the date on which the Order of refund is made?"

14. The date of filing of application for refund before the Authority is not in dispute. Assuming that the Assistant Commissioner of Central Excise, in the present case, had proceeded to accept the claim of the Appellant for refund and proceeded to pass an Order in terms of Section 11B(2) of the Act, then in case the amount was not refunded despite such an Order, the Appellant would be entitled to interest on the delayed payment of the refund after the expiry of three months from the date of such an Order. Section 11B, therefore, does not at all envisage an application to be filed seeking refund. The only application, which Section 11B envisages is an application for refund in terms of Section 11B(1) and the only Order that the said Section 11B envisages is an Order under Section 11B(2), where if satisfied, the Assistant Commissioner of Central Excise or Deputy Commissioner may make an Order for refund of the whole or any part of the duty of excise and interest if any paid on such duty paid by the Appellant.

15. With a view to ensure that despite an Order being passed in terms of Section 11B(2), the amount of refund is not withheld for an unreasonably long period of time, Section 11BB envisages payment of interest on delayed refund beyond the period of three months from the date of receipt of an application under sub-section (1) of Section 11B. The rate of interest which is payable is at a rate not below 5 per cent and not exceeding 30 per cent per annum, which may be fixed by the Central Government in an official gazette.

The Explanation appended to Section 11BB clearly takes care of a situation, where an Order of refund is made by the Commissioner (Appeals), the Appellate 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, such an Order would be deemed to be an Order passed under the said sub-section (2) of Section 11B for the purposes of Section 11BB, that is payment of interest on delayed refund.

16. A reading of the aforementioned provisions makes it clear that in a case where the Order is passed by the Appellate Tribunal, as has been done in the case of the Appellant, by virtue of its Order dated 13 October 2017, the said Order is deemed to be an Order under sub-section (2) of Section 11B and interest would be liable to be paid on delayed refund and therefore, interest would be liable to be paid in terms of Section 11BB on delayed refund as if it was an Order passed under sub-section (2) of Section



11B if the amount was not refunded within three months from the date of receipt of the application under sub-section (1). This issue, however, is no longer res integra.

17. The Apex Court in Ranbaxy Laboratories Limited (supra) has held as under :

In view of the above analysis, our answer "19. to the question formulated in para 1 (supra) is that the liability of the Revenue to pay interest under section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which the order of refund is made."


18. In our view, therefore, the Tribunal, in its Order impugned wrongly applied the judgment of the Apex Court (supra) for purposes of denying the benefit of interest on delayed refund by holding that it was not entitled to the same from the date of the application under Section 11B(1), but only after the expiry of three months from the date of the Order of the tribunal dated 10 February 2016, if such applications were filed in terms of the said Order and were disposed of within three months thereof.

19. Be that as it may, we allow the appeals and answer the question in favour of the Appellant."

6.4 In the instant case, the Commissioner (A) held that the appellant is eligible for refund. Once, it is held that the appellant is eligible for refund, then the interest on such refund shall automatically accrue after expiry of three months from the date of refund application. Considering the above judicial pronouncements, I find that the appellant shall be eligible for interest after three months from the date of original refund claim filed and not from the date of Commissioner (A) order. The original refund claim was by the appellant on 20.02.2021 whereas the refund was sanctioned to the appellant on 21.03.2023. As the refund was sanctioned beyond three months, I find that the appellant is eligible for interest under Section 11BB from date of filling of refund claim and not three months from the date of OIA.

7. In view of the above, I allow the appeal filed by the appellant on the above terms.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.


(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Date: 16.1.2024

Attested



(रेखा नायर)

अधीक्षक (अपील्स)

केंद्रीय जी. एस. टी, अहमदाबाद

By RPAD/SPEED POST

To,
M/s. Aculife Healthcare Pvt. Ltd,

Appellant



Village –Sachana, Taluka Viramgam,
Ahmedbad-382150

The Deputy Commissioner
CGST, Division-III,
Ahmedabad North

- Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Superintendent (System), CGST Appeals, Ahmedabad (for uploading the OIA)
- ✓ 4. Guard File.

