



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
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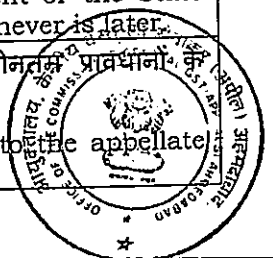


**By Regd. Post**

DIN NO. : 20220364SW00000333AF3

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/431/2021-APPEAL/688
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-100/2021-22 and 22.03.2022
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपर आयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	22.03.2022
(ङ)	Arising out of FORM-GST-RFD-06 Order-In-Original No. ZO2411200126767 dated 10.11.2020 issued by The The Deputy Commissioner, CGST & CE, Division-III (Sanand), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Aculife Healthcare Pvt. Ltd. (GSTIN-24AAMCA8542Q1Z0) Address:- Commerce House-V, Besides Vodafone House, Prahlad Nagar Corporate Road, Ahmedabad - 380051

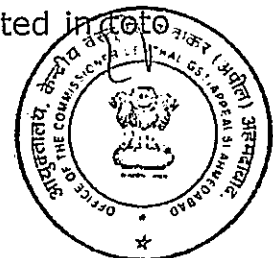
(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to <u>twenty five per cent</u> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax ( Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



**ORDER-IN-APPEAL****Brief Facts of the Case :**

**M/s. Aculife Healthcare Pvt. Ltd.**, Vill. Sachana, Taluka Viramgam, Dist. - Ahmedabad (hereinafter referred as '*appellant*') has filed the present appeal against Order No. ZO2411200126767 dated 10.11.2020 passed in the Form-GST-RFD-06 (hereinafter referred as '*impugned order*') rejecting refund claim of Rs. 53,69,328/-, issued by the Deputy Commissioner, CGST & C. Ex., Division - III - Sanand, Ahmedabad North (hereinafter referred as '*adjudicating authority*').

2. Briefly stated the facts of the case are that the '*appellant*' is holding GST Registration having GSTIN No.24AAMCA8542Q1Z0 has filed the present appeal on 15.02.2021. The '*appellant*' had filed refund claim of an amount of Rs.53,69,328/- of Compensation Cess pertaining to financial year 2019-2020 i.e., for the months April 2019 to March 2020 under Section 54 of the CGST Act, 2017 (hereinafter referred to as "the CGST Act") read with sub-rule (4) of Rule 89 of the CGST Rule, 2017 (hereinafter referred to as "CGST Rules") for the period. The '*appellant*' had imported coal and also indigenously purchased coal which is used in the in business of manufacture of pharmaceutical products. On import or indigenous purchase of Coal, they availed Input tax credit (ITC) of IGST/CGST/SGST and Compensation CESS paid on coal in terms of section 16 of the CGST Act, 2017. Since, the pharmaceutical products do not attract the Compensation CESS, therefore, the ITC availed of Compensation CESS got accumulated. Accordingly, in terms of section 54(3) of the CGST Act, 2017 and Rule 89(4) of the CGST Rules, 2017 the '*appellant*' had calculated the amount of refund in terms of prescribed formula and applied for refund on 12.10.2020 under ARN No. AA240920100713Q. On verification of the refund claim by the refund sanctioning authority, it was found that the refund claim pertains to exports of goods/services-without payment of tax (accumulated ITC) for the months April 2019 to March 2020. It was also found that input tax credit for CESS has not been availed in any GSTR-3B from April 2019 to March 2020 (relevant period for the present refund claim) and since no credit was in the relevant period due to which the net ITC for the relevant period becomes zero. Thus, the present claim was found to be inadmissible by the refund sanctioning authority and was rejected *in toto* vide *impugned order*.



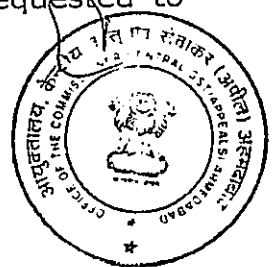
3. Being aggrieved with the *impugned order*, the *appellant* preferred the present appeal on the following grounds, inter-alia, contending that:

(i) There is no dispute by the department about eligibility to avail ITC of Compensation Cess in terms of CGST provisions, pertaining to financial year 2019-20, which was availed in the month of July, 2020, nor receipt and use of the Coal in the export products is disputed by the Department. The refund claim is filed within the period of limitation prescribed under the CGST Act.

(ii) For the period April, 2019 to March, 2020, they have exported the goods under LUT/Bond, without payment of Taxes. Hence, they are entitled to the refund of accumulation of unutilized ITC of compensation cess on inputs in cases where the final production is not subject to the levy of compensation cess; that this issue has been clarified vide Circular No. 45/19/2018-GST dated 30.05.2018; that Circular No. 79/53/2018-GST dated 31.12.2018 has further clarified the issue; that they have computed the amount of refund claim for the period April, 2019 to March 2020 in terms of circular dated 31.12.2018.

(iii) They have taken the turnover of the zero-rated supply of goods and adjusted turnover and calculated the net ITC by considering the ITC of compensation cess which was availed in July, 2020, but pertaining to the relevant period (months) of 2019-20; that they have calculated the refund amount as per the formula under sub-rule (4) of Rule 89 of CGST Rules and as envisaged in the circular dated 31.12.2018. Therefore, findings of the refund sanctioning authority are contrary to the Circular No. 79/53/2018-GST and therefore, the *impugned order* is required to be set aside.

4. Personal hearing in the matter was held on 16.12.2021 through virtual mode. Shri Vikramsingh Jhala on behalf of the appellant as authorized representative appeared in the hearing and he reiterated the submissions made earlier. He also submitted additional submissions dated 16.12.2021 and submitted that they have explained the circumstances regarding delay in filing of appeal due to wrongly addressing the appeal papers, they have filed appeal delayed by six days. They requested to condone the delay.



### **Discussion and Findings :**

5. I find that the Appellate Authority may condone a delay of up to one month, if he is satisfied that there was sufficient cause for such delay in terms of Section 107(4) CGST Act. Considering that the explanation offered by the *appellant* is a plausible and not an unreasonable one, especially the circumstances regarding delay in filing of appeal due to wrongly addressing the appeal papers, I am of the view that the mere delay of 6 days should not come in the way of their appeal for being considered on merits. The request of the *appellant* for the delay of condonation seems to be reasonable and justifiable. Therefore, in the interest of justice, I hereby condone the delay in filing the appeal and I proceed to decide the case as per law and merit.

6. I have carefully gone through the facts of the case, the *impugned order*, grounds of appeal. The issue to be decided in the present appeal is whether the *impugned order* rejecting refund claim to the tune of Rs. 53,69,328/- is correct, legal and proper or not.

7. On perusal of the records, I find that the *appellant* had filed a refund claim of Rs.53,69,328/- of Cess ITC accumulated on account of zero-rated supply under Section 54(3) of the CGST Act. The refund sanctioning authority rejected the said refund in entirety on the ground that the *appellant* has not availed the ITC during the relevant period i.e., April 2019-March 2020, but availed the said credit in the GSTR-3B in the month of July,2020, which is outside the refund claim period and therefore, as per provisions of Rule 89 of CGST Rules, is outside the relevant period. Therefore, no refund was to be sanctioned against the resultant Zero Net ITC in terms of formula given in Rule 89 of CGST Rules.

8. I find that refund of accumulated ITC of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking is available even if the exported product is not subject to levy of cess. This was clarified vide Circular No. 45/19/2018-GST dated 30.05.2018. The refund sanctioning authority has also not disputed this fact. Now, the whole controversy revolves around the interpretation of 'relevant period' by the refund sanctioning authority in the definition of "Net ITC" in the formula given in Rule 89(4) of CGST Rules, for the calculation of refund amount.

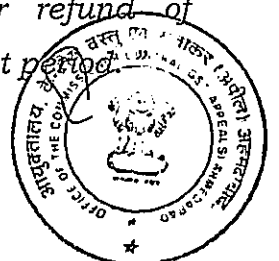
9. I have gone through the Circular No. 79/53/2018-GST dated 31.12.2018 wherein similar issues have been clarified. The relevant clarifications are found in para 9 of the circular, which are as under:



**“9. Issues related to refund of accumulated Input Tax Credit of Compensation Cess :** Several representations have been received requesting clarifications on certain issues related to refund of accumulated input tax credit of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking. These issues have been examined and are clarified as below:

**a) Issue:** A registered person uses inputs on which compensation cess is leviable (E.g. coal) to export goods on which there is no levy of compensation cess (E.g. aluminum). For the period July, 2017 to May, 2018, no ITC is availed of the compensation cess paid on the inputs received during this period. ITC is only availed of the CGST, SGST/UTGST or IGST charged on the invoices for these inputs. This ITC is utilized for payment of IGST on export of goods. Vide Circular No. 45/19/2018-GST dated 30.05.2018, it was clarified that refund of accumulated ITC of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking is available even if the exported product is not subject to levy of cess. After the issuance of this Circular, the registered person decides to start exporting under bond/LUT without payment of tax. He also decides to avail (through the return in FORM GSTR-3B) the ITC of compensation cess, paid on the inputs used in the months of July, 2017 to May, 2018, in the month of July, 2018. The registered person then goes on to file a refund claim for ITC accumulated on account of exports for the month of July, 2018 and includes the said accumulated ITC for the month of July, 2018. How should the amount of compensation cess to be refunded be calculated?

**Clarification:** In the instant case, refund on account of compensation cess is to be recomputed as if the same was available in the respective months in which the refund of unutilized credit of CGST/SGST/UTGST/IGST was claimed on account of exports made under LUT/Bond. If the aggregate of these recomputed amounts of refund of compensation cess is less than or equal to the eligible refund of compensation cess calculated in respect of the month in which the same has actually been claimed, then the aggregate of the recomputed refund of compensation cess of the respective months would be admissible. Further, the recomputed amount of eligible refund (of compensation cess) in respect of past periods, as aforesaid, would not be admissible in respect of consignments exported on payment of IGST. This process would be applicable for application for refund of compensation cess (not claimed earlier) in respect of the past period



**10.** On plain reading of the above Circular (No. 79/53/2018-GST dated 31.12.2018- para 9), I find that it has been clarified that this process will be applicable for refund of compensation cess (not claimed earlier) in respect of the past period. In the reply to Show Cause Notice dated 14.10.2020, the *appellant* had submitted that for the period April, 2019 to March, 2020, they had not claimed the refund of CGST/SGST/UTGST/IGST. They had also re-computed the amount of refund claim admissible for the period April, 2019 to March, 2020 in terms of Circular dated 31.12.2018 and had submitted the same as annexed as Annexure-D. However, I find that the refund sanctioning authority has failed to examine this re-computed admissible refund claim amount while issuing the *impugned order*.

**11.** I find that the issue explained in the Circular (No. 79/53/2018-GST dated 31.12.2018- para 9) is similar to the present issue of refund claim. In the given example of the said Circular, the taxpayer avails (through the return in FORM GSTR-3B) the ITC of compensation cess, paid on the inputs used in the months of July, 2017 to May, 2018, in the month of July, 2018. The registered person then goes on to file a refund claim for ITC accumulated on account of exports for the month of July, 2018 and includes the said accumulated ITC for the month of July, 2018. Now, on the question, 'How should the amount of compensation cess to be refunded be calculated?', the said Circular clarifies that, 'refund on account of compensation cess is to be recomputed as if the same was available in the respective months in which the refund of unutilized credit of CGST/SGST/UTGST/IGST was claimed on account of exports made under LUT/Bond. If the aggregate of these recomputed amounts of refund of compensation cess is less than or equal to the eligible refund of compensation cess calculated in respect of the month in which the same has actually been claimed, then the aggregate of the recomputed refund of compensation cess of the respective months would be admissible.' The same principle should have been applied by the refund sanctioning authority, but he simply ignored the clarification given in the said Circular. I also find that the Circular No. 79/53/2018-GST dated 31.12.2018 was updated vide Circular No. 125/44/2019-GST, dated 18-11-2019 and this circular also, the same issue was clarified in para 43(a) of the Circular.

**12.** I find that the accumulated ITC of compensation cess was availed for the period April, 2019 to March, 2020 in GSTR-3B for the month of July, 2020, while the refund claim of accumulated ITC of said cess was filed for the period April, 2019 to Mar, 2020. This was one of the



major points of rejection of refund claim by the refund sanctioning authority. I don't find anything wrong in claiming ITC for the month of April, 2019 to March, 2020 in the month of July, 2020. This is legally permissible in terms of Section 16(4) of CGST Act which says that a registered person shall be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both before the due date of furnishing of the return under section 39 (i.e. GSTR-3B) i.e. for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier. The refund sanctioning authority has not disputed this legal fact, but rejected the refund claim solely on the ground that refund claim is for the period April, 2019 to Mar, 2020, but the ITC is availed in the month of July, 2020 and therefore it is outside the relevant period and can't be considered for calculation of refund in terms of Rule 89 of CGST Rules. Here, I find that the refund sanctioning authority has failed to refer para 9 of Circular No. 79/53/2018-GST dated 31.12.2018, which has clarified the similar issue. The refund sanctioning authority has ignored the said clarification by stating that, "the circular does not intend to override the statute, i.e., Rule 89 of CGST Rules, 2017." When the similar issue is clarified by a circular issued by CBIC, the refund sanctioning authority should have given proper lawful reasoning for not accepting the clarification given in the Circular. In fact, he has erred in ignoring the circular, without examining the facts pertaining to present refund claim in detail.

**13.** I also go through para 10 and para 11 of the Circular No. 79/53/2018-GST dated 31.12.2018 and para 61 of Circular No. 125/44/2019-GST, dated 18-11-2019, wherein it has been clarified that "Net ITC" as defined in rule 89(4) of the CGST Rules means input tax credit availed on inputs and input services during the relevant period. Relevant period means the period for which the refund claim has been filed. Input tax credit can be said to have been "availed" when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in FORM GSTR-3B. Further, section 16(4) of the CGST Act stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier.



In view of above clarification, ITC of invoices for the period April, 2019 to March 2020, availed in July 2020, cannot be excluded from the calculation of the refund amount for the period April, 2019 to March 2020 while calculating "Net ITC" as defined in rule 89(4) of the CGST Rules.

**14.** Considering the above, I am of the opinion that the refund sanctioning authority erred in rejecting the refund claim solely on the ground that they have not availed the ITC of Compensation Cess during the period April, 2019 to March 2020 resulting into zero 'Net ITC'. The refund sanctioning authority is, therefore, directed to process the refund claim in view of above deliberations and in accordance with Section 54(3) of the CGST Act.

**15.** In view of above, I hereby allow the appeal and set aside the *impugned order*.

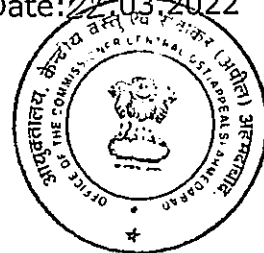
**16.** अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।


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

  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 22-03-2022



Attested  
  
(Dilip Vadav)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad

By R.P.A.D.

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

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-III - Sanand, Ahmedabad North.
- ✓ 5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File