

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.1

**Excise Appeal No. 10461 of 2020**

(Arising out of OIA No. AHM-EXCUS-002-APP-130-2019-20 dated 03.03.2020 passed by Commissioner (Appeals)-Ahmedabad)

**Aculife Healthcare Pvt Ltd.**  
Village Sachana, Tal:Viramgam,  
Ahmedabad-Gujarat

**...Appellant**

*VERSUS*

**C.C.E. – Ahmedabad-II**  
Custom House, 1<sup>st</sup> Floor, Old High Court Road  
Navrangpura, Ahmedabad-Gujarat-380009

**...Respondent**

**APPEARANCE:**

Shri P.P. Jadeja, Consultant appeared for the Appellant  
Shri P. Ganesan, Superintendent (AR) appeared for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA**

**FINAL ORDER NO. 11356 /2025**

DATE OF HEARING: 25.11.2025  
DATE OF DECISION:25.11.2025

**SOMESH ARORA**

Learned consultant appearing for the party states that similar issue stands decided, wherein various refunds were allowed by Commissioner (Appeals) and in all such matters department came in appeal. The issue was still decided in favour of the appellants by the Division Bench of this Tribunal in Commissioner of Central Excise & Service Tax, Ahmedabad-II vs Aculife Healthcare Private Limited vide Final Order No. 10978/2024. The whole issue in this decision are brought out in para 5 of the decision which is reproduced below:-

“5. We find that the department sought to deny the refund of CVD and SAD paid by the appellant only on the ground that at the time of payment of CVD and SAD there was no provision of availing the Cenvat credit, therefore, it was alleged that the appellant was not in position to avail the Cenvat credit, therefore consequently even refund of the amount which is not cenvatable could not have been claimed. We find that the appellant have paid the CVD and SAD for the period prior to 01.07.2017 even though the payment was made subsequent to 01.07.2017. Therefore, since the duty is paid by the appellant are for the period when the Cenvat credit Rules was existing, the appellant were entitled for Cenvat credit during period prior to 01.07.2017. In CGST Act to deal with situation of the present case, special provision was made under Section 142(3) whereby when the assessee is not in a position to avail the Cenvat credit or utilize the same due to effect of GST regime from 01.07.2017 refund provision was enacted which specifically deals with the situation of refund of amount which is cenvatable as per existing law i.e. Central Excise Act, 1944 and Rules made thereunder. In the present case, the refund was made under the existing law i.e. section 11B of Central Excise Act, 1944 accordingly, the refund of SAD/CVD paid by the appellant which was cenvatable at

the time when the said duty was payable, It is clearly eligible for refund under Section 11B read with Section 142(3) of CGST Act, 2017. Therefore, in our considered view, the appellants are legally entitled for the refund of CVD/ SAD. As regard the judgments relied upon by the appellants as well as the Revenue, we find that the Revenue has filed the appeal on the sole ground that the adjudicating authority has rejected the claim relying on the Single Member Bench decision in the case of this Tribunal decision in the case of Sarvo Packaging Ltd. There are number of judgments by this Tribunal itself which are contrary to the decision of Sarvo Packaging Limited 2020 (373) ELT 550 (Tri. Chennai). Moreover, even after considering the Sarvo Packaging Limited decision (supra), the Tribunal's Single Member Bench in the case of Sri Chakra Polyplast India Private Limited (supra) after relying upon many other decision came to the conclusion that the appellants are entitled for the refund under Section 142(3) of CGST Act, therefore, the decision of Sarvo Packaging Limited stand departed. Even if the precedent value of the judgment is considered, it is settled law that the later decision is always better than the earlier one on the principle of 'later is better' accordingly, the judgment of Sri Chakra Polyplast India Private Limited prevails over the decision of Sarvo Packaging Limited. We also make it clear that we being a Division Bench have already given an independent finding hereinabove which gets reinforced by the later judgments of this Tribunal. Accordingly, we do not find any infirmity in the impugned order, hence, the impugned order is upheld. Revenue's appeal is dismissed."

2. Since the core issue is same and facts as to whether refund of CVD and SAD paid by the appellants can be denied on the ground that there was no provision of availing the cenvat credit, therefore consequently, even the refund could not be allowed for CVD and SAD prior to 01.07.2017, there is similarity in the matters. The issue has been decided as above in the aforesaid decision.

3. In view of the same, learned AR agrees that the matter stands covered in the aforesaid appeal which was made by the department.

4. This court has considered above submissions. It finds substance in the submissions of the learned consultant and finds that the amount involved of Rs. 73,025/- is allowable to the appellants. Appeal consequently succeeds. The impugned order is set aside. Appeal allowed.

(Dictated & Pronounced in the open court)

**(SOMESH ARORA)**  
**MEMBER (JUDICIAL)**