

F. No. 195/48/2019-R.A.
195/84/2018-R.A.
195/85/2018-R.A.
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SPEED POST



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195/86/2018—R.A., 195/163/2018—R.A.

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 9/3/21.....

Order No. 37-41/2021-CX dated 9-3-2021 of the Government of India, passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject: Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the (i) Order-in-Appeal No. CHD-EXCUS-001-APP-02-08-2019-20 dated 24.04.2019 (ii) Order-in-Appeal No. CHD-EXCUS-001-APP-289-414-17-18 dated 24.01.2018 (iii) Order-in-Appeal No. CHD-EXCUS-001-APP-415-17-18 dated 29.01.2018 (iv) Order-in-Appeal No. CHD-EXCUS-001-APP-416-419-17-18 dated 29.01.2018 and (v) Order-in-Appeal No. CHD-EXCUS-001-APP-573-816-17-18 dated 20.03.2018 passed by Commissioner (Appeals), Central Goods and Service Tax, Chandigarh.

Applicant: M/s. Sun Pharmaceuticals Industries Ltd., Sirmour (H.P)

Respondent: Commissioner of CGST, Shimla

ORDER

Five Revision Applications Nos. 195/48/2019-R.A. dated 05.08.2019, 195/84/2018-R.A. dated 01.05.2018, 195/85/2018-R.A. dated 01.05.2018, 195/86/2018-R.A. dated 01.05.2018 and 195/163/2018-R.A. dated 02.07.2018, are filed by M/s. Sun Pharmaceuticals Industries Ltd., Sirmour (H.P) (hereinafter referred to as applicant) against Orders-in-Appeal Nos. CHD-EXCUS-001-APP-02-08-2019-20 dated 24.04.2019, CHD-EXCUS-001-APP-289-414-17-18 dated 24.01.2018, CHD-EXCUS-001-APP-415-17-18 dated 29.01.2018, CHD-EXCUS-001-APP-416-419-17-18 dated 29.01.2018 and CHD-EXCUS-001-APP-573-816-17-18 dated 20.03.2018 passed by Commissioner (Appeals), Central Goods and Service Tax, Chandigarh, wherein the appeals filed by the applicant have been rejected.

2. The brief facts leading to the present proceedings are that the applicant had filed 382 rebate claims under Rule 18 of Central Excise Rules, 2002, in respect of the duty paid on the finished goods exported by them. The original adjudicating authority partially sanctioned the rebate claims i.e. only to the extent of duty paid on FOB value whereas the applicant had paid duty corresponding to the CIF value and claimed rebate, accordingly. The remaining amount, totally amounting to Rs. 97,87,993/-, was termed as a deposit of amount on own volition and not duty, which, therefore, could not be rebated. The Commissioner (Appeals) also upheld the orders

of the original authority. The applicant has filed the subject revision applications on the ground that the Government cannot retain the excess amount deposited by them and it should be paid back to them in cash in terms of Section 11B of Central Excise Act, 1944, read with Section 142 (3) and (4) of CGST Act, 2017.

3. Personal hearing was held on 05.03.2021 in virtual mode. Sh. Ashok Nawal, Advocate, appeared for the applicant and reiterated the contents of the revision application as well as written submissions filed on 04.03.2021. Sh. Nawal stated that the duty paid corresponding to the difference in the CIF and FOB values of the exported goods is a deposit and, therefore, as per settled law it should be refunded. None appeared for the respondent and no request for adjournment has been received from them. Hence, the matter is being taken up for disposal on the basis of records and facts available.

4.1 The Government has examined the matter. It is observed that, in the present case, the applicant had paid duty corresponding to the CIF value of the exported goods from the CENVAT credit account. The original authority has sanctioned the rebate restricting it to the duty payable corresponding to the FOB value of the exported goods. Admittedly, the duty ought to have been paid only on the value corresponding to the FOB value of the goods. The differential amount paid, i.e., amount paid in excess of duty payable does not assume the character of duty as

defined under Rule 2(e) of the Central Excise Rules, 2002, i.e., the duty payable under Section 4 of the Central Excise Act, 1944. The Hon'ble Punjab and Haryana High Court has, in the case of M/s Nahar Industrial Enterprises Ltd. Vs UOI [2009(235)ELT 22 (P&H)], held that only the duty payable and ultimately paid on exported goods is refundable in cash by way of rebate claim. The Hon'ble High Court has also upheld the refund of excess amount paid by way of re-credit into the CENVAT account. Thus, in the present case, the sanction of rebate, in cash, to the extent of duty paid on value corresponding to FOB value of goods is correct in law.

4.2 The applicant has claimed that after the date of implementation of CGST, i.e., 01.07.2017, the excess amount paid under the Central Excise regime, cannot be refunded to them by re-credit in the CENVAT account. Hence, in terms of Section 142(3) & (4) of the CGST Act, 2017, this amount should also be refunded to them in cash. The Commissioner (Appeals) has, upon application of the provisions of Section 142(3) of the CGST Act, held that, the claims having already been partially rejected, the rejected amount has lapsed. It is observed that the Hon'ble Gujarat High Court, has, in the case of M/s Thermax Ltd. Vs. Union of India {2019 (31) GSTL 60 (Guj.)}, held that :-

"10. It is thus eminently clear from the aforesaid observations made in the impugned order that the duty, which was paid by the petitioner, which was otherwise not payable on the exported goods and therefore, rebate of such duty was not

admissible in terms of Rule 18 of Central Excise Rules. However, the duty, which was paid by the petitioner, is held to be treated as voluntary deposit. As per Section 142(3) of the GST Act, every claim for the refund filed by any person before, on or after the appointed day i.e. 01.07.2017 for refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law, should be disposed of in accordance with the provisions of existing law and any amount eventually accruing to such person should be paid in cash. We are of the considered opinion that in view of this clear provision, the Respondent No. 2 ought to have directed the sanctioning Authority to refund the amount of the duty refundable to the petitioner in cash instead of credit in Cenvat Account."

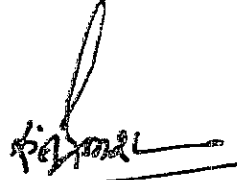
Therefore, the Government holds that, in the instant case, following the ratio of Thermax Ltd. (supra), the refund of excess amount paid, which would have been allowed by way of re-credit in the CENVAT account during the Central Excise regime, has to be allowed by way of refund in cash.

4.3 As regards the claim of interest, it is observed that this excess amount was paid by the applicant on his own volition, even though it was not required to be paid. In the earlier Central Excise regime, as per settled law, it would have been refunded by way of re-credit in the CENVAT account, without any interest. While after the implementation of GST, this amount has to be, now, refunded in cash, as the

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CENVAT account has become redundant, there is no authority in law to pay interest thereon. As such, the claim for payment of interest cannot be accepted.

5. In view of the above, the revision applications are allowed with consequential relief, as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

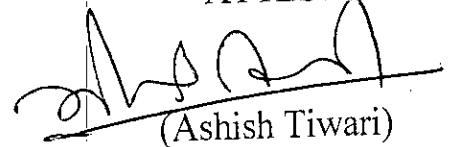
M/s. Sun Pharmaceuticals Industries Ltd.,
Village Ganguwala, Paonta Sahib,
Distt. Sirmour (HP) Pin- 173 025

G.O.I. Order No. 37-41/21-Cx dated 9-3-2021

Copy to:-

1. Commissioner of CGST, Shimla (Camp at Chandigarh).
2. Commissioner (Appeals), Central Excise & CGST, Chandigarh.
3. Sh. Ashok Nawal, M/s A. B. Nawal & Associates, Cost Accountants.
4. PA to AS (Revision Application)
5. Spare Copy
6. Guard File

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)