

SPEED POST



**F. No. 195/164/2018-R.A.
195/173/2018-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... 1.9.21

Order No. 60-61/2021-CX dated 19-3-2021 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 Orders-in-Appeal No. CHD-EXCUS-001-APP-840-842-17-18 dated 27.03.2018 and CHD-EXCUS-001-APP-33-18-19 dated 20.04.2018 passed by Commissioner (Appeals), Central Goods and Service Tax, Chandigarh.

Applicant: M/s Sun Pharmaceuticals Ltd., Sirmaur.

Respondent: Commissioner of CGST, Shimla.

ORDER

Two Revision Applications Nos. 195/164/2018-R.A. dated 02.07.2018 and 195/173/2018-R.A. dated 30.07.2018 have been filed by M/s Sun Pharmaceuticals Ltd., Sirmaur (hereinafter referred to as applicant) against Orders-in-Appeal No. CHD-EXCUS-001-APP-840-842-17-18 dated 27.03.2018 and CHD-EXCUS-001-APP-33-18-19 dated 20.04.2018 passed by Commissioner (Appeals), Central Goods and Services Tax, Chandigarh, wherein the appeals filed by the applicant against Orders-in-Original No. 1097/DC/R/SML/14 dated 23.02.2015, 1098/DC/R/ML/2014 dated 23.02.2015, 1099/DC/R/ML/2014 dated 23.02.2015 and 6/CE/JC/SML/2017-18 dated 01.11.2017 have been rejected.

2. The brief facts leading to the present proceedings are that the applicant are manufacturers of Patent and Proprietary (P & P) medicines falling under CETH 30 and Bulk drugs falling under CETH 29 of Central Excise tariff Act, 1985. They were availing area based exemption under Notification No. 49-50/2003-CE dated 10.06.2003 in respect of P & P medicines and paying Central Excise Duty in respect of Bulk Drugs being in negative list. In 2020-2011, the applicant set up another Block in their factory (having Blocks A to F), called Block G which was set up after 31.10.2010, i.e., the cutoff date in the exemption notification no. 50/2003. The applicant manufactured P & P medicines in this Block and cleared them for exports on payment of duty and filed 12 rebate claims totally amounting to Rs. 1,17,70,399/-

under Section 11 B of the Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002, which were rejected on the ground that they were not required to pay duty on P & P medicines manufactured in their Unit as they were availing area based exemption. Aggrieved, the applicant filed appeals before Commissioner (Appeals) who rejected their appeals vide the impugned Orders-in-Appeals. The instant revision applications have been filed on the grounds that Block G was a new unit in their factory which came into existence after the cutoff date of 31.03.2010 and, hence, it was not eligible for exemption. It is also averred that input stage rebate along with refund of differential duty was available to them, in any case. The department has changed its stand twice as AC (Tech) had written to the jurisdictional Assistant Commissioner that there was no harm to revenue if the applicant pays duty on goods cleared from this portion of factory. Hence, the impugned orders of Commissioner (Appeals) may be set aside. Further, the Government, in two of their own cases and involving the same issue, had passed orders in their favour.

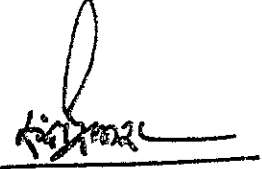
3. Personal hearing was held on 16.03.2021, in virtual mode. Ms. Krati Somani and Sh. Peyuse Prakhar, Advocates appeared for the applicant. Ms. Somani made submissions and reiterated the contents of the revision applications and additional submissions dated 15.03.2021. She specifically highlighted that the issue is covered in their favour by the Orders of the Government for the previous periods and that these orders have attained finality. She undertook to file a chart, detailing the previous periods involved covered by the Government's earlier Orders, which was

done on the same day. None appeared for the respondents and no request for adjournment has been received from them. Hence the matter is taken up for decision on the basis of facts on record.

4. The Government has examined the matter. It is not in dispute that the applicant had commenced production in the newly created Block G of their factory after 31.10.2010. The exemption under notification no. 50/2003-CE dated 10.06.2003 is applicable to the new industrial units set up or existing units which have undergone substantial expansion, which had commenced commercial production between 07.01.2003 and 31.03.2010. It is not disputed by the department that the commercial production in Block G has been commenced after 31.03.2010 only. However, the department's stand is that the production plant in Block G is part of existing factory i.e. Block A to F and the exemption under the notification no. 50/2003-CE is applicable to the entire unit, including the new plant set up in Block G. The Government finds that irrespective of whether the plant in Block G is considered a separate Unit or a part of the existing unit (i.e. expansion of existing unit), the commercial production having commenced after the cutoff date i.e. 31.03.2010, the exemption under notification no. 50/2003-CE would not be available to the goods produced in Block G. As such, the applicant was not eligible to clear goods from this Block, without payment of duty, as per notification no. 50/2003-CE dated 10.06.2003. Identical view has been taken by the Government in the earlier cases of the applicant (earlier known as Ranbaxy Laboratories Ltd.), pertaining to previous

periods where rebate was rejected on the same grounds, vide Orders Nos. 294-295-
CX dated 16.11.2017 and 173/2018-CX dated 09.04.2018.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

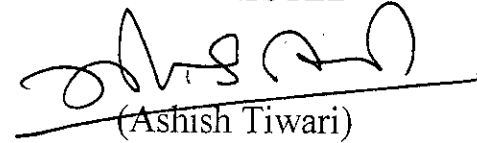
M/s. Sun Pharmaceuticals Industries Ltd.,
Erstwhile M/s. Ranbaxy Laboratories Ltd.,
Village Ganguwala, Post Office Bata Mandi,
Paonta Sahib, Distt. Sirmor, (H.P.)

G.O.I. Order No. 60-61 /21-Cx dated 19-3-2021

Copy to:-

1. Commissioner of CGST, Shimla.
2. Commissioner (Appeals), Central Excise & CGST, Chandigarh.
3. Sh. V. Lakshmikumaran, Advocate, 5, Jangpura Extension, Link Road, New Delhi
- 110 014
4. PA to AS (Revision Application)
5. Spare Copy
6. Guard File

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)