

SPEED POST



F. No. 195/73-77/SZ/2018-RA
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...25/04/23

Order No. 76-80/2023-CX dated 25-04-2023 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

- Subject : Revision Applications, filed under section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. HYD-EXCUS-MD-AP2-0162-0166-17-18 dated 29.12.2017, passed by the Commissioner (Appeals-II), GST & Central Excise, Hyderabad.
- Applicants : M/s Neuland Laboratories Ltd., Sangareddy Distt., Telangana.
- Respondent : Pr. Commissioner of CGST & Central Excise, Hyderabad.

ORDER

Five Revision Applications, bearing Nos. 195/73-77/SZ/2018-RA all dated 12.04.2018, have been filed by M/s. Neuland Laboratories Ltd., Sangareddy District, Telangana (hereinafter referred to as the Applicant), against Orders-in-Appeal Nos. HYD-EXCUS-MD-AP2-0162-0166-17-18 all dated 29.12.2017, passed by the Commissioner (Appeals-II), GST & Central Excise, Hyderabad. The Commissioner (Appeals) has, vide the impugned Orders-in-Appeal, rejected the appeals filed by the Applicants herein against 05 separate Orders-in-Original Nos. 601, 602, 603, 604 & 605/2017 (R) all dated 06.07.2017, passed by the Maritime Commissioner, Hyderabad.

2. Briefly stated, the Applicants herein filed rebate claims for Rs. 1,16,68,243/-, Rs. 66,56,260/-, Rs. 1,40,547/-, Rs. 36,74,552/- and Rs. 24,76,914/-, before the original authority under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The original authority found that the assessable value declared in the relevant ARE-1s was more than the FOB value declared on the relevant shipping bills and, accordingly, restricted the rebate claim, in cash, to the extent of Central Excise duty payable corresponding to the FOB value and balance amount was allowed by way of re-credit in the CENVAT credit accounts. The appeals filed by the Applicants against the re-credit in the CENVAT credit account instead of the corresponding amounts being paid, in cash, have been rejected, as time barred, by the Commissioner (Appeals). The details are as under:

S. No.	OIO No./Date	Sanctioned re-credit amount in cenvat account (Rs.)	Revision Application No.
(1)	(2)	(3)	(4)
1	601/2017 dt. 06.07.2017	44,458	195/73-77/SZ/2018-R.A. (SZ)
2	602/2017 dt. 06.07.2017	63,195	195/73-77/SZ/2018-R.A. (SZ)
3	603/2017 dt. 06.07.2017	2,311	195/73-77/SZ/2018-R.A. (SZ)
4	604/2017 dt. 06.07.2017	1,26,088	195/73-77/SZ/2018-R.A. (SZ)
5	605/2017 dt. 06.07.2017	1,34,998	195/73-77/SZ/2018-R.A. (SZ)
	Total	371050	

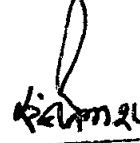
3. The Revision Applications have been filed, mainly, on the grounds that the Commissioner (Appeals) has dismissed their appeals on the basis of delay without examining the merits; that they have a good case on merits; and that the Government may condone the delay in filing the appeals before the Commissioner (Appeals).

4. Personal hearing in the matter was fixed on 24.03.2023 and 24.04.2023. Written submissions have been filed in response to the hearing notice dated 10.04.2023. Further, vide e-mail dated 21.04.2023, the Applicants have stated that they do not require personal hearing in the matter. No one appeared for the Respondent department on any of the dates fixed for hearing. It is, therefore, presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the matter. It is observed that the Orders-in-Original dated 06.07.2017 were received by the Applicants herein on the same day, i.e., on 06.07.2017 itself, whereas the appeals were filed before the Commissioner (Appeals) on 28.11.2017. As per sub-section (1) of Section 35 of the Central Excise Act, 1944, an appeal has to be filed before the Commissioner (Appeals) within a period of 60 days from the date of the communication of the order appealed against. Further, as per proviso to the said sub-section (1), Commissioner (Appeals) may condone a delay of 30 days, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days. In the present case, the Commissioner (Appeals) has pointed out that the normal period of limitation of 60 days ended on 03.09.2017 and the condonable period of 30 days ended on 03.10.2017, whereas appeals have been filed on 28.11.2017. This finding of Commissioner (Appeals) has not been disputed by the Applicants herein. Therefore, undoubtedly, the appeals were filed even beyond the condonable period of 30 days. It is settled by the judgments of the Hon'ble Supreme Court, in the cases of Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur {2008 (221) ELT 163 (S.C.)} and Amchong Tea Estate vs. Union of India {2010 (257) ELT 3 (SC)}, that the Commissioner (Appeals)

cannot condone the delay beyond the statutorily prescribed condonable period. Therefore, the Government does not find any infirmity in the Orders-in-Appeal impugned herein.

6. In view of the above, the revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

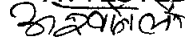
M/s Neuland Laboratories Ltd.
Survey No. 472, 473, & 291, Bonthapally Village,
Jinnaram Mandal, Sangareddy District-502313,
Telangana State.

G.O.I. Order No. 76-80/23-CX dated 25-04-2023

Copy to: -

1. The Pr. Commissioner of Central Goods & Service Tax, Hyderabad GST Bhavan Lal Bahadur Stadium Road, Basheerbagh, Hyderabad-500004.
2. The Commissioner (Appeals-II), GST & Central Excise, 7th Floor GST Bhavan, LB Stadium Road Basheerbagh, Hyderabad, TS-500004.
3. The Tax Nest, #1-10-5, 5-3-926/P15, Sai Gardens, Near Kaprai Cheruvu Vanasthalipuram, Hyderabad-500070.
4. PPS to AS (RA)
5. Guard File
- ✓ 6. Spare Copy.
7. Notice Board.

ATTESTED



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