

REGISTERED
SPEED POST

F.No. 198/300/2015-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... 10/4/18

Order No. 173/2018-Cx dated 9-4-18 of the Government of India, passed by
Shri R.P.Sharma, Principal Commissioner & 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 Order-in-Appeal No. JAL-EXCUS-
000-APP-177-178-15-16 dated 23.07.2015, passed by the
Commissioner of Central Excise (Appeals), Chandigarh

Applicant : M/s Sun Pharmaceuticals Industries Ltd., Paonta Sahib

Respondent : Commissioner of Central Excise, Chandigarh

ORDER

Revision Application No. 195/300/2015-RA dated 19.10.15 has been filed by M/s Sun Pharmaceuticals Industries Ltd., Paonta Sahib, Distt. Sirrnour (HP) (hereinafter referred to as the applicant) against the Order-in-Appeal No. JAL-EXCUS-000-APP-177-178-15-16 dated 23.07.2015.

2. Brief facts of the case are that the applicant availed area based exemption vide exemption Notification No.50/2003-CE dated 10.06.2003 in respect of P&P medicaments. In addition to P&P medicines they also manufactured bulk drugs which fell in the negative list for the purpose of the above notification and as a result they paid duty on the same. The applicant first expanded their installed capacity by 25% after 07.01.2003 and in 2010-2011 the applicant set up another medicament unit within their factory and this production block was called Block G. Earlier portion of the factory was covered in Block A to F. The new unit in Block G was set up after 31.03.2010 which was the cutoff date in the exemption Notification No. 50/2003. The applicant manufactured P&P medicaments in this unit and cleared them for exports on payment of duty for which rebate of duty was claimed. Meanwhile AC (Tech), CE, Chandigarh, wrote to ACCE (Shimla) on 08.04.2013 that under the provisions of Section 5A(1) of the Central Excise Act 1944 and the clarification under Circular No.940/01/2011-CX dated 14.01.2011, the manufacturer cannot opt to pay duty in respect of exempted goods and avail CENVAT credit of duty paid on inputs. But subsequently, The AC (Tech) Chandigarh, wrote to ACCE (Shimla) on 03.05.2013 after representation from the applicant that as there was no harm to revenue, the applicants may pay duty for goods cleared from the portion which became operational after 31.03.2010. The applicant filed rebate claim for Rs.2656183/- which were rejected by the jurisdictional Assistant Commissioner on the ground that the goods were exempted from duty and rebate was not admissible. The applicant preferred an appeal with Commissioner (Appeals), Chandigarh, who has rejected the applicant's appeals vide his above mentioned Order against which the applicant has filed this revision application on following grounds:

1. A new independent unit came into existence after 31.03.2010.

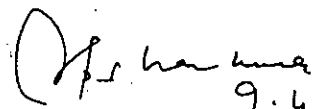
2. Input rebate is available along with refund of differential duty which was not payable according to the department.
3. Department has changed its stand twice.
4. The findings of Commissioner (Appeals) are unsustainable.

3. Personal hearing was held on 06.04.2018 which was attended by Shri Vinod Sharma on behalf of the applicant who reiterated the grounds of revision already pleaded in their application. He submitted a compilation of case laws, relevant provisions of CE Act/Rules and also argued that the Commissioner (Appeals) has wrongly placed reliance on two circulars mentioned at Sl.No.4 & 5 of their compilation as they are not applicable to the case and raised a point that Notification No.50/2003 is a conditional Notification. He also emphasized that this issue is already decided earlier by GOI vide its Order No.294-295/17-Cx dated 16.11.17.

4. On examination of Notification No.50/2003-CE dated 10.06.2003 it is noticed that exemption under this Notification is applicable to the new industrial units which have commenced commercial production between 7th Jan 2003 to 31.03.2010 and to the industrial units existing before 7th Jan 2003 but which have undertaken substantial expansion in installed capacity by not less than 25% on or after 7th day of Jan, 2003 but have commenced commercial production from such expanded capacity, not later than 31st March, 2010. While the applicant had availed exemption in respect of P.P. medicaments manufactured by them from its factory situated in Blocks A to F, the applicant did not avail exemption under the above notification on the same product manufactured from their same factory situated in Block G claiming that it is their new industrial unit from which commercial production has started after 31.03.2010 only. It is further contended that industrial unit is different from a factory and exemption under Notification No.50/2003 is given in terms of an industrial unit and not a factory. In support of their above contention they have also placed reliance on a CESTAT decision in the case of M/s. Victoria automotive INC Vs. CC Dehradun vide final order No.56294-56298/2017 dated 29.08.2017 wherein it has been held that industrial unit is something other than factory and each Division of a factory or undertaking manufacturing different identifiable products will have to be considered as a unit of the factory. On the other hand the case of the department

seems to be that Block G production plant is part of existing factory in Block A to F and the exemption under the above Notification is applicable to the entire unit, including the new plant situated in Block G. However, the government finds that the revenue authorities have completely overlooked a vital fact that the commercial production in Block G has been commenced after 31.03.10 only and because of this factor alone the applicant was not eligible to avail exemption under Notification No.50/2003-CE dated 10.06.2003 on goods manufactured by the applicant from their Block G portion of their factory irrespective of whether plant in Block G is considered as a new industrial unit as claimed by the applicant or mere expansion of the existing factory as is claimed by the revenue authorities. Therefore, it is evident that by virtue of para 2 of Notification No.50/2003 itself the applicant was not eligible to avail exemption from duty on the PP medicine manufactured from Block G plant after 31.03.2010 and accordingly the correctness of the payment of duty by the applicant in this case cannot be doubted. The properness of their action in payment of duty is further confirmed by the office of the Commissioner of Central Excise, Chandigarh, in as much as the A.C. (Tech), vide his letter dated 03.05.2013, advised the A.C. of Shimla Division that there is no harm to revenue if the applicant paid duty on goods from its factory in Block G which became operational after 31.03.2010.

5. In view of the above discussion, the Commissioner (Appeals)'s Order is set aside and Revision Application filed M/s Sun Pharmaceuticals Industries Ltd., Paonta Sahib Distt. Sirmour (HP) is allowed.


(R.P.Sharma) 9.4.18

Additional Secretary to the Government of India

M/s Sun Pharmaceuticals Industries Ltd.,
Paonta Sahib, Distt. Sirmour,
Himachal Pradesh

G.O.I. Order No. 73 /18-Cx dated 9-4-2018

Copy to:-

1. Commissioner of Central Excise, C.R. Building, Plot No.19, Sector-17C, Chandigarh
2. Commissioner (Appeals) Central Excise Chandigarh, C.R. Building, Plot No.19, Sector-17C, Chandigarh
3. The Assistant Commissioner of Central Excise Division, Out House No.2, Near MLA Corrsing, CMP Check Post, Boileauganj, Shi9mla-171005
4. PA to AS (Revision Application)
5. ✓ Guard File
6. Spare Copy.

ATTESTED

(Debjit Banerjee)
STO (RA)