

REGISTERED
SPEED POST



F.No.195/688/12-RA(CX)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue 07/10/18

ORDER NO. 125/2015-CX DATED 05.10.2015 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT 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. 105-CE/MRT-II/2010 dated 22.03.2010 passed by the Commissioner of Central Excise (Appeals), Meerut-II.

Applicant : M/s DSM Sugar Asmoli, Moradabad, UP.

Respondent : Commissioner of Customs & Central Excise, Meerut-II.

ORDER

This revision application is filed by M/s DSM Sugar Asmoli, Moradabad, UP (herein after referred to as Applicant) against the Order-in-Appeal No. 105-CE/MRT-II/2010 dated 22.03.2010 passed by the Commissioner of Central Excise (Appeals), Meerut-II with respect to Order-in-Original No. 39/Addl.Commr/M-II/2009 dated 30.04.2009, passed by the Additional Commissioner, Customs & Central Excise, Meerut-II.

2. Brief facts of the case are that the applicant is engaged in the manufacture of V.P. Sugar and Molasses falling under Chapter 17 of the Schedule to the Central Excise Tariff Act, 1985. The applicant vide their letter 15.05.08 addressed to Commissioner, Central Excise, Meerut-II, filed duty remission application under Rule 21 of the Central Excise Rules, 2002 seeking remission of duty of Rs. 3,79,071/- on 3874 quintals of sugar statedly damaged due to fire and water in a fire accident occurred at about 2.15 A.M. on 19.04.2008 in the corner of temporary godown no. 3 of the unit. It was stated in the said application that the fire was due to unknown causes and may be due to smoking of sugar loading labour. That it was an accident and the party was unaware of it. That the FIR was lodged with the police on 19.04.2008 and the goods pledged to PNB, Station Road, Moradabad. The details of the said loss were stated as under:-

(i) Total 5000 bags/quintals of sugar were affected due to fire. Out of which 640 bags/quintals of moist sugar were recovered and 486 bags/quintals of sugar were recovered from burnt sugar which is unfit for human consumption. Total 3874 bags/quintals of sugar were completely damaged due to fire and water.

(ii) Value of goods Rs. 58,11,001/- @ Rs. 1500/- per quintal of 3874 quintals of V.P. Sugar

(iii) Duty involved Rs.3,79,071/-.

Based on the facts and circumstances mentioned in the remission application dated 15.05.2008 and documents submitted by the applicant in support of their claim, a show cause notice was issued by the Additional Commissioner of Central Excise, Meerut-II alleging therein as to why the said application of remission of duty amounting to Rs. 3,79,071/- on 3874 quintals of sugar purportedly lost in the fire accident should not be rejected.

3. The Additional Commissioner, Central Excise, Meerut-II rejected the remission application of the applicant vide Order-in-Original No. 39/Addl.Commr/M-II/2009 dated 30.04.2009. Aggrieved by the order of the adjudicating authority, the applicant filed appeal before Commissioner (Appeals), Meerut-II, who upheld the Order-in-Original and rejected the appeal of the applicant vide Order-In-Appeal No. 105-CE/MRT-II/2010 dated 22.03.2010.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1. That the orders of the adjudicating authority as well as of the Commissioner (Appeals) are against the facts, evidence and circumstances of the case, as such the order is liable to be set-aside.

4.2 That Rule 21 of Central Excise Rules, 2002 provides for remission of duty in case of loss of goods due to natural causes or unavoidable accident or claimed by the manufacturer unfit for consumption or for marketing at any time before removal. That their case is fully covered by the provisions of Rule 21 under the clause of loss of goods due to unavoidable accident or being rendered unfit for consumption or for marketing at any time before removal. That it is uncontroverted fact that the loss of sugar has occurred due to unavoidable accident, the burnt sugar(waste) has become unfit for consumption or for marketing during storage in the factory. That the same has occurred before removal of goods, hence denial of remission of duty is unjustified, as such the orders of lower authorities are liable to be set aside.

4.3. That the Commissioner (Appeals) has confirmed the rejection of request for remission of duty on sugar lost in fire accident on the report of the Fire Department wherein it has been stated that fire accident might be due to careless smoking. That on reaching the site of fire accident the personnel of Fire Department with the help of sugar mill staff and the security personnel of sugar mill controlled the fire accident. That the mention of careless smoking being the reason of fire accident in the report of Fire Department is a presumption and there might be other reason as the godown of sugar storage was a temporary one, made from bamboos and polythene. That the fire accident has occurred in a corner of godown, had it not been controlled with the help of staff of sugar factory the damage would have been more in quantity. That no person would like to suffer loss of crores for negligence of workers which was not in the knowledge of the Management or Factory Personnel. That the confirmation of rejection of remission application is unjustified hence orders of both the lower authorities are liable to be set aside and remission of duty involved in fire and water accident may be granted.

4.4. That the Commissioner (Appeals) has written *"I do not find any force in the contention of the appellant that the time of fire accident at 2.15A.M. on 19.04.2008 there was no sugar loading labour, because apart from the labour the presence of the other staff such as security guards, plant maintenance staff, utility staff etc. cannot be overlooked as responsible for the incident for reasons as stated."*

That the above findings of Commissioner (Appeals) are beyond the scope of the show cause notice. That the show cause notice has alleged the fire accident may be due to smoking of sugar loading labour, whereas in the order, the Commissioner (Appeals) has travelled further by entangling security guards, plant maintenance

staff, utility staff etc. which is beyond the scope of show cause notice. That to levy such charge the department should have made further investigation in the matter by calling the records of clearance to know whether any clearance has been affected from the said godown in the night or by the persons posted in the area. That in absence of such an investigation, the allegation as well as the findings are unsustainable and liable to be set aside.

4.5. That Shri Mukesh Kashyap, Manger (Comm.) in his statement dated 23.04.2008 stated before Superintendent that the reason of fire is yet to be known. That it can be said that the fire was due to unknown causes and it cannot be said that in the fire accident there is any carelessness on the part of the applicant factory. That the rejection of application for remission of duty on goods destroyed in fire accident is unsustainable, unjustified and the order is liable to be set aside.

4.6. That the applicant came to know about the fire accident at about 2.15 A.M. on 19.04.2008. That they informed the Fire Brigade as well as S.H.O. of Thana Asmoli and in the morning informed the Range Superintendent. That the applicant had made all the efforts to stop the fire in the godown with the help of their staff and security personnel as mentioned in the report of Fire Department. That in such a situation, the remission of duty of sugar lost in fire and water accident is admissible as the applicant tried their best to stop the fire in godown and due to efforts of the factory staff, security guard and fire personnel the fire in the godown was limited to a corner only and controlled. That in such situation, the remission of duty involved Rs. 3,79,070.90 on 3874 quintal/bags of sugar damaged and lost in fire accident may be allowed.

4.7. That the sugar damaged and lost due to fire and water accident was lying there which was seen by al authorities and even the Majdoor Sangh and U.P. Pollution Control Board has given notice to the applicant to remove the burnt sugar so that it may not cause hazard, pollution or epidemic. That the applicant has suffered loss of sugar in fire and water accident as it has become unfit for consumption or marketing, the remission of duty involved is admissible which may be allowed.

4.8. That in the present case both the lower authorities have ignored the report of Police wherein it has been clearly mentioned that the fire accident has occurred suddenly and there is no mention that it has occurred due to carelessness.

5. The applicant has also filed a miscellaneous application for condonation of delay of 76 days in filing the Revision Application on the following grounds:-

5.1. That the applicant was pursuing appeal before wrong forum i.e.CESTAT whereas in case of loss of goods during storage the appeal lies to Revision Authority. That the Order-in-Appeal dated 22.03.2010 was received on 27.03.2010 and against

the said order, the appeal before CESTAT was filed on 24.05.2010. That on hearing of appeal on 26.06.2012, the appeal was dismissed as filed before wrong forum. That the CESTAT's order was issued on 02.07.2012 and the applicant received the order on 13.07.2012. That the applicant filed Revision Application on 20.07.2012. That there is a delay of 76 days which may be condoned. That Section 14 of Limitation Act, 1963 provides for excluding the time during which the appeal has been pursued before wrong forum. That in the present case the time period in pursuing appeal in wrong forum i.e. before CESTAT has been 24.05.2010 to 02.07.2012 (2 years 39 days) whereas total time taken for filing Revision Application has been 27.03.2010 to 20.07.2012 (2 years 115 days). That the condonation of delay comes to 76 days. That delay in filing appeal of 76 days be condoned. The applicant relied upon the case law Abicor Binzel Productions (India) Pvt. Ltd 2014(314)ELT 833(GOI).

5.2. That sugar 3874 bags/quintals involving duty of Rs. 3,79,071/- were destroyed by fire accident which occurred at 2.15 AM on 19.04.2008 in temporary godown of applicant factory. That the fire incident was immediately reported to authorities (Fire Brigade, Police Station) including Range Superintendent, Central Excise. That the Fire Department in their report has mentioned that fire accident may be due to careless smoking by labour. That the said presumption drawn by Fire department on which basis the lower authorities have rejected their remission claim is based on presumption and there is no material to support the said presumption that there was any malafide on the part of the applicant. That there was no loading of sugar from the godown in the night hours of 19.04.2008 when the fire accident occurred, it cannot be said that the fire accident may be due to smoking by sugar loading labour, hence the findings of both the lower authorities are unsustainable and liable to be set aside and remission of duty involved may be allowed. The applicant place reliance on following case laws:-

- U.P. State Sugar Corporation Ltd. Vs CE, Meerut-2004(168)ELT 280 (Tri-Del)
- Chandpur Enterprises Ltd Vs CCE Meerut-2008(229)ELT 133 (Tri-Del)

6 Personal hearing scheduled in this case on 20.07.2015 was attended by Shri Aalok Arora, Advocate on behalf of the applicant, submitted additional written submission reiterating the grounds of revision application alongwith case laws relied upon in this case:-

(i) UP State Sugar Corporation Ltd Vs CCE, Meerut-2004 (168) ELT 280 (Tri-Del)

(ii) Chandpur Enterprises Ltd Vs CCE, Meerut-2008(229)ELT 133 (Tri-Del)

Condonation of delay in filing Revision Application was also sought. Nobody attended the hearing on behalf of the department.

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

8 Government first takes up the application for condonation of delay of 76 days in filing the Revision Application:-

8.1.1 Government observes that the impugned Order-in-Appeal was communicated to applicants on 27.03.2010. Against the said Order-in-Appeal the applicant filed appeal before Hon'ble CESTAT on 24.05.2010. The Hon'ble Tribunal vide their final order 829/2012-SM(BR) dated 26.06.2012 dismissed the appeal as non-maintainable in terms of provisions of Section 35-B of the Central Excise Act, 1944. Subsequently, the applicant has filed present revision application on 20.07.2012. The matter has to be examined as to whether revision application is filed within statutory time limit. For understanding the relevant legal provision, the relevant Section 35 EE of Central Excise Act, 1944 is reproduced below:

"Section 35 EE Revision by Central Government (1) The Central Government may, on the application of any person aggrieved by any order passed under Section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of Section 35 B, annul or modify such order:

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months."

8.1.2. In the instant case, the applicant have sought the condonation of delay as they have wrongly filed appeal before Hon'ble CESTAT bonafidely and thereby prevented by sufficient cause. The Order-in-Appeal was received by the applicant on 27.03.2010 and they have filed appeal before CESTAT on 24.05.2010. The CESTAT order was issued on 02.07.2012 and received by the applicant on 13.07.2012 and they filed revision application received in this office on 20.07.2012.

- (a) Total time taken for filing the
Revision Application 27.03.2010 to 20.07.2012 = 2 yrs 115 days
- (b) Time taken for pursuing
Appeal before CESTAT 24.05.2010 to 02.07.2012 = 2 yrs 39 days
- (c) Time taken for filing Revision Application (excluding (b) above) = 76 days

8.1.3. Government notes that the Hon'ble High Court of Gujrat in case M/s Choice Laboratory vide order dated 15.09.2011, Hon'ble High Court of Delhi in case of M/s High Polymers Ltd. vide order dated 04.08.2011 and Hon'ble Bombay High Court in case of UOI (Revisionary Authority) Vs M/s EPCOS India Pvt. Ltd & Anr. 2013(290)ELT 364 (Bom) in order dated 25.04.2012 have held that the period spent

in prosecuting the proceedings bonafidely before the CESTAT, which had no jurisdiction, have to be excluded by giving the benefit of the provision of Section 14 of Limitation Act, 1963 while reckoning the time limit for filing revision application.

8.1.4. Government finds that keeping in view the above judgement, since the revision application is filed within period of three months, (excluding the period spent before Hon'ble CESTAT), Government condones the delay of 76 days in exercise of powers vested in it under Section 35EE of Central Excise Act, 1944.

9. On perusal of records, Government observes that the applicant vide their letter 15.05.08 addressed to Commissioner, Central Excise, Meerut-II, filed duty remission application under Rule 21 of the Central Excise Rules, 2002 seeking remission of duty of Rs. 3,79,071/- on 3874 quintals of sugar statedly damaged due to fire and water in a fire accident that occurred at about 2.15 A.M. on 19.04.2008 in the corner of temporary godown no. 3 of the unit. It was stated in the said application that the fire was due to unknown causes and may be due to smoking of sugar loading labour. That it was an accident and the applicant was unaware of it. A show cause notice was issued by the Additional Commissioner of Central Excise, Meerut-II alleging therein as to why the said application of remission of duty amounting to Rs. 3,79,071/- on 3874 quintals of sugar purportedly lost in the fire accident should not be rejected. The Additional Commissioner, Central Excise, Meerut-II rejected the remission application of the applicant. Aggrieved by the said order of the adjudicating authority, the applicant filed appeal before Commissioner (Appeals), Meerut-II, who upheld the Order-in-Original and rejected the appeal of the applicant. Now the applicant has filed this revision application on the grounds stated in para 4 above.

10. Government observes that remission of duty is governed by Rule 21 of Central Excise Rules, 2002 which reads as follows:-

"Remission of duty-Where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him in writing".

From perusal of above provisions, it becomes clear that remission of duty on lost or destroyed goods may be allowed provided such loss/destruction is caused by natural causes or by unavoidable accident and such causes are to be shown to the satisfaction of the jurisdictional Commissioner. In this case, the applicant in their application for remission of duty have stated the reason of the fire accident as due to "unknown causes and may be due to smoking of sugar loading labour". This fact has also been confirmed by the Fire Department which has also opined that had

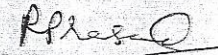
there been proper arrangement of light, the fire could have been controlled in due time. Further, Government notes that no concrete material evidence has been placed by the applicant to substantiate the cause of fire. The onus to prove that the loss occurred due to natural causes or due to accident over which they had no control clearly lies on the applicant seeking the benefit of remission of duty. The loss on destruction should have been brought about by the action of factors over which men have no fore-knowledge or control, by causes which are susceptible to no human control. A natural cause is the one which invariably happens naturally and is beyond the control of man. The case incident in the present case is not treatable as due to natural causes but because of failure on the part of persons responsible for taking required precautions. Further from the report of Fire Department it is also revealed that the Godown No. 3 of the applicant was made of bamboo and plastic and there was no light/electricity facility in that godown due to which the fire could not be immediately extinguished, and the same has also not challenged by the applicant. Government thus holds that though the fire that broke out destroying the goods was accidental in nature, it was not in the nature of an unavoidable accident and could have been avoided and averted had the applicant taken adequate precautions.

11. The case laws cited by the applicant are distinguishable on facts for the reason that in those cases there was no finding that the fire was caused due to circumstances beyond the control of the applicant. In the present case the Department's stand is that fire was avoidable.

12. Therefore, the Government finds no cause to interfere with the order passed by the Commissioner (Appeals) upholding the order of Additional Commissioner rejecting the applicant's claim of remission of duty and holds it as proper and legal.

13. In view of above discussions & findings, the revision application is thus rejected being devoid of merit.

14. So, ordered.

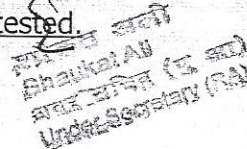


(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s D.S.M. Sugar, Asmoli,
Village Asmoli, Tehsil-Sambhal,
District Moradabad-244004.

Attested


Under Secretary (RA)

GOI ORDER NO. 125/2015-CX DATED 05.10.2015

Copy to:

1. Commissioner of Customs and Central Excise, Meerut-II, Opposite Shaheed Park, Delhi Road, Meerut, U.P.
2. Commissioner of Central Excise (Appeals), Meerut-II, Opposite CCS University, Mangal Pandey Nagar, Meerut-250005, U.P.
3. Assistant Commissioner of Central Excise Division, Moradabad, UP.
4. Shri Alok Arora, Advocate, Opposite Telephone Exchange, 82-Mission Compound, Saharanpur (UP).
5. PA to JS(RA)
6. Guard File.
7. Spare Copy

ATTESTED

(Shaukat Ali)

Under Secretary to the Government of India

शुकात अली
Shaukat Ali
अधीनस्थ (ए.सी.)
Under Secretary (RA)

