



**REGISTERED
SPEED POST**

F.No. 198/242/2012-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 29/1/16

ORDER NO. 15/2016-CX DATED 27.01.2016 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, 1944 against the Order-in-Appeal No.139/CE/MRT-I/2012 dated 11.06.2012 passed by Commissioner of Central Excise (Appeals), Meerut-I

Applicant : Commissioner of Central Excise Meerut-I.

Respondent : Triveni Engineering & Industries Ltd., Muzaffarnagar(UP).

ORDER

This revision application is filed by Commissioner of Central Excise, Meerut-I (hereinafter referred to as Applicant) against the Order-in-Appeal No. 139/CE/MRT-I/2012 dated 11.06.2012 passed by Commissioner of Central Excise, (Appeals), Meerut-I with respect to Order-in-Original No. 24/AC/MZN-II/2011 dated 31.05.2011 passed by the Assistant Commissioner of Central Excise, Muzaffarnagar-II against M/s Triveni Engineering & Industries Ltd., Muzaffarnagar(hereinafter referred to as the Respondent) .

2. Brief facts of the case are that the respondent are engaged in the manufacture of Rectified Spirit, Denatured Rectified Spirit, Extra Neutral Alcohol (ENA) and by-product i.e Fusel Oil. The products viz Denatured Rectified Spirit and by- product Fusel Oil are excisable goods falling under Chapter sub-heading No. 22072000 and 38069090 respectively of Central Excise Tariff Act, 1985 the other products viz Rectified Spirit and ENA are non-excisable goods. The respondents are also availing CENVAT Credit facility on inputs, input services and capital goods in terms of CENVAT Credit Rules, 2004. On scrutiny of ER-1 returns for the month of April 2009 to March 2010, it has been observed that the respondent has shown some quantity of Denatured Rectified Spirit as process loss after production of the finished goods. The respondent has not mentioned any reason for this process loss in their ER-1 return. As excise duty is leviable on the manufacture of excisable goods in a factory of manufacturer in terms of Section 3 of the Central Excise Act, 1944, hence all the goods manufactured in the factory are liable for payment of duty except under the circumstances when the party show sufficient reasons that the said 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 and claim remission of duty in terms of Rule 21 of Central Excise Rules, 2002. The respondent has neither shown any reason for such loss nor applied for remission of duty as required in terms of Rule 21 of Central Excise Rules, 2002 on the quantity shown to have been lost in the ER-1 returns. Therefore the said goods appear to have been removed from the factory without payment of Central Excise duty. Hence a Show Cause Notice was issued on 17.05.2010 to the respondent alleging therein that it appears that the respondent has clandestinely cleared 6137.9 ltr of Denatured Rectified Spirit, shown it as loss in their ER-1 return in order to evade Central Excise duty amounting to Rs. 10,092/- which is recoverable under the provisions of Section 11 A of the Central Excise act, 1944 along with interest in terms of Section 11 AB of the said Act. As the said goods appears to have been removed without payment of duty the respondent is liable for penal action under

Rule 25 of the Central Excise Rules, 2002 for alleged violation of Rule 4 of the said Rules.

2.1. The Show Cause Notice was adjudicated. The Assistant Commissioner, Muzaffar Nagar, Division-II vide Order-in-Original No.24/AC/MZN-II/201 dated 31.05.2011 confirmed the demand of Central Excise Duty amounting to Rs. 10,092/- and imposed penalty of equivalent amount along with interest.

3. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals), who vide his Order-in-Appeal No.139/CE/MRT-I/2012 dated 11.02.2012 set aside the Order-in-Original and appeal of the respondent was allowed.

4. The Applicant has now filed this Revision Application under Section 35 EE of Central Excise Act, 1944 before the Central Government mainly on the following grounds:-

4.1. That the respondent appealed that the quantity of molasses in question was in fact storage loss due to natural cause but could not produce any application for remission of duty before the competent authority.

4.2. That Rule 21 of Central Excise Rules, 2002 is very clear on remission of duty. That as per this rule "where it is shown to the satisfaction of the Commissioner that the 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 condition as may be imposed by him by order in writing." That as per the instructions issued by the Additional Collector, North U.P. Collectorate vide instruction no. 74/89 dated 01.06.1989 for condonation of storage loss for Denatured Rectified Spirit upto 0.5% and letter of CBEC, F.No. 261/15CC/80-CX 8 dated 06.02.1982 for same, it has been made clear that upto 2% of storage loss of molasses because of natural cause should be condonable for remission of duty.

4.3. That in this case remission of duty by the competent authority arises only when a request through an application or letter is made to him. The respondent has shown storage loss in their ER-1 returns for the period of April 2009 to March 2010 without mentioning any reason for the said loss, yet they were not able to produce the receipt of any application of remission before the adjudicating authority.

4.4. That the Commissioner (Appeals) has found that the losses reported in the ER-1 returns were much below 0.5% placing reliance on the order of Hon'ble

Tribunal in the case of Kishan Sahkari Chini Mills Ltd Vs. CCE, Allahabad and he found that no proof or evidence on record to uphold the allegation of clandestine removal or to prove that the goods have been sold without payment of duty. That relying upon the judgment of Hon'ble Tribunal in the case of UP State Sugar Corporation Vs CCE, Meerut 2006(206) ELT 677(Tri-Del) he found that the confirmation of demand of Central Excise Duty on storage loss of Denatured Rectified Spirit in the impugned order is not sustainable.

4.5 That remission of duty is a provision to facilitate the unavoidable storage loss of molasses or other products on the part of assessee and for that even circulars/clarifications from the CBEC Board are there. So, when a facility for the benefit of assessee as statutorily provided in Central Excise Rules is there, it should be availed as per the statutory requirements, otherwise it will set a precedence on the part of the manufacturer to avail this facility/concession for clandestine removal of the goods without payment of duty.

4.6 That it is also held by the larger Bench of Tribunal in the case of Avis Electronics (P) Ltd. 2000 (117) E.L.T. 571 (Tri.-LB) that when a particular thing is directed to be performed in a manner prescribed by Rules, it should be performed in that manner itself and not otherwise.

4.7 That the Central Government may revise the Order-in-Appeal No. 139/CE/MRT-I/2012 dated 11.06.2012 passed by the Commissioner (Appeals), Central Excise, Meerut-I and restore the Order-in-Original No. 24/AC/MZN-II/2011 dated 31.05.2011, passed by the Assistant Commissioner, Central Excise, Muzaffarnagar-II, in the case of M/s Triveni Engineering & Ind. Ltd., Bhikki Bilaspur, Jolly Road, Muzaffarnagar, or pass such order as deemed fit.

5. A show cause notice was also issued to the Respondent on 15.04.2013 in response to which the following submissions have been made:

5.1. That the impugned Order-in-Appeal narrates correctly the facts that the solvents, spirits, alcohol etc are volatile in nature and can evaporate over a period of time. That the percentage of loss was clearly indicated to be less than 0.5%. That the order also narrates factually and correctly that the loss is because of natural causes which are attributable to the inherent nature, characteristic of denatured spirit particularly, the natural causes of evaporation. That in case of natural losses no documentary evidence can logically be available.

5.2. That regarding the application for remission of duty on the storage loss, the loss reported in the instance case was less than 0.5%. That the loss was duly reported in the monthly return. That it was not the case here that the department detected the so called shortage. That when the department issued Show Cause Notice and they filed reply to the same refuting the allegations of demand of duty, the same could be treated as sufficient compliance of Rule 21 of Central Excise Rules.

5.3. That the product in dispute being volatile in nature, some losses were bound to occur and that was the reason as to whether the State Excise Officers are recording the losses in the statutory records. That the product is under physical control of State Excise Office, it was not possible for them to remove even a litre of Denatured Spirit without accounting the same in the statutory records and without the permission of State Excise Officer.

5.4. That the charge of clandestine removal of Denature Spirit to the extent of storage loss is totally untenable. That clandestine removal is to be established with cogent evidence. That there is nothing on record to show that there was any such removal from the factory in clandestine manner. That the charge of clandestine removal is very arbitrary, loss due to natural causes cannot be equated with clandestine removal.

5.5. The respondent placed reliance on the following cases laws:-

- CCE Madurai Vs Valan Beedi Works, 2003 (166) ELT 133 (Tri Chennai)
- Kalvert Foods India Vs CCE, Mumbai, 2003 (152) ELT 13 (Tri Del)
- Emmtex Synthetics Ltd Vs CCE, Delhi 2003 (151) ELT 170 (Tri Del)
- Thiruchengode Velavar Vs CCE, Coimb 2003 (155) ELT 159 (Tri Chennai)
- CCE Coimbatore Vs Sangamitra Cotton 2004 (163) ELT 472 (Tri Chennai)
- CCE Chennai Vs GM Re-rollers 2003 (153) ELT 392 (Tri Chennai)
- Nav Bharat Papter Vs CCE, Delhi 2003 (165) ELT 564 (tri Delhi)
- CE Coimbatore Vs Velavan Spinning 2004 (167) ELT 91 (Tri-Chennai)
- CCE Jalandhar Vs Harcharan& Bros 2004(168) ELT 454 (Tri Del)
- CCE Madurai Vs Madras Suspensions 2003 (156) ELT 807 (Tri Chennai).

6. Personal hearing scheduled in this case on 04.11.2015 and 20.11.2015 was attended by Shri Jitendra Kumar Gupta, Assistant Officer (Sales Tax and Excise), on behalf of the respondent who reiterated the submission made in the cross objection filed in response to the Revision Application. Shri Rakesh Chaturvedi, Assistant Commissioner, Division -II, Muzaffarnagar 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. On perusal of records, Government observes that in the instant case on scrutiny of ER-1 returns of the respondents for the month of April 2009 to March 2010, it has been observed that they have shown some quantity of denatured rectified spirit as process loss after production of the finished goods. The respondent has not mentioned any reason for this process loss in their ER-1 return. As excise duty is leviable on the manufacture of excisable goods in a factory of manufacturer in terms of Section 3 of the Central Excise Act, 1944, hence all the goods manufactured in the factory are liable for payment of duty except under the circumstances when the party show sufficient reasons that the said 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 and claim remission of duty in terms of Rule 21 of Central Excise Rules, 2002. The respondent has neither shown any reason for such loss nor applied for remission of duty as required in terms of Rule 21 of Central Excise Rules, 2002 on the quantity shown to have been lost in the ER-1 returns. A Show Cause Notice was issued on 17.05.2010 to the respondent alleging therein that it appears that the respondent has clandestinely cleared 6137.9 ltr of Denatured Rectified Spirit, shown it as loss in their ER-1 return in order to evade Central Excise duty amounting to Rs. 10,092/- which is recoverable under the provisions of Section 11 A of the Central Excise act, 1944 along with interest in terms of Section 11 AB of the said Act. As the said goods appears to have been removed without payment of duty the respondent is liable for penal action under Rule 25 of the Central Excise Rules, 2002 for alleged violation of Rule 4 of the said Rules. The Assistant Commissioner, Muzaffarnagar, Division-II vide Order-in-Original No.24/AC/MZN-II/201 dated 31.05.2011 confirmed the demand of Central Excise Duty amounting to Rs. 10,092/- and imposed penalty of equivalent amount along with interest. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals), who vide his Order-in-Appeal No.139/CE/MRT-I/2012 dated 11.02.2012 set aside the Order-in-Original and appeal of the respondent was allowed. Now the Applicant has filed this Revision Application before the Central Government on the grounds stated at para 4 above.

9. 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 the present case the respondent has neither shown any reason for such loss nor applied for remission of duty as required in terms of Rule 21 of Central Excise Rules, 2002 in respect of quantity shown to have been lost.

10. Government further observes that the respondent has contended that there is physical control on the clearances of Denatured Ethyl Alcohol of the State Excise Department and the Denatured or Non-denatured Ethyl Alcohol cannot be removed from the factory until issuance of a pass from State Excise Officers. Further that the State Excise Department allows 0.5% storage loss of Denatured Spirit. But in this case the respondent has failed to place on record any evidence showing that such losses occurred due to any natural cause and instead has merely shown the said losses in their ER-1 return only. Any remission can be allowed in terms of Rule 21 *ibid*. In the present case, Government observes that the respondent has *suo moto* claimed remission without fulfilling the conditions laid down under Rule 21 of Central Excise Rules, 2002 and obtaining permission from the Commissioner.

11. Further, Government notes that in the case Central Excise Appeal No. 315 of 2006- Commissioner of Customs & Central Excise Vs M/s U.P. State Sugar Corporation Ltd , the Hon'ble High Court of judicature at Allahabad has held that-

"We have no hesitation to record that even if in the facts of the case, the assessee claims remission from excise duty of goods said to have been lost in natural course, within the permissible limit, as per the circulars, he has to follow the procedure prescribed under Rule 21 of the Rules. Only after an order is made granting remission in respect of the goods so lost due to natural circumstances, he could be exempted from payment of excise duty".

From the above Hon'ble Court's judgement it is very clear that the respondent has to follow the procedure laid down under Rule 21 of the Central Excise Rules, 2002 which was not followed.


12. Government notes that in support the respondent has cited a number of decisions. However Government finds that the decisions relied upon by them are not applicable as the facts and circumstances of the quoted cases differ from that of the respondent's case.

13. Government, therefore, holds that remission of duty on storage losses cannot be claimed by the respondent even when no remission application has been filed by them and it is established to the satisfaction of the competent authority that such loss is due to circumstances referred to in Rule 21 *ibid*.

14. In view of the above, Government finds that Commissioner (Appeals) has erred in setting aside the impugned Order-in-Original and hence upholds the same and sets aside the Order-in-Appeal passed by the Commissioner (Appeals).

15. The Revision Application is thus allowed.

16. So, ordered.



(RIMJHIM PRASAD)

Joint Secretary to the Government of India

Commissioner of Central Excise, Meerut-I
Opposite Chaudhary Charan Singh University
Mangal Pandey Nagar
Meerut – 250 005.



ATTESTED

श्रीकान्त खली
Under Secretary (RA)

ORDER NO. 15/2016-CX DATED 27.01.2016

Copy to:-

1. Commissioner of Central Excise , Meerut-I (UP).
2. Commissioner (Appeals), Central Excise, Meerut-I (UP).
3. M/s Triveni Engineering & Industries Ltd. Bhikki Bilaspur, Jolly Road, Muzaffarnagar (UP).
4. The Assistant Commissioner of Central Excise Division, Muzaffarnagar (UP).
5. PA to JS (RA).
6. Guard File.
7. Spare Copy.

ATTESTED



(SHAUKAT ALI)
UNDER SECRETARY
GOVT. OF INDIA

शुकात अली
Shaukat Ali
असिस्टन्ट सेक्रेटरी (उ. व.)
Under Secretary (U.S.)

