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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 198/67/14-RA / 4197

Date of Issue: 12.08.2021

ORDER NO. 257/2021-CX (SZ) /ASRA/MUMBAI DATED 09.08.2021 OF THE OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT,1944.

Applicant : The Commissioner, CGST, Hyderabad.

Respondent: M/s Mayuka Labs (P) Ltd.
Plot No. A-4/2, Road No. 5,
IDA, Nacharam, Hyderabad – 500 076.

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. 14/2014-(H-III), C.E. dated 30.06.2014 passed by the Commissioner (Appeals), Central Excise, Hyderabad.

ORDER

This Revision application is filed by the Commissioner, CGST, Hyderabad (hereinafter referred to as 'the department') against the Orders-In-Appeal No. 14/2014-(H-III), C.E. dated 30.06.2014 passed by the Commissioner (Appeals), Central Excise, Hyderabad.

2. The brief facts of the case are M/s Mayuka Labs Pvt. Ltd., Plot No. A-4/2, Road No. 5, IDA, Nacharam, Hyderabad- 500 076 (hereinafter referred to as 'the respondents') are manufacturers of Bulk Drugs and Intermediates falling under Chapter No. 29 of the Central Excise Tariff Act, 1985. A fire took place in the factory premises of respondents on 30.09.2009 and goods worth Rs. 42,87,366/- were destroyed. The respondent had not applied for the remission of duty. The duty liability worked out to Rs. 4,41,600/-. The department issued a Show Cause Notice dated 30.04.2013 to the respondent demanding duty on the subject goods along with other demands. The adjudicating authority vide Order in Original No. 18/2013 CE Hyd III Adjn dated 30.10.2013 confirmed the demands along with interest and proposed penalty under Section 11AC of the Central Excise Act, 1944.

3. Aggrieved by the impugned Order in Original, the respondent filed an appeal before the Commissioner (Appeals I & III), Central Excise, Hyderabad. The Appellate Authority vide Order in Appeal No. 14/2014-(H-III), C.E. dated 30.06.2014 set aside the Order in Original. While passing the impugned Order in Appeal, the appellate authority observed that the subject demand pertains to the goods which were destroyed in the fire accident and the respondent was eligible for substantive benefit or remission of duty, the requirement to file application is procedural infirmity, for which substantive benefit (remission of duty) cannot be denied.

4. Aggrieved by the impugned Order in Appeal, the department has filed the instant Revision Application on the following grounds :-

- a) There is no evidence that the assessee has not claimed the Central Excise duty from the Insurance company.
- b) Remission of duty under Rule 21 of Central Excise Rules is provided 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.
- c) Remission should be granted on the application of the assessee explaining the reasons for such claim supported with evidences. However, the respondent had neither submitted application seeking remission of duty nor submitted any evidence to arrive for a conclusion that the loss of goods was due to natural causes or by unavoidable accident.
- d) Even if it is taken that non filing of remission application is a procedural infirmity, in terms of Board Circular No. 800/33/2004-CE dated 01.10.2004, they should have reversed cenvat credit attributable to inputs used in the manufacture of finished goods destroyed in accident. However, the respondents had not reversed such credit.

5. Personal hearing scheduled in this case on 08.01.2020, 14.01.2020, 25.02.2020, 05.02.2021 and 19.02.2021. However, no one appeared before the Revision Authority for personal hearing on any of the dates fixed for hearing. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the records available.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. The Government finds that a fire occurred in the factory premises of the respondent on 30.09.2009 and goods worth Rs. 42,87,366/- were destroyed. The respondent had not applied for the remission of duty. The duty liability worked out to Rs. 4,41,600/-. The department issued a Show Cause Notice dated

30.04.2013 to the respondent demanding duty on the subject goods along with other demands. The adjudicating authority vide Order in Original No. 18/2013 CE Hyd III Adjn dated 30.10.2013 confirmed the demands along with interest and proposed penalty under Section 11AC of the Central Excise Act, 1944. Further, the Appellate Authority set aside the impugned Order in Original as discussed above.

8. On perusal of the Revisions Application, the Government notes that the Revision application has been filed to the extent of issue related to the goods destroyed in fire only. In view of the above, Government restricts the order to the following grounds only :-

- a) Whether the respondent is eligible for remission of duty?
- b) Whether Cenvat Credit involved in the goods destroyed by fire to be reversed or otherwise?
- c) The duty demanded on the goods destroyed in fire is recoverable or otherwise.

9. The Government observes that Remission of Central Excise Duty means duty which is required to be paid as per statutory provisions, but waived from payment in specified circumstances by the competent authority. In the instant case it is a situation where some manufactured goods were destroyed in a factory on account of fire before clearance of the same. As these are manufactured goods, Central Excise duty is leviable on these goods in terms of Section 3 of Central Excise Act 194. But under the statutory provisions relating to Remission of Central Excise Duty, the same can be allowed to be remitted by the competent authority.

9.1 The Government finds that Section 5 of Central Excise Act 1944 provides enabling provisions for remission of Central Excise duty on Excisable goods which are found deficient in quantity or destroyed due to natural / unavoidable causes by making rules in this behalf. In exercise of powers conferred under Section 5 of the Central Excise Act, 1944, the Government has framed Rule 21

of the Central Excise Rules, 2002. Rule 21 of the Central Excise Rules, 2002, provides 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 by order in writing :

Provided that where such duty does not exceed ten thousand rupees, the provisions of this rule shall have effect as if for the expression “Commissioner”, the expression “Superintendent of Central Excise” has been substituted :

Provided further that where such duty exceeds ten thousand rupees but does not exceed one lakh rupees, the provisions of this rule shall have effect as if for the expression “Commissioner”, the expression “Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be,” has been substituted :

Provided also that where such duty exceeds one lakh rupees but does not exceed five lakh rupees, the provisions of this rule shall have effect as if for the expression “Commissioner”, the expression “Joint Commissioner of Central Excise or Additional Commissioner of Central Excise, as the case may be,” has been substituted.”

9.2 In view of above, Government observes that under Rule 21, a remission of duty is contemplated where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by (i) natural causes; or (ii) unavoidable accident; or are claimed by the manufacturer as being unfit for consumption or for marketing. The remission is to be granted subject to such conditions as may be imposed. The expressions “natural causes” or “unavoidable accident” have to be interpreted in their ordinary and natural connotation. An unavoidable accident is an event which lies beyond the control of the assessee and which has taken place despite the exercise of due and reasonable care and protection. Both the expressions have to be construed in a reasonable manner to sub-serve the

object of the legislature in introducing the provision for remission of duty in Rule 21.

9.3 The Government holds that the manufacturer must make an application giving proofs of loss like fire report, insurance survey report, police complaint etc. Further, the department should be informed as soon as possible after such loss or damage in order to satisfy the competent authority to ascertain the cause of destruction of goods, the value and duty involved in the goods destroyed, Cenvat Credit involved in the material used in manufacture of goods destroyed. In the instant case, it is found that the fire had occurred in the factory premises of the respondent on 30.09.2009 and the department in the Show Cause Notice issued on 30.04.2013 alleged that the respondent had not filed any remission claim in respect of duty on goods destroyed in fire. Though, the respondent in their ground for appeal filed with appellate authority stated to have filed remission claim, they had not produced any evidence / details of the claim so filed with the department. The Government opines that the respondent, being registered Central Excise assessee, was bound to comply with the provisions related to remission of duty on goods destroyed in fire as envisaged under the provisions of Rule 21 of Central Excise Rules, 2002. However, there is no evidence forthcoming on record to prove such compliance on the part of the respondent. In the instant case, the respondent had failed to take the recourse available under Rule 21. Therefore, the Government opines that the granting remission of duty without compliance of procedural requirements by the respondent would make the Rule 21 of Central Excise Rules, 2002 redundant.

9.4 Now so far as reliance placed upon the decision of the Hon'ble Supreme Court in the case of *Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner* reported in 1991 (55) E.L.T. 437 (S.C.) by appellate authority is concerned, it is required to be noted that even in the said decision it is observed and held by the Hon'ble Supreme Court that distinction is to be made between procedural condition of a technical nature and a substantive condition. It is observed that non-observance of the former is condonable while that of the latter

not condonable is likely to facilitate commission of fraud and introduce administrative inconveniences. As observed hereinabove, the procedure, which is required to be followed in Chapter 18 of the C.B.E. & C.'s Central Excise Manual cannot be said to be procedural condition of technical nature. As observed hereinabove, it is substantive condition while claiming remission of duty and destruction of goods.

9.5 In view of above discussion, the Government holds that the respondent cannot circumvent the provisions of law and claim the remission of duty with post facto effect when the demand of duty on goods destroyed by fire had been raised by the department. Therefore, the orders of the appellate authority in this regard were not just and proper.

10. Without prejudice to above, the Government finds that the cause of Revision Application in the instance case has been originated from the Show Cause Notice whereby the duty involved in the manufactured goods, claimed to have been destroyed by fire, has been demanded under Section 11A of the Central Excise Act, 1944. The Government holds that since the respondent have not made any application for remission of duty on goods destroyed by fire, the demand of duty involved on the finished goods is sustainable.

11. In view of the above discussion and findings, the Government sets aside the impugned Order-in-Appeal No. 14/2014-(H-III), C.E. dated 30.06.2014 passed by the Commissioner (Appeals), Central Excise, Hyderabad.

12. Revision Application is disposed off on above terms.

Shrawan
9/8/21
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

To

M/s Mayuka Labs (P) Ltd.
Plot No. A-4/2, Road No. 5,
IDA, Nacharam, Hyderabad - 500 076

ORDER NO. 257/2021-CX (SZ) /ASRA/MUMBAI DATED 09.08.2021

Copy to :

1. The Principal Commissioner of CGST & Central Excise, 2nd Floor, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad, Telangana, 500004.
2. The Commissioner CGST (Appeals-II), GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad, Telangana, 500004.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.