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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  
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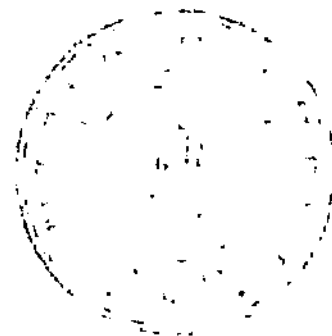
F. No. 198/98/2003-RA / 3719

Date of Issue:- 31.08.2020

ORDER NO. 298/2020-CX(SZ)/ASRA/MUMBAI DATED 04.03.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Sl. No.	Revision Application No.	Applicant	Respondent
1	198/98/2003-RA	The Commissioner of Central Excise, Chennai-I Commissionerate.	M/s Tide Water Oil Company (India) Ltd.

**Subject:** Revision applications filed under Section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. 80/2003 (M-I) dated 06.08.2003 passed by the Commissioner of Central Excise (Appeals), Chennai.



**ORDER**

This is a Revision Application filed by the Commissioner of Central Excise, Chennai-1 Commissionerate (hereinafter referred to as "the applicant") against order-in-appeal No. 80/2003(M-I) dated 6.8.2003 passed by the Commissioner of Central Excise (Appeals), Chennai.

2. M/s. Tide Water Oil Co. (1) Ltd., Chennai-13 (hereinafter referred to as "the respondent"), are engaged in the manufacture of lubricating oils and lubricating greases falling under Chapter Sub Heading 2710.90 of Central Excise Tariff Act, 1985. The final products cleared by them are in packed containers of varying sizes:

During the course of annual physical stock taking by the assessee on 31.3.02, a shortage of 4595.80 hrs of lubricating oil and 436 kgs of lubricating greases was noticed in the recorded stock as per RG-1 register. The assessee had not debited the duty involved on the shortage in quantity observed. Therefore the Superintendent of Central Excise, B-3 Range issued a SCN O,C. No. 303/2002 dated 26.08.2002 demanding duty of Rs. 34,343/- involved on the shortage in stock. The Assistant Commissioner 'E' Division after due process of law confirmed the duty amount of Rs. 34,343/- under Section 11A on the lubricating oil and greases found short vide his Order-in-Original No. 2/2003 dated 26.2.2003 on the ground that the loss detected at the time of annual stock taking was not entitled for the remission of duty.

Aggrieved by the order of the Assistant Commissioner, the assessee preferred an appeal before the Commissioner (Appeals). The Commissioner (Appeals) vide his Order-in-Appeal No. 80/2003(M-1) dated 06.08.2003 allowed the appeal filed by the assessee and directed the Asst. Commissioner 'E' Division to compute the loss and

verify as to whether it was falling within the condonable limit of 0.5% and if found to be so to condone the same.

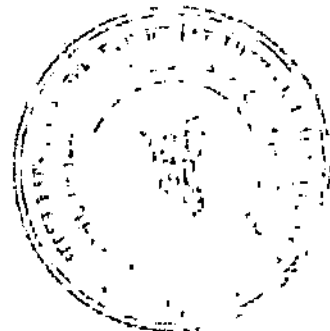


3. The Commissioner of Central Excise, Chennai-I filed Revision Application before the Joint Secretary (RA), New Delhi against the said Order in Appeal. The Joint Secretary (RA), New Delhi disposed off the Revision Application vide Order No. 127/04 dated 30.04.2004 by way of remand to the Original Authority for a fresh consideration on merits in terms of CBEC instructions from F. No. 261/11-13/2/76-CX.8 dated 04.10.76.

4. Aggrieved by the said Revision Order, the respondent filed a Writ Petition before the Hon'ble High Court of Madras. The Hon'ble High Court of Madras vide Order dated 02.08.2017 allowed the Writ Petition No. 18276/2004 setting aside the Order No. 127/2004 dated 30.04.2004 passed by the Joint Secretary (RA) and remanded the case back to the Joint Secretary (RA), New Delhi. The order passed by the Hon'ble High Court of Madras read as under :-

*"3. The first respondent set aside the order and remanded the matter to the Commissioner with a direction to follow a circular issue by the CBEC dated 04.10.176. Admittedly, the most important factor which has to be considered while assessing the spillage loss or loss which may occur during the course of packing is the manner in which the repacking or packing is done at the factory of concerned assessee. Obviously, in the year 1976, there was no much automation in various factories except in automobile industries. The percentage of loss which was adopted at 0.21% was for the period 1997-98. Subsequently, the loss in case of other assessee has been fixed between 0.4% to 0.5%. Therefore, it will be inequitable for the second respondent to adopt percentage of loss which was fixed in the 1976 regardless of the facilities available in the assessee's factory. Therefore to that extent, the order or remand passed by the first respondent is incorrect.*

**Accordingly, this writ petition is allowed and the impugned order dated 30.04.2004 is set aside. The matter is remanded back to the first respondent to apply a percentage for spillage and loss during repacking by calculating an average, which was adopted in the case of the petitioner for the earlier three assessment years ..."**



5. The Personal hearing was held on 14.01.2020 Shri T.S. Balasubramaniam, Advocate appeared on behalf of the respondent and filed subsequently filed submissions on 20.01.2020.

6. Govt. has carefully considered the orders-in-original, order-in-appeal and the submissions made. Government has also noted the directions given by the Hon'ble High Court of Madras while setting aside the Revision Order No. 127/2004 dated 30.04.2004 passed by the Joint Secretary (RA) and remanded the case back to this office i.e. first respondent in the said writ petition. The Government has perused the submissions of the applicant as well as the other documents available on record. The Government observes that the Superintendent of Central Excise, Range-E-2, E-Division, Chennai-34 vide his letter O. C. No. 110/2003 dated 07.08.2003 had furnished the statistical figures in respect of the quantity found short for the year 1996-97 to 2001-2002 for perusal of Commissioner of Central Excise. The data in respect of the spillage and loss for the earlier three assessment years has been ascertained from the said letter dated 07.08.2003 and the same is reproduced below:-

Year	Quantity found Short		Quantity Handled		% of Actual Shortage
	Lube Oil (in Litres)	Grease (in Kg.)	Lube Oil (in Litres)	Grease (in Kg.)	% of Actual Shortage
1998 - 1999	47816.5	207	10404219	2025224	Lub oil - 0.46 % Grease - 0.01 %
1999 - 2000	41217.7	1577	10412996	2176408	Lub oil - 0.40 % Grease - 0.07 %
2000 - 2001	9017.10	2037	6125874.5	1498765	Lub oil - 0.15 % Grease - 0.14 %
2001 - 2002	4595.80	436	3461419	728539	Lub oil - 0.13 % Grease - 0.06 %

From the data as above the average for earlier three years as per the dictions of Hon'ble High Court of Madras, is worked out as below :

$$\text{Lub Oil} \quad :- \quad \frac{0.46 + 0.40 + 0.15}{3} = \frac{1.01}{3} = 0.34$$

$$\text{Lub Grease} \quad :- \quad \frac{0.01 + 0.07 + 0.14}{3} = \frac{0.22}{3} = 0.07$$



7. From the above table, the Government observes that the Actual Shortage / Loss occurred during the Financial Year 2001-2002 based on reported figures i.e. 0.13% for Lube Oil and 0.06% for Lube Grease are less than the average worked out i.e. 0.34% for Lub Oil and 0.07% for Lub Grease. The Government, therefore, observes that the Actual loss in respect of both the products is less than average and hence the same is liable to be condoned.

8. In view of discussion in forgoing paras, the Government condones the percentage of loss on account of process / handling and spillage in respect of the shortage of Lube Oil up to 0.13% and Shortage of Grease Lub up to 0.06% in respect of inventory for the respective products for the year ending on 31.03.2002.

9. The revision application is disposed off on the above terms.

10. So ordered.

(SEEMA ARORA)

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

To

M/s Tide Water Oil Co. (India) Ltd.,  
Seshachalam Centre,  
10<sup>th</sup> Floor, 636/1, Annasalai Nandanam  
Chennai- 600 035.

Copy to :

1. The Principal Commissioner of CGST & Central Excise, Chennai North Commissionerate, No.26/1, Mahathma Gandhi Road, Chennai - 600 034.
2. The Commissioner of CGST & Central Excise (Appeals), , No.26/1, Mahathma Gandhi Road, Chennai - 600 034.
3. The Assistant Commissioner, CGST, E-Division, Chennai-I Commissionerate, 121, Uttamar Gandhi Salai, Nungambakkam, Chennai - 600 034.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare copy.

**ATTESTED**

B. LOKANATHA REDDY  
Deputy Commissioner (R.A.)

