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F.No. 195/17/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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NEW DELHI-110 066

Date of Issue... 9/1/13

Order No. 29 dated 9.1.2013 of the Government of India, passed by Shri D. P. Singh, 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. 420/2010 dated 15.9.10 PASSED BY COMMISSIONER OF CENTRAL EXCISE (APPEALS), MADURAI

APPLICANT : M/S SATHIA MATCH WORKS W.PUDHUPATTI, SRIVILLIPUTTUR TALUK

RESPONDENT : COMMISSIONER OF CENTRAL EXCISE, TIRUNELVELI

ORDER

This revision application is filed by the applicant M/s Sathia Match Works W. Pudhupatti, Srivilliputtur Taluk against the order-in-appeal No. 420/2010 dated 15.9.10 passed by the Commissioner of Central Excise (Appeals), Madurai with respect to order-in-original No. 52/2008 dated 18.12.08 passed by Assistant Commissioner of Central Excise Rajapalayam Division, Tirunelveli Commissionerate.

2. Brief facts of the case are that on 12.7.2007, a fire accident occurred in factory of applicant was reported to Range Officer by the applicant. A total quantity of 15,220 units of matches involving excise duty of Rs.56,436/- was destroyed in the fire accident. Factory building was also damaged in the fire. Range Officer visited the factory on 13.7.2007 and ascertained the quantity of matches so destroyed. The Range Officer's report dated 18.7.2007 cited the entry of the rats into the store room as the cause of the fire accident as also stated in the applicant's statement. The insurance company finally settled the appellant's claim for damages to building and stock of the matches for an amount of Rs.9,68,238/- which did not include excise duty.

2.1 A show cause notice dated 18.7.2008 was issued to the applicants proposing denial of their claim of remission of the aforesaid amount of excise duty on the ground that the fire accident was only avoidable accident caused due to lack of reasonable care and diligence on the part of the applicants in the matter of safe and secure storage of excisable goods prone to fire accident. Meanwhile the applicant reversed the cenvat credit of Rs.23,843/- for inputs used in the manufacture of final products destroyed in the fire accident in his cenvat credit account dated 18.1.2008. After due process of law the Assistant Commissioner, Central Excise rejected the entire claim of the applicant for remission of the impugned duty, holding that the fire accident was an avoidable one.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who modified the impugned order-in-original by reducing the demand of duty from Rs.56,432/- to Rs.32,589/- as the applicants had reversed the

duty by using the credit of Rs.23,843/- availed on inputs used in the manufacture of final products destroyed in fire. He observed that the demand of duty in the instant case was neither determined under Section 11A (2) of the Central Excise Act 1944, nor paid under Section 11 A(2B) of the said Act, but the notice was issued only under Section 5 of Central Excise Act 1944 read with Rule 21 of Central Excise Rules 2002 proposing denial of the applicant's claim of remission of the impugned duty, he set aside the confirmation and demand of interest on the amount of Rs.56,432/- i.e. on the duty demanded.

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 The Commissioner (Appeals) has erred in demanding duty from the appellant in respect of the matches which were destroyed in the fire accident. Because, an accident is an event which, with a reasonable degree of care could not have been foreseen and if it is foreseen could not have been avoided. If an accident can be avoided, it is not an accident. Unavoidable accident means an accident which has not arisen as a result of negligence or willful omission of manufacturer and has arisen despite reasonable precaution that he has taken.

4.2 The Commissioner (Appeals) has failed to see that the impugned goods being a inflammable nature and the chemicals viz., Potassium Chlorate and Sulphur used thereon also highly inflammable nature and hence they are controlled by the District Magistrate in issue and use of such chemicals by Arms Act licence, the fire accident occurred in the appellant factory is accidental one in spite of the precautionary measures taken by the appellant in guarding the finished goods as well as his factory premises. The applicants had employed watchman and even he posted one supervisor to stay in his factory for safety and also had fire buckets and sand buckets as required under the Factory's Act rules. The appellant also kept all matches in the store room under lock and key only and how he can prevent the entry of rats into factory in the

midnight. Thus is submitted that there is no negligence on the part of the appellant and the accident occurred was accidental one and Central Excise Authorities who cause the investigation has also satisfied the reasons for the accident and thereby recorded statement from the appellant and the persons who were available at the time of fire accident.

Case laws relied upon by the applicants:

- M/s Voltas Ltd. Vs. CCE 2003 (156) ELT 295 (CESTAT)
- M/s Rajpalayam Cements and Chemicals (P) Ltd. Vs CCE Tirunelveli 2008 TIOL, 12555 CESTAT (MAD)
- Chandpur Enterprises Ltd. Vs CCE Meerut-I 2008 (229) ELT 133
- Ergo Auto Ltd. Vs CCE, Faridabad 2008 (232) ELT 154 Tri (Del)
- Kishan Sahkari Chini Mills Ltd. Vs CCE Meerut-I 2008 (222) ELT 540
- National Flask India Ltd. Vs CCE Vapi 2008 (224) ELT 98 Tri (Ahd)

5. Personal hearing was scheduled in this case on 13.12.12. Shri K.Kumaravel, authorized representative appeared on behalf of the applicant who reiterated the ground of revision application. Shri J.Sivakumar, Superintendent of Central Excise, Srivilliputtur Range represented the Department and submitted that remission of duty involved on goods destroyed in fire should not be allowed because the applicant did not take adequate precaution to prevent the fire accident.

6. Government has carefully gone through the relevant case records and perused the impugned the impugned order-in-original and order-in-appeal.

7. On perusal of records Government observes that the adjudicating authority denied the claim of remission and confirmed the demand of Central Excise duty with interest on the goods destroyed in fire as the applicants had failed to take sufficient precautionary measures to safeguard the dutiable goods. Commissioner (Appeals)

modified the impugned order and reduced the demand of duty from Rs.56,432/- to Rs.32,589/- considering the fact that the applicants had reversed the credit of Rs.23,843/- availed on the inputs used in finished goods. He also held that since the notice to demand of duty was issued under Section 5 of Central Excise Act 1944 read with Rule 21 of Central Excise Rules 2002 only, interest was not payable. He accordingly set aside the confirmation and demand of interest of the said amount. Now the applicants have filed this revision application on the grounds as stated at para 4 above.

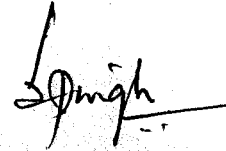
8. Government notes that in the instant case the only issue is to be decided is whether the applicant is eligible for remission of duty under Rule 21 of Central Excise Rule 2002 on the goods destroyed in the fire accident in the factory. For this it has to be specifically decided whether the said fire accident was unavoidable accident or not in the given facts and circumstances of the case. The applicants have submitted the fire accident occurred due to rolling over the big rats on the impugned goods. The Range Officer's report and the FIR of Police confirms the same version of the applicants as the cause of the fire accident. Government notes that as per Para 3 of order-in-original it is a fact that the applicants are running their business for at least 10 years. It is also on record that the said unit is located at the outskirts of an agricultural village surrounded by paddy fields and as per the safety norms the factory is facilitated to have free flow of air. If the applicant's contention is believed, it is natural that such a situation will help the rats to enter into their factory perpetually and therefore what is simultaneously required to put deterrent to make the rats away from the factory by adopting pest control measures etc. which lacks in the case. Secondly the applicant's version of cause of fire is hard to believe as the Commissioner (Appeals) has rightly observed that if applicant's version is to be believed then "there will be frequent fire accidents everywhere involving matches when they are either handled within the factory or transferred to their destination." But it is not the case. The fire accident was certainly avoidable. Thus, Government is of considered opinion that the applicants had not

exercised proper care or precaution for the safe storage of the impugned goods inflammable in nature, hence remission of duty is rightly rejected by lower authorities.

9. In view of above circumstances Government does not find any infirmity in the order of Commissioner (Appeals) thus upholds the same.

10. The revision application is rejected being devoid of merit.

11. So ordered.



(D.P.Singh)
Joint Secretary (Revision Application)

M/s Sathia Match Works
W. Pudhupatti,
Watrap (via), Srivilliputtur Taluk
Pin-626116

Assesed
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Ministry of Finance (Dept. of RA)
आय व करा विभाग / Govt. of India
११, बंगला रोड / New Delhi

ATTESTED

G.O.I. Order No. 29 dated 9-1-2013

Copy to:-

1. Commissioner of Central Excise, C.R.Building, HQS Office, Tractor Road, NGO 'A' Colony, Perumalpuram, Tirunelveli-07
2. Commissioner (Appeals), Lal Bahadur Shastri Marg, Central Revenue Buildings, Madurai-625002
3. Assistant Commissioner of Central Excise, Rajapalayam Division, Central Revenue Building, Shenbaga Thoppu Road, Rajapalayam-626117
4. Guard File.
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6. Spare Copy


(P.K.Rameshwaram)
OSD (Revision Application)

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THE UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

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