

**REGISTERED  
SPEED POST**



**F.No. 195/737/11-RA-Cx  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)**

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

Date of Issue... 17/11/13

ORDER NO. 30 /13-Cx DATED 09-01-2013 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.IND/CEX/000/APP/227/11  
dated 17.06.2011 passed by the Commissioner of  
Central Excise (Appeals), Indore

**APPLICANT** : M/s Malva Sahakari Shakkar Karkhana Ltd. Indore.

**RESPONDENT** : The Commissioner of Customs & Central Excise, Indore.

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ORDER

This revision application is filed by M/s Malva Sahakari Shakkar Karkhana Ltd, Indore against order-in-appeal No. No.IND/CEX/000/APP/227/11 dated 17.06.2011 passed by the Commissioner of Central Excise (Appeals), Indore with respect to Order-in-Original passed by the Assistant Commissioner, Central Excise, Division-Indore.

2. Brief facts of the cases are that the applicant factory was closed since 2002. At the time of closure of the factory there was huge stock of white sugar and brown sugar in the factory, which was carried forward since the crushing season of 2000-01 and 2001-02. The Directorate of Sugar, Department of Food & Public Distribution, Ministry of Consumer Affairs, Food & Public Distribution, Government of India, issued an order and directed the applicant to sell white sugar and brown sugar both as a brown sugar to the Industrial Users only. The Sugar stock was under lock-n-key of Indore Premier Co-Operative Bank, Applicant conducted physical verification of stock in presence of a committee. After verification, it was found that there was a shortage of sugar, details of stock were as under:-

Item	As per Excise records	As per physical verification	Shortage
White Sugar	1314 Quintals	632.64 Quintals	681.36 Quintals
Brown Sugar	1875 Bags (1663.65 Quintals)	1789 Bags (1479.06 Quintals)	86 Bags (184.59 Quintals)

The applicant decided to obtain remission of duty from the department on the following:-

- (i) on shortage of sugar i.e. 681.36 Quintals of white sugar and 184.59 quintals of brown sugar.
- (ii) On remaining stock of white sugar which is converted into brown sugar.

After filing remission application, applicant started to sell the goods. During the sale, further shortage of 1.75 Quintals of white sugar and 71.69 Quintals of brown sugar was found. Therefore applicant filed another remission application. The original authority rejected remission application on the ground that the applicant could not given any logical reason for such shortages.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

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 In present case the duty involved on the quantity found short is below Rs. 1,00,000/-. Hence remission can be granted by the Assistant Commissioner. Since applicant have already filed remission application in time duty supported by documentary evidence, the Assistant Commissioner should have granted the remission of the duty.

4.2 It is the settled law that if goods has been destroyed due to natural cause/unavoidable accident, the remission can be granted. In present case the stock of sugar was lying since 2001-02. During this storage period the sugar has been lost due to moisture absorption/rainy water. It is a acceptable fact that if sugar is kept in store for long period, the quantity may reduced due to number of reason. It is a storage loss which is a unavoidable cause. Hence remission may be granted. The applicant has relied upon some case laws in favour of their contention:-

- (i) Haji Latif Gani Vs. CCE, Nagpur 2011 (263) ELT 431 (Tri. Mum.)
- (ii) Bal Kishan Agrawal Glass Inds. Ltd. Vs. CCE 2010(256) ELT 775
- (iii) Titawi Sugar Complex Vs. CCE, MRT-I 2008(231) ELT 468 (Tri.-Del)

- (iv) DSM Sguar Vs. CCE, MRT-2008 ELT 301 (Tri. Del.)
- (v) Kisan Sahkari Chinni Mills Ltd. Vs. CCE., MRT 2008 (227) ELT 538
- (vi) Rajapalayam Cement & Chemicals Ltd. Vs. CCE Tirunelveli 2008 (227) ELT 401
- (vii) CCE, Allahabad Vs. Balrampur Chini Mills Ltd. 2008 (223) ELT 34 (All.)
- (viii) Rosa Sugar Works Vs. CCE Lucknow 2009 (241) ELT 218 (T.)
- (ix) Jayshree Chemicals Ltd. Vs. CCE, BBSR-I 2009 (238) ELT 289 (T)
- (x) CCE., Patna Vs. Cownpore Sugar Works Ltd. 2001 (137) ELT 577 (Tri.-Kolkata)
- (xi) Harinagar Sugar Mills Ltd. Vs. CCE., Patna 2010 (256) ELT 592 (Tri.-Kolkata)

4.3 The Commissioner (Appeals) without any base treated the present case of shortage as a case of theft whereas neither applicant have filed remission application on the ground of theft nor the original adjudicating authority treated this case as case of theft. Hence the Commissioner (Appeals) assumed a new case which was not the subject matter of the present case. Hence, the appeal decided on entirely new grounds is not sustainable.

5. Personal hearing was scheduled in this case on 07.12.2012 Nobody attended the hearing. Authorized representative of the applicant vide their letter dated 03.12.2012 requested to decide the matter on the basis of submission made in revision application. Hence, Government proceeds to decide the case on merits on the basis of available records.

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

7. Government observes that the factory of applicant, which was engaged in production and clearance of sugar and molasses, got closed in the year 2002. At the time of its closure, there was stock of white and brown sugar of the crushing

reason of 2000-01 and 2001-02. As per the order of Directorate of sugar to sell all the sugar stocks as brown sugar, the applicant conducted the physical verification of the sugar lying in the stock and it was observed that there was shortage of 681.36 Qtls of white sugar and shortage of 86 bags (184.50 Qts.) of brown sugar. The applicant filed remission application of duty involved in such shortage quantity. Further, at the time of sale of impugned goods, they further noticed some shortage w.r.t. quantity ascertained at the time of physical verification. They filed remission application for such losses also. Remission application of the applicant was rejected by the original authority vide impugned Order-in-Original. Commissioner (Appeals) uphold impugned Order-in-Original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that remission of duty is governed by rule 21 of the 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 by order in writing:

.....  
 .....  
 ....."

From perusal of above provision, it becomes quite clear that remission of duty on lost or destroyed goods may be allowed provided if such loss/destruction caused by natural causes or by unavoidable accident, and such causes are to be shown to the satisfaction of the jurisdictional Commissioner. The assessee applying for remission of duty should satisfy the competent authority that inspite of taking all precaution/effort by them, loss/destruction of goods happened due to natural cause/unavoidable accident. If such precaution/efforts are not explained by the assessee, their remission claim can not be accepted.

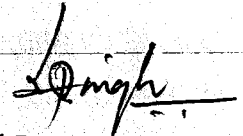
8.1 Government observes that in the instant case, the applicant's stock of sugar was lying for 7-8 years. The applicant has stated that this stock was under lock and key of bank officials. However, the applicant has not produced any evidence to show that they made any communication with bank requesting them to allow inspection/verification so as to ensure safety of their sugar stock on periodic interval. If the applicant was aware of such natural losses which can occur in storage of sugar, they were required to take necessary measures to prevent such losses, which they failed to do. There is no valid explanation for shortage of such a huge quantity of white sugar to the extent of 50%. Applicant had stated before adjudicating authority that matter about shortage in stock of sugar was under investigation and they were under process to find out reason for such shortage. This clearly shows that they have wrongly claimed remission of duty on said shortage which can not be attributed to natural causes.

9. Case laws cited by the applicant are not applicable to this case in as much as in those cases, loss/destruction occurred due to natural cause/unavoidable accident, which is not the case in this matter. Hence ratio of case laws cited by the applicant cannot be made applicable to this case.

10. In view of above observation, Government do not find any infirmity in order of Commissioner (Appeals) and hence, upholds, the same.

11. Revision application is thus rejected being devoid of merit.

12. So, ordered.

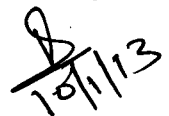


( D.P. Singh )

Joint Secretary to the Government of India

M/s Malwa Sahakari Shakkar Karkhana Ltd.,  
Barlai,  
Distt- Indore (M.P.)

(Attested)



Order No. 30 /13-Cx dated 09-01-2013

Copy to:-

1. The Commissioner of Central Excise & Customs, P.B. No. 10, Manik Bagh Place, Indore -452 001 (MP)
2. The Commissioner (Appeals) Customs & Central Excise, Keshar Bagh Road, Indore, (MP).
3. The Assistant Commissioner of Central Excise, & Customs, Division Indore, (MP)
4. M/s Pradeep Asawa, Chartered accountant, 445-46, Vikram Tower, 3<sup>rd</sup> Floor, Sapna Sangeeta Road, Indore.
- ✓ 5. PS to JS(Revision Application)
6. Guard File
7. Spare Copy.

  
10/1/13

(Bhagwat P. Sharma)  
OSD-III (Revision Application)

THE UNIVERSITY OF CHICAGO

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