

REGISTERED
SPEED POST



F.No. 198/188-A/2012-R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue.. 37/8/18

Order No. 493/2018-CX dated 01-8-18 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional 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.23/CE/ALLDI/2009 dated 6.2.2009 passed by Commissioner of Central Excise (Appeals), Allahabad.

Applicant : Commissioner of Central Goods & Service Tax, Varanasi

Respondent : M/s. J.H.V. Sugar Ltd., Gadaura, Nichloul, District-
Maharajganj (U.P.)

ORDER

A revision application No.195/188-A/2012-R.A. dated 9/05/2017 is filed by the Commissioner of Central Excise, Allahabad (hereinafter referred to as the applicant) against the Order-in-Appeal No.23/CE/ALLDI/2009 dated 6.2.2009, passed by the Commissioner of Central Excise (Appeals), Allahabad, whereby the appeal of M/s. J.H.V. Sugar Ltd., Gadaura, Nichlaur District- Maharajganj (U.P.) (hereinafter referred to as the respondent) is allowed and the OIO passed by the jurisdictional Assistant Commissioner confirming demand of duty on the respondent is set aside.

2. The revision application is filed mainly on the ground that the storage loss due to natural causes is only condonable under Rule 21 of Central Excise Rules and the Commissioner (Appeals) has wrongly set aside the OIO even when no natural cause for the loss of goods was explained by the respondent.

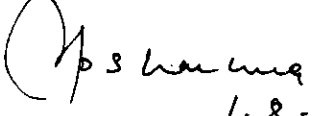
3. A personal hearing was offered on 13/6/2018 in this case. However, no one appeared for the personal hearing either from the applicant or for the respondent and even no request for any other date of hearing was also received from which it is implicit that both are not interested in availing the personal hearing. Hence, the revision application is taken up for a decision on the basis of available case records.

4. The Government has examined the matter and it is observed at the outset that the revision application has been filed on 9.5.17 after gap of more than eight years from the communication of the OIA on 13.2.2009. But despite of such enormous delay no request for condonation of delay was made earlier along with the revision application and an application of condonation of delay

has been filed recently on 26.4.18 when this lapse was pointed out by this office vide letter dated 20.3.18. Now in their letter dated 26.4.18, the Commissioner, Central Excise, Varanasi, has tried to justify the delay on the ground that they had earlier filed the appeal before the CESTAT and the same was disposed off vide Order dated 22.5.12 by way of directing its Registry to transfer the case papers to the Joint Secretary (Revision Application) on the ground that only the Government has the jurisdiction to deal with the issue relating to remission of duty on loss of molasses. But the Government is not satisfied by the above reason as there is complete silence over the enormous delay in filing the revision application even after the CESTAT's Order dated 2.5.12 was issued. In fact the applicant took more than six months time in filing the revision application even after the Under Secretary to the Government of India had requested the applicant to file revision application in this case vide his letter dated 11.11.16 which is mentioned in the aforesaid letter of condonation of delay also. Further not to speak of sufficient cause which might have prevented the applicant from filing Revision Application after CESTAT's Order and at least soon after receiving the letter from the Under Secretary (R.A.), no reason for taking six months in filing Revision Application is given in the said application even after having received the letter of the Under Secretary. Above all, under Section 35EE(2) of the Central Excise Act the Government has power to condone the delay upto three months only and it does not have power to condone the delay of more than three months for any reason. Therefore, the revision application is patently time barred and it is liable for rejection on this ground alone. Even the Government does not also agree with the view that Government has only the jurisdiction with regard to remission of duty on loss of goods which is the main

cause for demanding duty in this case. On the contrary, it is evident from first Proviso to Section 35B of the Central Excise Act that Government has limited jurisdiction to deal with only those cases of loss of goods where the loss occurred in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in warehouse or in storage. Thus only transit and processing loss of goods are the subject matter of the Government and any other type of loss of goods occurring in the factory or storage etc. on account of natural causes or others does not fall in the domain of the Government. This view is also supported by the CESTAT's final order No.54719-20/2017 dated 6.7.17 in the case of M/s Kisan Sahkari Chini Mills Ltd. Vs. CCE Meerut-II wherein the appeal of assessee involving loss of goods on account of bursting of molasses storage tanks, remission of central excise duty claimed by the assessee and demand of central excise duty by the central excise authorities is decided by the CESTAT and not the revisionary authority. Since in the instant case the loss of goods has not occurred on account of either transition of the goods or during manufacturing process, the Government is convinced that the issue relating to demand of duty on account of storage loss in this case does not fall in the jurisdiction of the Government.

5. Accordingly, the revision is rejected.


(R.P.Sharma) 1.8-18

Additional Secretary to the Government of India

Commissioner of Central Goods & Service Tax,
9, Maqbool Alam Road,
Near Zila Kutchehari,
Varanasi-221002

G.O.I. Order No. 493/18-Cx dated 01-8-2018

Copy to:-

1. M/s J.H.V.Sugar Ltd., Gadaura, Nichlaul, Distt-Maharajganj (U.P.)
2. Commissioner of Central Excise (Appeals), Lucknow (Erstwhile
Commissioner of Central Excise (Appeals), Allahabad)
3. The Assistant Commissioner, Central Excise, Division Gorakhpur (U.P.)
4. PA to AS (Revision Application)
5. ✓ Guard File

ATTESTED

(Ravi Prakash)
OSD (R.A.)
