REGISTERED SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.195/262/13-RA/5026 Date of Issue:- 01.09.2020 ~~.08.2020~~

ORDER NO.574/2020-CX (SZ)/ASRA/MUMBAI DATED 10 .08.2020 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.

Sr. No.	Revision Application No	Applicant	Respondent
1	195/262/13-RA	M/s Mangalore Refinery & Petro-Chemicals Ltd., Mangalore.	The Commissioner of Central Goods & Service Tax, Mangaluru.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Orders-in-Appeal No.614/2012 dated 06.11.2012 passed by the Commissioner (Appeals), Central Excise, Mangalore.

ORDER

This revision application has been filed by the applicant M/s Mangalore Refinery & Petro-Chemicals Ltd., Mangalore against Order-in-Appeal No. 614/2012 dated 06.11.2012 passed by the Commissioner (Appeals), Central Excise, Mangalore.

2. The applicant are holding Central Excise Registration No. AAACM5132AXM001 for manufacture of petroleum products falling under Chapter 27 of Central Excise Tariff Act, 1985. The applicant are storing the excisable products in the tanks and showing storage loss / gain in their monthly ER-1 returns regularly. Though the applicant declared these shortages in their monthly E.R.1 returns for the month of July 2010 to December 2010, they have not furnished any reasons / explanations for the shortages found in their excisable goods. They have also not discharged the duty liability amounting to Rs. 2,58,83,493/- (Rupees Two Crore Fifty Eight Lakh Eighty Three Thousand Four Hundred Ninety Three Only) in respect of the said quantity of excisable goods found short and shown in their monthly returns.

3. The Adjudicating Authority vide Order in Original No. 15/2012 CEX. ADC dated 30.03.2012 condoned the storage losses upto 0.5% in respect of Naphtha, HSD, Motor Spirit, LPG, SKO & ATF and upto 0.25% in respect of Furnace Oil as per the limits prescribed by the Board in various circulars issued from time to time in this regard. Further, the Adjudicating Authority confirmed the demand of duty amounting to Rs. 99,902/- (Rupees Ninety Nine Thousand Nine Hundred Two Only) along with interest on storage loss occurred in respect of Asphalt, Bitumen and CRM Bitumen since no condonation limits are prescribed for these products.

4. Being aggrieved by the impugned orders, the applicant filed appeal with appellate authority. The appellate authority rejected the appeal and upheld the Order in Original passed by the Adjudicating Authority.

5. Being aggrieved by the said order in appeals, the applicant have filed these revision applications under section 35EE of Central Excise Act, 1944 before the Central Government on the following grounds :-

5.1 The Board's Circular No. 261/6/28/80 CX.8 dated 19.10.1981 pertaining to condonation of losses in storage clearly laid down that in respect to petroleum products wherein evaporation and pilferage can take place, CBEC has prescribed 1% as a standard permissible loss. There is no specific mention of any product in this circular for which condonable limits apply.

5.2 The said circular is equally applicable to storage loss in respect of Asphalt which is also one of the petroleum products.

5.3 They seek to rely on the judgement of the Hon'ble Tribunal in the case of Indian Oil Corporation Limited Vs. the Collector of Central Excise, 1984 ELT 1116 wherein it has been laid down that the Assessing Authority should not act mechanically as long as the losses were not caused due to wanton negligence on the part of the assessee, they should be considered by the Authorities rather than levying duty on such losses.

5.4 The alleged losses had occurred in storage tanks and losses were genuine and beyond the control of the Applicant.

5.5 There is no allegation in the Show Cause Notice that there had been any clandestine removal of any of the product or that such losses had been due to negligence on the part of the Applicant.

6. Personal hearing was fixed on 03.12.2019, 10.12.2019 and 22.01.2020. The applicant vide letter dated 20.01.2020 has requested to take on record the written submission submitted on 05.12.2019 in lieu of personal attendance. No one appeared on behalf of the applicant.

7. Government has carefully gone through the relevant case records, written / oral submissions and perused the impugned order-in-originals and order-in-appeal.

8. On perusal of records, Government observes that duty of Rs. 99,902/- was confirmed by the adjudicating authority on account of storage loss in respect of Bitumen, CRM Bitumen and Mixed Xylene noticed during the

period from July 2010 and December 2010. In appeal, Commissioner (Appeals) upheld the said order-in-originals. The contention of applicant is that Board Circular No. 261/6/28/80-CX 8, dated 19-10-1981 covers all the petroleum products whereby loss condonation upto 1%.

9. The Government observes that as per the Petroleum Manual the Board has specifically prescribed cumulative loss allowance of 0.5% for motor spirit, kerosene, refined diesel oil and 0.25% of furnace oil, 0.5% for Naptha and 0.05% for LSHS which is the maximum condonable limit permissible under Circular No. 261/6/28/80-CX 8, dated 19-10-1981 issued by the CBEC. The said circular nowhere mentions about its applicability on pipeline deliveries and transit losses during in bond removal but simply indicates storage and processing losses. It is evident that condonation of loss is extended only to a few commodities of the petroleum Sector and that too with different % ages. The said circular clearly prescribes the percentages of losses that would be available commodity wise respectively. Moreover, the percentage of losses allowed also differs from commodity to commodity, which clearly goes to show that all the commodities are distinguished from one another. It is observed that the Adjudicating Authority had condoned the losses in terms of Board's Letter F. No. 261/6/28/80-CX 8, dated 19-10-1981 for the eligible commodities. Further, the Commissioner (Appeals) has recorded in the impugned Order in Appeal that Government vide Order No. 211/10-CX dated 16.02.2010 has upheld Order in Appeal No. 111/2008 dated 21.08.2008 in the case of the similar issue against the applicant. The said Order in Appeal has not been set aside. In the absence of any new facts emerging, it is a binding precedent. The Commissioner (Appeals) has also taken not of the fact that the applicant's Revision Application to allow storage loss on actual basis or on the basis of Board's Instructions dated 19.10.1981 has already been rejected on several previous occasions by the Government of India. Moreover, as mentioned in the Revision Order No. 211/10-CX dated 16.02.2010, the Board's Instructions dated 19.10.1981 had been issued to condone the losses of imported goods stored in warehouse and cannot be

made applicable to the facts of the present case.

10. In view of the above discussion, Government holds that the Commissioner (Appeal) has rightly upheld the Original Order confirming the demand of Central Excise Duty on shortages noticed in respect of commodities viz. Bitumen, CRM Bitumen, Mixed Xylene etc. which are not covered under the said circular dated 19.10.1981. As such, Government finds no reason to set aside the impugned order-in-appeal.

11. In view of above circumstances, Government finds no infirmity in the impugned order-in-appeal and therefore upholds the same.

12. The revision applications are dismissed.

13. So ordered.

(SEEMA ARORA)
Principal Commissioner (RA) &Ex-Officio
Additional Secretary to the Government of India

ORDER NO.574/2020-CX (SZ)/ASRA/MUMBAI DATED 31 .08.2020

To,

M/s Mangalore Refinery & Petro-Chemicals Ltd.,
Bala Village, Kuthethoor,
Via Katipalla, Mangalore- 575 030.

Copy to:

1. The Commissioner of CGST & Central Excise, Mangalore Commissionerate, Bunts Hostel Road, Trade Centre Building, 7th Floor, Mangalore- 575 003.
2. The Commissioner of CGST & Central Excise, (Mysuru Appeals),- S-1 & S-2, Vinaya Marg, Siddartha Nagar, Mysuru-570011.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.

ATTESTED

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