REGISTERED
SPEED POST

F. No. 195/457/2012-RA(CX)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue....2/5/2016.....

ORDER NO. 57/2016-CX DATED 29.04.2016 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Subject	:	Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. Commr.(A)/ 274/VDR-I/10 dated 20.10.2010 passed by Commissioner of Central Excise (Appeals), Mumbai – II.
Applicant	:	M/s NIRMA LIMITED
Respondent	:	Commissioner of Central Excise, Vadodara – I.

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ORDER

This Revision Application is filed by M/s Nirma Ltd., Ahmedabad (hereinafter referred to as the Applicant) against the Order-in-Appeal No. Commr.(A)/274/VDR-I/10 dated 20.10.2010 passed by Commissioner of Central Excise (Appeals), Mumbai-II with respect to the Order-in-Original No.D/07/DN.I/08-09 dated 17.03.2008 passed by the Assistant Commissioner of Central Excise & Customs, Division-I, Vadodara-I.

2. The facts of the case, in brief, are that the applicants are engaged in the manufacture of Linear Alkyl Benzene (LAB) falling under Chapter 38 of the Central Excise Tariff Act, 1985. The Applicants had cleared LAB to various locations under UT-I for export under the provision of Rule 19 of Central Excise Rules, 2002, in the months of November, 2007 and May, 2008. On scrutiny of proof of export documents filed by the appellants on 24.01.2008 and 02.06.2008, it was noticed that 7.921 M.T. of LAB were short shipped/not exported by the applicants. The applicants requested for remission of duty in respect of shortage of LAB due to evaporation loss during transit, under Rule 21 of Central Excise Rules, 2002, to the jurisdictional Assistant Commissioner, as the loss was claimed to have within the permissible limit prescrtibed by the Board's Circular No.292/8/97-CX dated 24.01.1997 in respect of Natural Gasoline Liquid (NGL). The applicants were directed to pay the duty on the 7.921 M.T. of goods cleared from the factory, but not exported from the place of export, which they failed to do so. Accordingly, a Show Cause Notice was issued for recovery of Central Excise duty amounting to Rs.85,435/-, interest at the appropriate rate and proposing for imposition of penalty under Rule 25 of Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944. The Show Cause Notice was adjudicated by the impugned Order-in-Original dated 17.03.2009 confirming Central Excise duty of Rs.85,435/- along with interest at the appropriate rate and imposing a penalty of Rs.85,435/- under Rule 25 of Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944. The adjudicating authority observed that the applicants have not submitted adequate documents, proof or evidences in support of their remission claim as well as to show that their product LAB is NGL.

3. Being aggrieved by the said Order-in-Original applicant filed appeals before Commissioner(Appeals) who modified the impugned Order-in-Original in as much as order of imposition of penalty is set aside.

4. Now the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 The applicant submit that the only issue to be acceded in the present case is about condonation of losses by way remission of duty under Rule 21 for the short quantity occurred due to natural causes, during transit, storage and handling etc. in export goods, cleared from factory to port of export.

4.2 That the LAB cleared in bulk tankers from the factory it is stored in large tank in the customs area and thereafter from the tank, it is transferred to the vessel in the ship for export. In such type of cases, it is but natural that some short quantity may occur during handling the export goods at various stages. Therefore, it could be very well said that short quantity is only due to natural causes and so no duty is required to be paid on short quantity, but required to be remitted under Rule 21 of Central Excise Rules.

4.3 That the Commissioner (Appeals) rejected the claim of the Applicant mainly relying upon Board's Circular No.292/8/97-CX dated 24.01.1997 and held that the Circular is applicable only to the product NGL falling under tariff heading No.27101190 and not applicable to other products viz. LAB falling under tariff heading No.38170011 and no other goods.

4.4 That it is submitted that the instructions issued by the Board is only a guideline to the officers for uniformity in taking the action by the Departmental officers. But in any case, it is not the law. The applicant relied and brought the Board Circular to the notice of the Commissioner (Appeals) only as an example that the similar views can be taken in other products / cases. The applicant had not relied only Board's Circular but relied upon several decisions in which it has been clearly held that remission of duty to be allowed where the loss of the goods is due to natural causes or accident etc. Unfortunately the Commissioner (Appeals) has neither discussed nor given any findings but turned down, as they are not relevant. In fact he was bound to give the proper findings as to how and why the cited decisions are not relevant in the present case. This has not been done. Therefore, the impugned order is apparently violative of principals of natural justice.

4.5 It is further submitted that is true that the administrative instructions issued by the Board may not be binding on the adjudicating and Appellate authorities who perform quasi-judicial officers. But then, the object of the administrative instructions is to achieve uniformity in the matter of condonation of evaporation and handling loss, it is desirable to have due regard to such administrative instruction by the authorities. Except stating that certain loss on certain dates are abnormal, the adjudicating officer nor the appellate Commissioner has given any reasons for non-consideration to remit the duty. The Commissioner (Appeals) being quasi-judicial authority is required to assign reasons for not allowing the permissible condonation of loss and not allowing remission of duty under Rule 21 of Central Excise Rules. Therefore, the denial of the remission of duty on short quantity due to natural causes is violative of natural justice and not justifiable and so the impugned order required to be quashed and set aside.

4.6 It is further submitted that as per the clear provisions under Rule 21 of Central Excise Rules that remission of the duty shall have to be allowed in case that goods have been lost or destroyed by reasons of the natural causes and by unavoidable

accident. In the present case, it is a fact that the short quantity is only due to handling of LAB at various stages which is due to natural causes. The short quantity is negligible below 0.1%. Further this is not the case of the Department that the short quantity has been clandestinely disposed off. The Department has accepted short quantity due to natural causes. Therefore, the applicant is not required to pay any duty but the Commissioner (Appeals) should have granted the remission of duty in light of the following decisions.

(1) 2004 (166) ELT 480 (Tri.Kolkata) – Ispat Alloys Ltd.
(2) 2009 (233) ELT 61 (Raj.) - Hindustan Zinc Ltd.
(3) 1996 (86) ELT 6 (All.) - U.P. State Cement Corporation Ltd. Upheld by Supreme Court as reported in 1999 (112) ELT A44 (S.C.)
(4) 2008 (221) ELT 246 (Tri.Delhi) - Upper Doab Sugar Mills.
(5) 2008 (225) ELT 271 (Tri.Delhi) - Oswal Overseas Ltd.
(6) 2008 (225) ELT 389 (Tri.Delhi) - Venus Sugar Ltd.

4.7 That it is submitted that the goods are exported in two manners. Accordingly, the goods exported in sealed containers which are directly loaded in ships no possibility of handling and storage. Whereas in a case when exports goods are transported in some tankers from factory and thereafter unloaded from tankers and stored in large tank in custom area and from storage tank to vessel meant for shipment a negligible short quantity is noticed which is only due to natural causes during transportation and handling the goods at different stages. The present case is of this kind / type this very fact was argued during personal hearing before the Commissioner (Appeals), who had indifferently distinguished the transportation in sealed containers where no shortage noticed. Unfortunately this has not been considered. Therefore, this ground is also not acceptable by any law and so could not be upheld.

4.8 That it is further submitted that remission of duty for any excisable goods is specifically provided in Rule 21 of Central Excise Rules subject to condition that the loss or shortage of goods must be due to natural causes and not for any other reason. In the present case, the Department itself has accepted that the short quantity is due to natural causes and the short quantity has not been removed clandestinely or disposed off illicitly. Therefore, the applicant is legally entitled for remission of duty on short quantity noticed as a result of natural causes. Therefore, the impugned order denying the benefit of remission of duty under Rule 21 of Central Excise Rules is not justifiable in law and so deserves it to be quashed and set aside.

5. The applicant vide letter dated 12.06.2012 also requested for condonation of delay in filing Revision Application on following grounds:

5.1 During the period November 2007 and May 2008, we cleared LAB from our premises for Export under Bond/LUT without payment of duty. After clearance of the

goods from the factory the same is stored in storage tanks at port till vessel for export is available to us. The goods cleared from the factory in November, 2007 was exported in 23.11.2007 and the goods cleared in May 2008 was exported in June 2008. During the transit and storage of goods at port and handling of the goods at port, some loss was occurred. We, therefore, filed an application for condonation of the loss under Rule 21 of Central Excise Rules for remission of duty on the short quantity of loss occurred which was below 1% i.e. within the limit of condonation.

5.2 The Assistant Commissioner instead of condoning the loss confirmed the demand of duty on the short quantity of loss which was upheld by the Commissioner(Appeals) Vadodara.

5.3 There are several decisions on the subject issue reported in ELT and other journals in which Honorable CESTAT has entertained and dealt with the appeals pertaining to transit/storage/handling losses. Therefore, under the bona fide relief we filed an appeal before the Hon'ble CESTAT Ahmedabad on 6th December, 2010 which was not objected about jurisdiction at the time of filing of Appeal. However, when the Appeal posted for Personal Hearing on 8th May, 2012 learned SDR objected about the jurisdiction of filing the appeal before CESTAT. Therefore, Hon'ble CESTAT has not entertained our appeal and dismissed the same on the ground that appeals filed before the wrong forum is not maintainable vide Order No. A/651-652/WZB/ AHD/2012 dated 08.05.2012. Copy of which is enclosed herewith. Under the circumstances, we now file this Revision Application before your honor for consideration. Under the circumstances, we request your good self to be kind enough to condone the delay for late filing of Revision Application and admit the same in the interest of justice.

6. Personal Hearing in this case was scheduled on 06.07.2015 and 18.12.2015.

6.1 Hearing held on 06.07.2015 was attended by Shri Motilal A. Patel, Consultant and Shri Vikram, AGM, Indirect Taxation, Nirma Ltd. on behalf of applicant, who reiterated grounds of Revision Application. A written submission dated 07.07.2015 was also received from the applicant as under:

6.1.1 As regards to condonation of delay in filing the revision application, it is submitted that as explained in our condonation of delay in filing the revision application under letter dated 12.05.12, we have explained the reasons for the delay. In addition to that it is further submitted that we filed the appeal against the order of the Commissioner (Appeals) before the Hon'ble CESTAT on the ground that the Hon'ble CESTAT has admitted and took the decision in such types of cases in various decisions. Some of them are –

(i) Associated Capsules Pvt. Ltd. reported in 2007 (207) ELT 613 (Tri. Mumbai)

(ii) M/s Kuntal Granites Ltd. reported in 2007 (215) EL T 515 (Trib. Bang.)

(iii) Sree Narasimha Textiles Ltd. reported in 2009 (239) EL T 86 (Trib. Chennai) and so on.

In view of the above we filed the appeal before the Hon'ble Tribunal under the bonafide impression that such types of appeals could be heard by the Tribunals. In the present case the Hon'ble Tribunal has not taken the decision merely because the Departmental representative objected about the jurisdiction in the said appeal. Therefore, the appeal is not rejected on the grounds of limitation, but rejected on the grounds of jurisdiction. Therefore, we filed the revision application against the order of the Commissioner (Appeals) before your Honour immediately when decision pronounced in the open court on 8.5.12. Since initially we filed the appeal before the Hon'ble CESTAT within stipulated time period and also filed the revision application immediately after the decision of the Hon'ble CESTAT, before your Honour, the provisions of limitation in filing the revision application will not come into the picture. Therefore, taking into consideration of the aforesaid facts your goodself is requested to admit the revision application by condoning the delay and to take the decision on merits. In support of the aforesaid views we draw your kind attention to refer to the following decisions:-

6.1.2 In the matter of M/s GILCO EXPORTS LTD reported in 2015 (317) E.L.T. 229 (P&H) wherein the Appeal was filed before Tribunal, the tribunal declined to entertain appeal on the grounds of Jurisdiction and directed the petitioner to approach the Revisional Authority who dismissed the petition as being barred by limitation, petitioner pleaded before Revisional Authority that period spent before Tribunal be excluded, but the contention was rejected without considering the import or applicability of Section 14 of Limitation Act, 1963. The High Court of P&H Held "that Question whether section 14 ibid applies to case in hand covered in favour of petitioner by a judgment of Punjab & Haryana High Court in Sonia Overseas Pvt. Ltd reported in 2015 (316) E.L.T. 578 (P &H), therefore the matter restored to Joint Secretary (Revision) for deciding application for condonation of delay. Same views in the case of Sonia Overseas Pvt. Ltd reported in 2015 (316) ELT 578 (P &H). The ratio of the aforesaid decision is squarely applicable in the present case and therefore your Honour is requested to condone the delay and requested to take the decision on merits.

6.1.3 As regards to merits of the case we have explained in detail in the grounds of our revision application. In addition to that we further submit that the facts in brief are that there is minor short quantity in export goods which is due to natural causes. It is an admitted and undisputed fact that this is not the case of the Department nor any allegation that the short quantity is due to the result of disposal of goods illicitly or the goods have been clandestinely cleared without payment of duty but the case of the Department is that the short quantity has been exported. Both the lower

authorities has not considered the instructions issued by the Board under circular dated 24.01.97 and the cited decisions produced before them and rejected our claim merely on a flimsy ground that short shipment has taken place only in respect of consignment sent in the months of November 2007 and May 2008 and no proof has been given that NGL and LAB belongs to the same group.

6.1.4 The only issue to be decided in the present case is that whether the short quantity noticed in export goods due to natural causes, duty is required to be paid or otherwise.

6.1.5 It is submitted that the grounds stated in Revision Application are required to be considered. In addition to that we further state that it is not the case of the Department that non-export of short quantity is as a result of removal of goods illicitly there is no such allegation by the Department. It is undisputed fact that short quantity is due to natural causes. Since the short quantity is much below 0.17 which is within the permissible condonable limits and required to be condone and no duty could be demanded. In support of this in addition to the decisions cited in the grounds in revision application we have produced several decisions before your Honour during personal hearing.

6.1.6 From the copy of the Legal Metrology (Packaged Commodities) Rules 2011, it could be seen from table for condonation of maximum permissible errors on net quantities declared by weight or volume the permissible variation in quantity plus or minus is permissible up to 1. In the present case the less quantity is much below 1 i.e. 0.17. Therefore by applying the provisions under this act the short quantity of 0.17 is required to be ignored or condoned.

6.1.7 In this regard applicant place reliance on following cases laws :

- M/s Welspun Maxsteel Ltd. Reported in 2015 (317) ELT 0559 (Tri. Mumbai)
- 2010 (275) ELT 83 (Tri. Mumbai) in the matter of Somaiya Organo Chemicals Ltd.
- 2010 (249) ELT 218 (L.B) in the matter of Bhuwalka Steel Industries Ltd.

Though the aforesaid decisions are related for admissibility of the modvat/cenvat credit on the permissible short quantity, the ratio of these decisions is equally applicable in case of short quantity during transportation / transit loss for demand of central Excise duty. Therefore, when credit has been allowed on permissible short quantity no duty could be demanded on short quantity during transit for export goods.

6.2 Nobody attended the hearing on behalf of the Department. The Department vide their letter dated 16.12.2015 mainly reiterated contents of impugned orders and also placed reliance upon various case laws in support of the contention that this is not a case for remission of duty under Rule 21 of the Central Excise Rules 2002.

7. Government has carefully gone through the relevant case records available in case files, oral and written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government first takes up the application for condonation of delay in filing Revision Application. The applicant has submitted that they were pursuing the appeal before wrong forum (Hon'ble CESTAT) filed this Revision Application. The appeal before Tribunal was rejected on the grounds of jurisdiction vide its order date 08.05.2012. Thereafter the present Revision Application was filed on 25.05.2012.

8.1 The time calculation for filing Revision Application is as under:

A.	Date of communication of impugned Order-in-Appeal	: 29.10.2010
B.	Date of filing appeal before Tribunal	: 06.12.2010
C.	Total time taken in filing appeal before Tribunal A - B Order-in-Appeal	: 2+30+5=37 days.
D.	Date of communication of Tribunal's Order dated 08.05.2012:	14.05.2012
E.	Date of filing Revision Application.	: 25.05.2012
F.	Time taken in filing Revision Application since the date of Communication of Tribunal Order D – E	: 12 days
G.	Total time taken for filing Revision Application after excluding time lapsed during proceedings before CESTAT C+F	: 37+12= 49 days

8.2 Government notes that the Hon'ble High Court of Gujarat in case M/s Choice Laboratory vide order dated 15.09.2011, Hon'ble High Court of Delhi in case of M/s High Polymers Ltd. vide order dated 04.08.2011 and Hon'ble Bombay High Court in case of UOI (Revisionary Authority) Vs M/s EPCOS India Pvt. Ltd &Anr. 2013(290)ELT 364 (Bom) in order dated 25.04.2012 have held that the period spent in prosecuting the proceedings bonafidely before the CESTAT, which had no jurisdiction, have to be excluded by giving the benefit of the provision of Section 14 of Limitation Act, 1963 while reckoning the time limit for filing revision application.

8.3 As such after excluding time elapse before Tribunal, the applicant filed the Revisional Application in 49 days. As such the Applicant has been filed within the stipulated period. Government now proceeds to examine the case on merits.

9. On perusal of records, Government observes that the applicant cleared Linear Alkyl Benzene (LAB) under Rule 19 of the Excise Rules, 2002. Upon scrutiny of proof of export submitted on 21.01.2008 by the applicant, it was noticed that 7.921 M.T. of LAB was not exported. The applicant had applied for remission of duty under Rule 21 to the jurisdictional Assistant Commissioner. The request was rejected and the Original authority confirmed demand of duty with respect to 7.921 M.Ts. of LAB, not

exported / short shipped by the applicant along with applicable interest and also imposed penalty equal to amount of duty demanded. Aggrieved by the order, the applicant filed appeal before Commissioner(Appeals) who is vide impugned Order-in-Appeal modified Order-in-Original in as much as order of imposition of penalty was set aside. Now, the applicant has filed this Revision Application on grounds mentioned in para(4) above.

10. Government observes that demand was raised on the applicant for failure to export certain quantities of goods. The applicant in response stated that they had already applied for remission of duty under Rule 21 for natural losses. The same was not allowed by the original authority on the grounds that the losses should have occurred prior to removal of goods from the factory. The original authorities further held that the applicant failed to prove that goods exported by them viz. LAB is the same as Natural Gasoline Liquid (NGL) to qualify for storage transit, handling losses upto 0.5% in terms of Board's Circular No.292/8/97 dated 24.01.1997. The Commissioner(Appeals) has also held that as applicants failed to give evidence to prove that NGL and LAB belong to the same group there was no cause to interfere with the impugned Order-in-Original.

11. Government observes that the main contention of the applicant is that the short shipment of the impugned goods has occurred due to storage and handling loss in the course of transit from the factory to the port. As the loss has occurred due to natural causes they are entitled to remission under Rule 21 of the Central Excise Rules, 2002.

11.1 Rule 21 reads as under:

> ***Rule 21. 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:*

On plain reading of the Rule 21, it is seen that remission is applicable if the 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. Therefore, if any of the eventualities had occurred after the removal of goods, there are no governing provisions under Rule 21 of Central Excise Rules, 2002 empowering the Central Excise Officer to remit the duty payable on the goods destroyed by natural causes. Therefore, the applicant's contention that they were eligible for remission under Rule 21 of Central Excise Rules, 2002 is devoid of merit.

11.2 Government's above view finds support in the following judicial pronouncements:

11.2.1 In the case of S.V.G. Exports (P) Ltd. Vs. CCE, Chennai-III 2008 (232) E.L.T. 305 (Tri. – Chennai), it was held that

4. I have carefully considered the facts of the case and the rival submissions. The impugned order sustained demand of duty due on goods cleared for export but were involved in accident and were damaged. As the impugned goods were not exported in terms of the bond executed by the appellants, they are required to discharge the duty due on those goods. The duty liability on the impugned goods could be waived only if there are enabling provisions in the statute. Rule 21 of Central Excise Rules, 2002 which provides for remission of goods destroyed in accidents is subject to the condition that the damage is suffered by the excisable goods before their removal from the factory. In the instant case, the goods have been damaged after they were cleared for export and outside the factory. There are no provisions enabling authorities to remit duty on such goods. I find that the Tribunal in the case of Hind Nippon Rural Industries (P) Ltd. case (supra), had held that there is no provision for remission of the duty once goods have been cleared from the factory. The Tribunal, in the case of Siraj Sons, Bombay vs Collector of Central Excise, Bombay-I reported 1988 (35) E.L.T. 597 (Tri.) has held that waiver of duty is not claimable if goods are destroyed by fire after clearance and before export. The ratio of the Tribunal's decisions are to the effect that duty is liable to be paid by the assessee in respect of goods cleared for export and destroyed before export. Respectfully following the above ratio, I find that the appeals to be devoid of merit. Therefore, the appeals are dismissed

11.2.2 The Tribunal in the case of Ginni Filaments Ltd. vs. CCE, Lucknow 2005 (188) E.L.T. 45 (Tri. – Del) held that:

4. I have considered the submissions made by both the sides. I find that the Commissioner has rejected the application for remission of duty on a correct ground that the remission under Rule 49 is allowable when the loss takes place within the factory. Rule 49 does not provide for remission of duty after clearance from the factory. Therefore, I do not find any merit in the appeal and the same is rejected.

11.2.3 In the case of M/s Periwal Exports vs. CCE, Jaipur-II 2015 (317) E.L.T. 793 (Tri. – Del), it was held as under:-

7. From plain reading of this Rule, it is clear that remission of duty in respect of the goods lost or destroyed due to natural causes or by unavoidable accident is permissible only when this loss or destruction has taken place "at any time before removal". Thus the point of time when the loss or destruction should take place is the time before the "time of removal". In my view the words "at any time before removal", cannot be read as "at any place before the place of removal"; they have to be read as "at any time before the time of removal". In terms of the provision of Section 4(3)(cc) of the Central Excise Act, 1944, the time of removal even in respect of the goods sold from the depot or from consignment agent's premises or from any other place, is the time when the goods are cleared from the factory. Therefore, in respect of the goods cleared for export, even if the "place of removal" is the port from where the goods are exported, the "time of removal" would be the time when the goods have been cleared from the factory and, therefore, if the goods are lost during

transit, for the purpose of Rule 21, the "time of removal" would have to be treated as the time at which the goods were cleared from the factory. In the judgments of the Tribunal in the cases of *Kuntal Granites Ltd.* vs *CCE, Bangalore* (supra) and *CCE, Coimbatore* vs *SreeNarasimha Textiles Ltd.* (supra) the provisions of Section 4(3)(cc) have not been considered and these judgments have read the words "at any time before removal" as "at any place before the place of removal," which is not permissible while interpreting a statutory provision. In view of this, I follow the judgments of the Tribunal in the cases of *S.V.G. Exports (P) Ltd.* vs *CCE, Chennai - III* reported in 2008 (232) E.L.T. 305 (Tri. - Chennai), *Hind Nippon Rural Indus. (P) Ltd.* vs *CCE, Bangalore* reported in 2004 (167) E.L.T. 414 (Tri. - Bang.), *CCE, Jaipur - II* vs *Hindustan Zinc Ltd.* reported in 2012 (275) E.L.T. 136 (Tri. - Del.) and *Meghmani Industries Ltd.* vs *CCE, Ahmedabad* - I reported in 2007 (218) E.L.T. 50 (Tri. - Ahmd.), wherein a contrary view has been taken and it has been held when the goods after clearance from the factory for exports are lost in transit, the remission of duty under Rule 21 would not be admissible. The appeal is, therefore, dismissed

11.2.4 Further Government in its own order 012 (285) E.L.T. 135 (GO.I.) has held that –

> *8. Government notes that since the inception of Central Excise Rules, 2002; issue of remission of duty is governed by Rule 21 of the said rules ibid. As per Rule 21 of the said rules, remission of duty is allowed if the loss of goods occurs due to natural or unavoidable accident, at any time before removal of goods from factory of manufacture. In the instant case, the goods were removed from factory and loss had occurred after removal of goods. As such, remission of duty sought in this case is not covered in the provision of said Rule 21 ibid.*

11.2.5 The Hon'ble High Court of Andhra Pradesh in the case of Virat Crane Agri-Tech Ltd. vs. CCE, Guntur 2011 (271) E.L.T. 510 (A.P.) ruled that Rule 21 of Central Excise Rules, 2002 has to be interpreted strictly. The said judgment was approved by the Apex Court 2013 (292) E.L.T. A99 (S.C.). Therefore, the rule cannot be interpreted as loosely. The substantial condition that the loss has to be before the clearance of the goods from the factory has to be fulfilled to qualify as a case of remission and the applicant has ignored this position.

12. Government further observes that Commissioner (Appeals) has held the applicant to be ineligible for the benefit of Circular No. 292/8/97-CX dated 24.01.1997 holding the said Circular to be applicable to NGL only. On perusal of the above Circular, it is crystal clear that the benefit is only admissible to the Natural Gasoline Liquid (NGL) and not for any other commodity. The Board after considering the nature of loss being occurred specifically in NGL has prescribed the percentage for the particular item only. Admittedly, the goods manufactured and cleared by the assessee is not NGL and as such they are not eligible for the benefit of the above circular, as rightly held by the Commissioner (Appeals).

13. Government has also perused the case laws relied up by the applicant and finds that none of the case laws are applicable to the facts and circumstances of the

present case. These case laws either relate to losses which have occurred prior to removal from factory or deal with other issues and specified commodities.

14. In view of the above facts and circumstances, Government finds no infirmity in the impugned Order-in-Appeal and thus upholds the same.

15. The Revision Applicant is thus rejected as devoid of merits.

16. So ordered.

(RIMJHIM PRASAD)
Joint Secretary to the Government of India

M/s NIRMA LIMITED
Nirma House
Ashram Road
Ahmedabad – 380 009.

Attested.

(Yashwant Sharma)
Assistant Commissioner
C.E.C.-O.S. (Revision Application)
वित्त मंत्रालय (वित्तीय विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

ORDER NO. 57/2016-CX DATED 29.04.2016

Copy to:-

1. The Commissioner of Central Excise, Vadodara – I, Central Excise and Customs Building, Race Course Circle, Vadodara – 390 007.

2. The Commissioner (Appeals) of Central Excise, Vadodara-I, Central Excise and Customs Building, Race Course Circle, Vadodara – 390 007.

3. The Assistant Commissioner, Division – I, Central Excise and Customs Vadodara-I, 4th floor, Central Excise Building, Race Course Circle, Vadodara – 390 007.

4. Shri Motibhai A. Patel, Excise Consultant, C/o Nirma House, Ashram Road, Ahmedabad.

5. PA to JS (RA)

6. Guard File.

7. Spare Copy.

Attested.

(B.P. Sharma)
OSD (RA)