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[Training Material for Departmental Use]

E-BOOK

On

Remission of  
Central Excise  
duty

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## Remission of Central Excise Duty

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## Remission of Central Excise Duty

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### **INDEX**

<b>1. Introduction .....</b>	<b>1</b>
<b>2. Summary of Relevant Legal Provisions at a Glance .....</b>	<b>1</b>
<b>3. Important Points relating to Remission of Central Excise Duty.....</b>	<b>3</b>
<b>4. CENVAT Credit .....</b>	<b>4</b>
<b>5. Procedure for Destruction: .....</b>	<b>5</b>
<b>6. Manner of Destruction .....</b>	<b>6</b>
<b>7. Important Case Laws explaining concept of “Remission of Central Excise Duty” in various circumstances.....</b>	<b>7</b>
<b>8. Text of Relevant Circulars Issued by CBEC.....</b>	<b>8</b>
8.1 Circular No. 650/41/2002-CX., dated 7-8-2002 .....	8
8.2 Circular No. 800/33/2004-CX, dated 01.10.2004.....	9
8.3 Circular No. 907/27/2009-CX, dated 07.12.2009.....	10
8.4 Circular No. 930/20/2010-CX, dated 9-7-2010 .....	11
<b>9. Appeal against the order of Remission passed by Central Excise Authorities ..</b>	<b>12</b>
<b>10. CASE Laws relevant to Circulars .....</b>	<b>13</b>
10.1 Kesar Enterprises Ltd. (Sugar Div.)Vs. Commr. Of Cus.& C. Ex., Meerut-II .....	13
10.2 Commissioner Of C. Ex., Chandigarh Vs. Kandhari Beverages (P) Ltd.....	14
10.3. Mafatlal Industries Ltd.Vs. Commr. Of C. Ex. & Customs, Ahmedabad .....	16

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## Remission of Central Excise Duty

### 1. Introduction

- 1.1 Remission comes from the Latin word “remissiones” which means “relaxation”. Remission of Central Excise Duty means duty which is required to be paid as per statutory provisions, but waived from payment in specified circumstances by the competent authority. For Example, let us consider a situation where some manufactured goods are destroyed in a factory on account of earthquake before clearance of the same. As these are manufactured goods, Central Excise duty is leviable on these goods in terms of Section 3 of Central Excise Act 1944. But under the statutory provisions relating to Remission of Central Excise Duty, the same can be allowed to be remitted by the competent authority.
- 1.2 Section 5 of Central Excise Act 1944 provides enabling provisions for remission of Central Excise duty on Excisable goods which are found deficient in quantity or destroyed due to natural causes by making rules in this behalf. In exercise of powers conferred under Section 5 of the Central Excise Act, 1944, the Government has framed Rule 21 of the Central Excise Rules, 2002, which empowers competent authority to remit Central Excise Duty on goods lost or destroyed, on account of following reasons:
- (i) by natural causes such as earthquake, flood, excessive rains, etc.
  - (ii) by un-avoidable accident such as industrial accidents, fire, breakage during handling within factory etc.
  - (iii) goods becoming unfit for consumption or marketing such as manufactured goods found on testing of very poor quality unfit for human consumption or having safety issue etc.

### 2. Summary of Relevant Legal Provisions at a Glance

**Table 1**

Sr. No.	Relevant Sections /Rules /notification / Circulars	Subject matter
1.	Section 5 of the Central Excise Act, 1944	<p><b>Remission of Central Excise Duty on goods found deficient in quantity. —</b></p> <p>(1) The Central Government may, <b>by rules</b> made under this section, <b>provide for Remission of Central Excise Duty of excise leviable on any excisable goods which due to any natural cause are found to be deficient in quantity.</b></p> <p>(2) Any rules made under sub-section (1) may, having regard to the nature of the excisable goods or of processing or of</p>

## Remission of Central Excise Duty

		<p>curing thereof, the period of their storage or transit and other relevant considerations, <b>fix the limit or limits of percentage beyond which no such remission shall be allowed:</b></p> <p><b>Provided</b> that <b>different limit or limits of percentage</b> may be <b>fixed for different varieties of the same excisable goods or for different areas or for different seasons.</b></p>
2.	Rule 21 of the Central Excise Rules, 2002	<p><b>RULE 21. Remission of Central Excise Duty. —</b> Where it is <b>shown to the satisfaction</b> of the [Principal Commissioner or Commissioner, as the case may be] that <b>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,</b> he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by <b>order in writing :</b></p> <p><b>Provided</b> that where such duty does not exceed [ten thousand rupees,] the provisions of this rule shall have effect as if for the expression “[Principal Commissioner or Commissioner, as the case may be]”, the expression “Superintendent of Central Excise” has been substituted :</p> <p><b>Provided</b> further that where such duty exceeds [ten thousand rupees] but does not exceed [one lakh rupees], the provisions of this rule shall have effect as if for the expression “[Principal Commissioner or Commissioner, as the case may be]”, the expression “Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be,” has been substituted :</p> <p><b>Provided</b> also that where such duty exceeds [one lakh rupees] but does not exceed [five lakh rupees], the provisions of this rule shall have effect as if for the expression “[Principal Commissioner or Commissioner, as the case may be]”, the expression “Joint Commissioner of Central Excise or Additional Commissioner of Central Excise, as the case may be,” has been substituted.</p>
3.	Rule 3 (5C) of the CENVAT Credit Rules, 2004 [ <b>Inserted vide notification No. 33/2007-CE (NT), dated 07.09.2007</b> ]	<p>(5C) Where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, <b>the CENVAT credit taken on the inputs used in the manufacture or production of said goods and the CENVAT credit taken on input services used in or in relation to the manufacture or production of said goods shall be reversed.</b></p> <p><b>Explanation 1.-</b> The amount payable under sub-rules (5), (5A), (5B) and (5C), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or</p>

## Remission of Central Excise Duty

		<p>otherwise on or before the 5th day of the following month except for the month of March, where such payment shall be made on or before the 31st day of the month of March.</p> <p><b>Explanation 2.</b> - If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), (5B) and (5C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken and utilised.</p>
4.	<p>CBEC Circular No. 650/41/2002--CX. dated 07.08.2002 [withdrawn by Board Circular No. 800/33/2004-CX, dated 01.10.2004]</p>	<p>Admissibility of Modvat / Cenvat credit on inputs used in the manufacture of finished goods on which duty has been remitted.</p> <p><b>Note:</b> This Circular has been withdrawn and therefore, it is no longer relevant.</p>
5.	<p>CBEC Circular No. 800/33/2004-CX. dated 1.10.2004</p>	<p>Admissibility of CENVAT Credit on inputs used in the manufacture of the finished goods on which duty has been remitted- Withdrawal of Board's Circular No. 650/41/2002-CX, dated 07.09.2002</p>
6.	<p>CBEC Circular No. 907/27/2009-CX, dated 07.12.2009</p>	<p>Clarification on issues related to reversal of Cenvat credit on WIP/ finished goods written off in the books of accounts</p>
7.	<p>CBEC Circular No.930/20/2010-CX dated 09.07.2010 (F.No.261/03/2009-CX.8)</p>	<p>Tolerance of breakage of bottles due to handling during storage and clearance.</p>
8.	<p>CBEC Circular dated 06.02.1982 [ <i>Note: This circular is not available on CBEC website</i>]</p>	<p>Loss of Molasses upto 2% - Remission of Central Excise duty thereof.This Circular has been considered by the Hon'ble High Court of Allahabad and reproduced in the order in the case of <b>Kesar Enterprises Ltd. (Sugar Div.) Versus Commr. Of Cus. &amp; C. Ex., Meerut-II</b>[ <b>ELT Ref: (2008) 221 ELT 329 (Allahabad HC-DB)</b>].</p>
9.	<p>CBEC Circular Dated 17.09.1995 [<i>Note: This circular is not available on CBEC website.</i>]</p>	<p>Remission due to breakage of bottles during handling and storage. This Circular has been considered by CESTAT and reproduced in the order in the case of <b>Commissioner of C. Ex., Chandigarh Versus Kandhari Beverages (P) Ltd.</b> [ELT Ref: (2008)224 ELT 265 (CESTAT)]</p>

### 3. Important Points relating to Remission of Central Excise Duty

- 3.1 The Central Excise duty may be remitted by the competent Central Excise Officer provided he is satisfied that 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. The Central Excise Officer, after being satisfied, may remit the duty payable on such goods and subject to such conditions as may be imposed by him by issuing order in writing. Further,

## Remission of Central Excise Duty

such goods on which remission has been granted are required to be destroyed to avoid any misuse of such goods.

- 3.2 In the Rule 21 of the Central Excise Rules, 2001, powers of the different rank of the central Excise Officer to order Remission of Central Excise Duty on goods have been prescribed and the same are as given in Table 2 below:-

**Table 2**

<b>S. No.</b>	<b>Competent Central Excise Officer</b>	<b>Amount of duty empowered to remit</b>
1	Inspector	None
2	Superintendent	UptoRs 10,000/-
3	Deputy/Assistant Commissioner	Rs 10,001 to Rs 1,00,000/-
4	Additional Commissioner / Joint Commissioner	Rs 1,00,001/- to Rs 5,00,000/-
5	Commissioner or Principal Commissioner	Without limit

### **4. CENVAT Credit**

- 4.1 CENVAT credit of duty paid on inputs contained in finished products on which duty remission has been granted shall have to be reversed. Board has issued revised guidelines in the light of Tribunal's decision in case of *M/s Mafatlal Industries Ltd. v. CCE, Ahmedabad.* (2003 (154) E.L.T. 543 (T-Mumbai) (Ref: CBEC Circular No.800/33/2004-CX. dated 1.10.2004)
- 4.2 Where inputs have been destroyed as such, proportionate credit of duty paid on such inputs is required to be reversed as the goods have not been put to use in manufacture of excisable goods.
- 4.3 There is no limit on the executive powers of the Commissioners to order Remission of Central Excise Duty in such cases. However as a measure of administrative control and information, where the duty amount exceeds Rs.5 lakhs in a case, the Commissioners are required to send a report to the Board (in CX.-9 Section) giving sufficient details of such cases.
- 4.4 No Remission of Central Excise Duty is allowed in case of theft since the goods are available for consumption somewhere else.

### **5. Procedure for Destruction:**

5.1 The manufactured goods, on which remission has been granted, are required to be destroyed so that misuse of such goods may be avoided. The procedure to be followed for destruction of goods and Remission of Central Excise Duty thereon in nutshell may be summarized as under:-

- (i) A manufacturer desiring to destroy and seek Remission of Central Excise Duty in respect of the excisable goods manufactured in his factory, in terms of Rule 21 on the grounds that the said goods have been rendered unfit for consumption or for marketing, will make an application in duplicate to the Range Officer indicating complete details of the goods and reasons for destruction, along with the proof that the goods have become unfit for consumption or for marketing such as report of chemical test or any other test, conducted by a Government recognized laboratory.
- (ii) The application will be quickly processed by the Range Officer. In case the Range Officer is competent to allow destruction and remission, he will proceed to take necessary action at his level. In case the matter falls within the competency of superior officer, he will forward the application along with his recommendation to the Deputy/Assistant Commissioner of - the Division within 15 days of receipt.
- (iii) The Deputy/Assistant Commissioner will scrutinize the application and based upon the information given by the assessee, if found in order, allow destruction of goods and Remission of Central Excise Duty, if the case relates to his competency. Otherwise, he will forward the application with his remarks to the superior authority competent to give permission for destruction and remission (Additional/Joint Commissioner or Commissioner, as the case may be) within 3 days.
- (iv) Where only physical verification is required, the same may be conducted by the remission granting authority (proper officer), as specified above and upon his satisfaction, destruction of goods and Remission of Central Excise Duty may be allowed.
- (v) In case of any doubts, the competent authority may, for reasons to be recorded in writing, order for drawing of samples and its testing by the Central Revenue Control Laboratory or the Custom House Laboratories or any other Government recognized laboratory where the aforementioned laboratories cannot test the samples.

## Remission of Central Excise Duty

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- (vi) Ordinarily the views of the assessee that the goods are rendered unfit for consumption or marketing, should be accepted and necessary permission should be granted within a period of 21 days or earlier, if possible. Where samples are drawn, such permission should be granted within 45 days.
- (vii) Actual destruction of goods should be supervised by the officers according to the monetary limit. The date and time for destruction should be fixed by mutual convenience of the proper officer and the assessee and it should be ensured that the same date and time are not fixed for more than one assessee. It should also be ensured that there is no inordinate delay once permission for destruction and remission is granted.
- (viii) In case of frequent requests for destruction of goods by an assessee, necessary enquiries into the cause thereof should be conducted before according permission for destruction of goods.
- (ix) The proper officer personally supervising the destruction will check the quantity by physical verification i.e. by weight or by counting or using appropriate method in case of liquids, as the case may be, and the identity of goods by reference to relevant records and the application for destruction. The clearance of goods, within or outside the factory premises, shall be done on an invoice, indicating 'nil' duty. The order of the proper officer permitting destruction and remission, should be quoted in the invoice.
- (x) As far as possible, destruction should be done inside the factory.

**[Source: The CBEC Central Excise Manual, 2005, Chapter-18]**

### **6. *Manner of Destruction***

- 6.1 The goods intended and presented before the proper officer for destruction must be destroyed in such a manner that they become irretrievable as excisable commodity. The actual method of destruction will depend upon the nature of the goods to be destroyed. For example, matches, cotton, rayon and woollen fabrics, paper, cigar and cheroots may be destroyed by fire. Electric bulb and batteries may be destroyed by crushing into bits and scraps. Vegetable oils and vegetables products may be destroyed by mixing earth or kerosene and dumping into pits. Whatever method of destruction is adopted, the officer supervising the destruction will satisfy himself that the destroyed goods cannot be marketed. If there is any doubt with regard to the suitability of any particular method for destruction of any goods, the officer destroying the goods will refer the matter to his superior officer for orders.

## Remission of Central Excise Duty

- 6.2 The officer supervising the destruction must endorse under his signature the relevant records/documents such as ARE-1, invoices etc. and other relevant factory records indicating the description and quantity of the goods destroyed in his presence specifying the time and date.
- 6.3 Immediately after destruction of the goods is completed, the officer supervising destruction must also send a certificate to his immediate superior, countersigned by the factory manager and the factory officer.

[Source: The CBEC Central Excise Manual, 2005, Chapter-18]

### **7. Important Case Laws explaining concept of “Remission of Central Excise Duty” in various circumstances.**

As remission of Central Excise duty is not a right of a manufacturer in normal circumstances, therefore various courts have given their opinion in different situations when remission has been claimed by the manufacturer. The same are summarized as under:-

Sl. No.	Type of incident occurred.	Case Law Cited
01	Damage due to rain of unprecedented intensity all over state. Remission allowed.	Rajapalayam Cement and chemical Ltd. Vs CCE Tirunelveli (2008 (227)ELT401 (Tri-Chennai)
02	Remission of Central Excise Duty is permitted when the assessee has taken steps to prevent the combustion of molasses in the tank by spraying water on the tank.	Balarpur Chini Ltd. US CCE 2000 (120) ELT 184 (T)
03	Where loss of molasses occurred during storage due to drainage /seepage at the time of filling of tankers and dispatch of goods. No material was available that losses occurred deliberately.	Rosa Sugar Works Vs. CCE 2009 (241) ELT 218 (T)
04.	Remission of Central Excise Duty is grantable though the assessee has received compensation for fire accident.	<ul style="list-style-type: none"> <li>• Sarda Plywood Industries Ltd. Vs. CCE 1987(32)ELT 116 (T)</li> <li>• Barodia Plastics Pvt. Ltd. Vs. CCE 2015(315)ELT-357 (P&amp;H)</li> <li>• Sanskriti Packaging Pvt. Ltd. Vs. CCE Surat 2015(318)ELT 451/(Tri Ahmedabad)</li> </ul>
05.	Remission of Central Excise Duty should be granted even if it could be argued that the loss could have been prevented.	Puma Sahakari Sakhar Kharkhana Ltd. Vs. CCE 1998 (100) ELT 513 (T)
06.	‘Theft’ or ‘dacoity’ cannot be called	Gupta Metal Sheets Vs. CCE 2008

## Remission of Central Excise Duty

	unavoidable accident within the meaning of the rule 21 of the Central Excise Rules, 2002 (Erstwhile Rule 49 of Central Excise Rules 1944) and the goods lost in theft or dacoity would not be eligible for remission.	(332) ELT 796 (Tri- LB)
07.	Remission of Central Excise Duty on goods to be exported	Periwal Exports Vs. CCE, Jaipur-II 2015(317) ELT 793 (Tri. Delhi)

Note: It is expected that the above cited cases would help the trainee in understanding the true intention of the Government with regard to Rule 21 of Central Excise Rules 2002 dealing with the remission claims. However, it is suggested that due care may be taken while taking decision on a particular claim of Central Excise duty considering facts and Circumstances of the claim.

### ***8. Text of Relevant Circulars Issued by CBEC***

#### **8.1 Circular No. 650/41/2002-CX, dated 7-8-2002**

**Subject:** Admissibility of Modvat/Cenvat credit on inputs used in the manufacture of finished goods on which duty has been remitted.

I am directed to refer to the subject cited above and to say that a doubt has arisen whether Modvat/Cenvat credit is admissible on inputs used in the manufacture of goods on which duty has been remitted.

2. In this regard Board's attention has been drawn to a decision of CEGAT in the case of M/s. Kirloskar Electric Co. v. CCE, Bangalore. In this case, CEGAT has held that the assessee is entitled to Modvat credit on the inputs used in the finished products which were destroyed due to circumstances beyond their control and on which duty remission has been granted by the Department. While delivering this judgment, CEGAT has relied upon its judgment in the case of Inalsa Ltd. v. CCE, New Delhi. [1997 (90) E.L.T. 417] in which CEGAT has held that reversal of proportionate credit on inputs used in manufacture of finished goods cannot be demanded under erstwhile Rule 57C of Central Excise Rules, 1944 as Remission of Central Excise Duty cannot be equated to exemption from duty and hence, the Modvat credit on such inputs is admissible.

3. Board has examined the matter in the context of the said CEGAT judgments and the instructions contained in Para 2.4 of Chapter 18 of Central Excise Manual. It is clarified that Modvat/Cenvat credit of duty paid on the inputs contained in finished products on which duty remission has been granted shall be admissible and reversal thereof shall not be necessary. However, before granting Remission of Central Excise Duty on any finished

## Remission of Central Excise Duty

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products destroyed or damaged in fire, accident etc., it should be ensured that the insurance amount claimed by the assessee does not include the duty element of the inputs used in the manufacture of said goods taken as credit. The instruction contained under para 2.4 of Chapter 18 of Central Excise Manual shall be modified to this extent.

4. Trade and field formation may be informed suitably.
5. Receipt of the same may be acknowledged.
6. Hindi version will follow.

[ Note: It may be noted that the above said CBEC Circular has been withdrawn by CBEC vide Circular No. 800/33/2004-CX, dated 01.10.2004]

### **8.2 Circular No. 800/33/2004-CX, dated 01.10.2004**

**Subject: Admissibility of CENVAT Credit on inputs used in the manufacture of the finished goods on which duty has been remitted- Board's Circular No. 650/41/2002-CX dated 7<sup>th</sup> August, 2002- regarding.**

I am directed to invite your attention to Board's Circular No. 650/41/2002-CX dated 7<sup>th</sup> August, 2002 on the above mentioned subject which was issued in the light of the judgment of the Tribunal in cases of **M/s Inalsa limited Vs CCE, Delhi and M/s Kirloskar Electric Co. Vs CCE, Bangalore** wherein the Tribunal held that the assessee was entitled to Modvat credit on the inputs used in the finished products which were destroyed due to circumstances beyond their control and on which the duty has been remitted by the department.

2. Attention is drawn to the decision of the Tribunal in case of **M/s Mafatlal Industries Ltd. Vs CCE, Ahmedabad {2003 (154) ELT 543 (Tribunal-Mumbai)}** in which the Tribunal while differing from its earlier decision in Inalsa Case held that the credit of the duty taken on inputs used in finished goods burnt/ damaged in fire is demandable if the Remission of Central Excise Duty on such finished goods is allowed. The Tribunal while coming to said decision has observed,-

*"The manufacturer has already been compensated by the insurers for the value of the finished goods which is inclusive of the value of the inputs. The intention of the Modvat scheme is that the duty paid on inputs can be taken credit for paying duty on the finished goods to give relief against the cascading effect of excise duty. When the duty on the finished goods is being remitted, allowing credit of the duty paid on inputs would confer a totally unintended benefit. Allowing such credit when the finished goods suffer no duty would amount to allowing a cash refund as it can be utilized for paying duty on other goods. There is no provision in the Central Excise Rules to either allow refund of duty paid on inputs or to grant remission of such input duty when the finished goods made from such inputs get burnt / destroyed in fire. The Modvat scheme cannot be interpreted in a way to allow such a refund / Remission of Central Excise Duty on the inputs which is not provided for in the rules."*

## Remission of Central Excise Duty

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3. In view of the decision of the Tribunal in the case of Mafatlal Industries, Board has reconsidered the issue of admissibility of Modvat /Cenvat credit on inputs used in the manufacture of finished goods on which duty has been remitted. **Accordingly, Board's Circular No.650/41/2002-CX dated 7.8.2002 is hereby withdrawn. It is clarified that the credit of the excise duty paid on inputs used in the manufacture of the finished goods on which the duty has been remitted due to damage or destruction etc. is not permissible and the dues with interest should be recovered.**

4. Trade and field formations may be informed suitably.

5. Receipt of the circular may be acknowledged.

6. Hindi version will follow.

### **8.3 Circular No. 907/27/2009-CX, dated 07.12.2009**

**Subject: Clarification on issues related to reversal of Cenvat credit on WIP/ finished goods written off in the books of accounts -reg.**

References have been received from field formations stating that as per Rule 3(5B) of CENVAT Credit Rules, 2004, if the value of inputs is fully written off, then the manufacturer is required to pay an amount equal to Cenvat credit taken. However, there is no provision to demand reversal of credit taken on inputs which have gone into manufacture of work in progress (WIP), semi-finished goods and finished goods which have also been written off fully in the books of accounts.

2. The matter has been examined. **Rule 3(5B) of the CENVAT Credit Rules, 2004, provides that if the value of any input on which Cenvat credit has been taken is written off fully in the books of accounts, then the manufacturer is required to reverse the credit taken on the said input.** As far as finished goods in concerned, it is stated that excise duty is chargeable on the activity of manufacture or production. Even though liability for payment of tax has been postponed to the time of removal of goods for the factory, but still the legal liability to pay the excise duty has been fastened on the goods, when it has been manufactured or produced. Therefore, normally all goods manufactured suffer excise duty at the time of removal, but if the manufactured goods are destroyed due to natural causes etc., Rule 21 of Central Excise Rules, 2002, provides for Remission of Central Excise Duty. **Further, Rule 3(5C) of CENVAT Credit Rules, 2004, also requires reversal of credit on the inputs when the duty is ordered to be remitted under the said Rule 21. Therefore, if the goods have been manufactured, in that case, a manufacturer is liable to pay excise duty unless duty is remitted under Rule 21. Therefore, if the value of finished goods is written off, the manufacturer would be liable to pay excise duty or he would be required to reverse the credit on the inputs used, if duty has been remitted on finished goods.**

## Remission of Central Excise Duty

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3. As regard writing off work in progress (WIP), it is stated that if the WIP has reached the stage, when it can be considered as manufactured goods, in that case, the same treatment as applicable to finished goods, discussed in para2 above would apply. However, if the activity carried out on the WIP goods cannot be considered as amounting to manufacture, in that case, the said goods should be considered as input and the treatment for reversal of credit applicable to input would be applicable.
4. Trade & Industry as well as field formations may be suitably informed.
5. Receipt of this circular may kindly be acknowledged.
6. Hindi version will follow.

### **8.4 Circular No. 930/20/2010-CX, dated 9-7-2010**

**Subject : Tolerance of breakage of bottles due to handling during storage and clearance - Reg.**

It has been brought to the notice of the Board that some of the manufacturers of bottled beverages are claiming the benefit of duty exemption in respect of breakage of PET bottles upto 0.5% citing the Board's Instruction letter No. ID/3/70-CX. 8, as amended vide letter F. No. 261/ID/1/75-CX. 8 dated 17-09-1975. As per the letter dated 17-09-75, tolerance of 0.5% is allowed on account of breakage of bottles due to handling in the course of movements from the manufacturing area to bonded store rooms and breakages during storage and clearance there-from. It has also been observed that in some judicial pronouncements, this benefit has been allowed to the parties, on the limited ground that the said instruction has not been rescinded/ modified by the Board and further the Cenvat credit taken on bottles as input have been allowed to be retained by the assessee.

2. The matter has been examined. The instructions mentioned above were issued primarily in the context of use of glass bottles. At the relevant time, the scheme of Modvat /CENVAT credit was not available to the assessees and, therefore, there was no issue of reversal of credit taken on bottles, which were subsequently broken/ destroyed. After the introduction of MODVAT and subsequent replacement of the same with CENVAT, any circular, instruction or provision inconsistent with the same has no relevance. As per the provisions of Rule 21 of Central Excise Rules, 2002, Remission of Central Excise Duty before removal can be claimed on any goods lost or destroyed by natural causes or unavoidable accident, claimed by manufacturer to be unfit for consumption or marketing. The said remission is granted subject to the condition of reversal of Cenvat credit taken on inputs used in the final product, as per the Circular No. 800/33/2004-CX dated 01-10-2004. Rule 3(5C) was also inserted in CENVAT Credit Rules, 2004, w.e.f 07-09-07, to specifically provide for the same. Further, as per Rule

## Remission of Central Excise Duty

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3(5B) of CENVAT Credit Rules, 2004, if the value of any input is written off, the Cenvat availed on the same is required to be reversed. Therefore, if the final product (i.e bottled beverage) is broken/ destroyed then remission can be claimed and if the bottle (input) is written off by the assessee as destroyed, the same is required to be dealt with as per the provisions of Rule 3(5B) of CENVAT Credit Rules, 2004.

3. In view of above, the application of the letters/ instructions quoted in para1 above, in the said judicial pronouncements, without recourse to the aforesaid provisions of law, is therefore **per incuriam**. Necessary action may be taken to safeguard revenue. Nevertheless, to avoid such disputes in future, it is stated that the instructions/letters quoted in para1 above have no relevance in the present CENVAT scheme, and the instructions stand rescinded.

4. Trade & Industry as well as field formations may be suitably informed.
5. Receipt of this circular may kindly be acknowledged.
6. Hindi version will follow.

**Note:** The term “Per incuriam” is a Latin term. It indicates “*lack of due regard to the law or the facts*”.

### ***9. Appeal against the order of Remission passed by Central Excise Authorities***

9.1 In matter relating to Remission of Central Excise Duty, in case of any order issued by the Central Excise authority lower in rank than Commissioner or principal Commissioner of Central Excise, appeal shall lie to the Commissioner (appeal) and thereafter, before the Joint Secretary ( Revision Application). However, in case of remission order passed by the Commissioner of Central Excise or Principal Commissioner of Central Excise, the appeal shall lie to CESTAT.

9.2 To know more about the concept of Revisionary Authority, **e-book on “concept of Revision Application”** may be referred. The Orders passed by the Joint Secretary (Revision Application) may be downloaded from the website of Department of Revenue, Government of India using the following link:-

<http://dor.gov.in/cera12015>

### *10. CASE Laws relevant to Circulars*

#### **10.1 Kesar Enterprises Ltd. (Sugar Div.)Vs. Commr. Of Cus.& C. Ex., Meerut-II**

Order No.	Central Excise RA No. 33, decided on 16.07.2007
ELT Ref.	2008 (221) E.L.T. 329 (All.)
Subject	Remission of Central Excise Duty
Section/Rule involved	Section 5 of CEA, 1944/Rule 21 of Central Excise Rules, 2002/ Rule 49 of erstwhile Central Excise Rules, 1944
Important Paras	Para 7 and 8

**[Order].** - We have heard learned counsel for the applicant and Sri K.C. Sinha, for the respondent. The applicant has sought a reference to be called with regard to all or any of the seven questions of law framed and mentioned in paragraph 8 of the application.

2. Molasses attract Central Excise Duty. The applicant is a manufacturer of molasses. A shortage in stock of molasses was detected by the respondent-department. Initially, the action was sought to be taken with regard to suspicion of ‘clandestine removal’ of stocks, which were found short. That proceeding was dropped with the finding that ‘clandestine removal’ was not established.

3. However, the prayer of the applicant for Remission of Central Excise Duty on the shortage has been rejected up to the level of Tribunal. The order of the Tribunal dated 7-3-2003 has been enclosed as Annexure 10 to this application.

4. It appears from the said order of the Tribunal that the case set up by the applicant was that the shortage in stocks amounted to “losses in storage” of molasses, which was less than 2 per cent of the total production of that year and, therefore, the applicant was entitled to remission of these losses in terms of the Circular of the C.B.D.T. dated 6-2-1982, copy of which is enclosed as Annexure 3 to this application. The Circular, which has been issued in the context of the query kacha pits or tanks and how the deficiency or shortage noticed in stored stock in such tanks should be dealt with. The part of the circular, upon which reliance has been placed reads as follows :

“As regards to losses in storage of molasses losses up to 2 per cent may be condoned irrespective of whether molasses stored in kacha pits or tanks or steel or pucca tanks”.

5. The Tribunal while rejecting this contention of the applicant has held that the applicant had set up a case that the shortage/loss was on account of “natural causes”, but no evidence had been given by the applicant to show that such loss had occurred due to natural causes. On the other hand, the shortfall of 1200.6 quintals of molasses had occurred between 28-10-1998 (i.e. end of October) and 19-1-1999 (i.e. mid January). That period being winter season, such large amount of shortage could neither be justified by foam formation due to natural heating nor evaporation to any appreciable extent. Thus loss due to natural causes, as pleaded by the applicant, during this period was not established and on the contrary was highly doubtful.

## Remission of Central Excise Duty

6. Before us, learned counsel for the applicant has argued that because there is a finding by the department in the earlier proceeding that 'clandestine removal' of the stocks found short, had not been established against the applicant, therefore, it must be assumed that the loss is storage loss and being within the 2% limit set out by the Board in its Circular, the remission should have been granted by the department without any further examination or questions. We are unable to agree with this submission.

7. In our opinion, the Circular can not be interpreted to mean that every producer of molasses would as a matter of right be entitled to write off 2% of the annual production as storage loss irrespective of the facts and circumstances. We are of the opinion that the Circular, while dealing with another subject, incidentally merely sets out a guideline about the maximum amount of storage loss which could be expected to be condoned by way of storage loss. This however does not absolve the producer of the obligation to establish that despite due precaution and care, the particular quantity of loss sought to be condoned has actually been occasioned and could not have been avoided. The submission and the evidence of the applicant adduced towards proving the above would be subject to rational testing by the Central Excise Authorities, having regard to facts, materials and circumstances available with the department.

8. In this backdrop, the seven questions framed by the applicant which relate to the (i) refusal on part of the Tribunal to grant the remission application, despite the alleged storage loss being less than 2 per cent, (ii) the applicability of the Board's Circular and (iii) the accuracy of the Dip Method Measurement, have to be seen.

9. So far as the Dip Measurement Method is concerned, the Tribunal has held in its order that stock taking had been done on several occasions by the same Dip Method and the applicant itself measured the stock by the same method on 19-1-1999 and, therefore, it was not open to the applicant to say in this case that on this particular occasion when shortage was detected the Dip Measurement Method is not acceptable.

10. In view of the above finding, the question framed about the Dip Method does not arise as a question of law from the Tribunal's order.

11. So far as the other questions are concerned, as we have already pointed out above that the issues in the Tribunal's order are concluded by pure findings of fact based upon the appreciation of circumstances and the pleas of the applicant. The Tribunal's order does not give rise to any of the questions of law mentioned in the application.

The application is accordingly rejected.

### **10.2 Commissioner Of C. Ex., Chandigarh Vs. Kandhari Beverages (P) Ltd.**

Order No	Final Order No. 1726/2007-SM(BR)/(PB), dated 3-12-2007 in Appeal No. E/865/2006-SM
ELT Ref No.	(2008) 224 ELT 265 (CESTAT)
Subject	Remission of Central Excise Duty in respect of aerated water bottles and reversal of Cenvat Credit.
Section/Rule/Circular involved	Rule 3 of the Central Credit Rules, 2004 CBEC Circular dated 17.09.1995
Important Paras	Para 3

## Remission of Central Excise Duty

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**[Order].** - Heard both sides. The Revenue filed this appeal against the impugned order passed by the Commissioner (Appeals). The Commissioner (Appeals) has held as under :-

“I have carefully examined the case records including the appellants submissions made in writing and at the time of personal hearing and observe that the main issue involved is this that the appellant did not discharge the duty liability in respect of aerated water bottles which had been destroyed/broken during handling/loading. The contention of the appellant is that as per Board Circular No. 261/D/1/75-CX.8, dated 17-9-75 has permitted the Remission of Central Excise Duty up to the limit of 0.5% which is correct and convincing. Moreover, the Board’s Circular No. 674/65/2002-CX., dated 1-11-2002 has categorically mentioned that the technical functions which are performed under the statute by Board and such circulars are biding on the field formation. The above circular says that no protective demands should be raised on the basis of the audit objections if there exists a Board Circular/instructions.”

*The contention of revenue in the present case is that in case of breakage of finished goods, the respondents should have applied for Remission of Central Excise Duty in terms of Rule 21 of Central Excise Rules and also reversed the Cenvat credit involved on inputs in such finished goods. It is also submitted by the revenue that Board Circular dated 7-9-1975 pertains to the period when Modvat credit/Cenvat facilities were not there.*

2. I find that there is no dispute that the finished goods were destroyed during manufacture and as per Board Circular dated 17-9-95, 0.5% breakage is condonable. For ready reference; the Board circular is reproduced below :-

*CE.MP: Aerated water: Breakage of bottles after the stage of filing -Fixation of tolerance limit - Question regarding*

*Reference letter No.V.ID(3)1/75/MP, dated 3<sup>rd</sup> July, 1975 received from CCE Baroda (copy appended). After careful consideration of CCE Baroda’s recommendations, the Board has decided that the clearances effected by a particular manufacturer during a month may be taken as the basis for writing off the breakages up to 0.5% in this case. This tolerance would be on account of breakages of bottles due to handling in the course of movement from the manufacturing place to the bonded store room, breakages during the course of storage and clearances therefrom. The tolerance may be calculated on monthly basis and the adjustments made at the end of the month.”*

3. I find that as inputs were used in the manufacture of final product, there is no question of reversal of credit and there is no evidence on record to show that Board has modified the instructions issued vide circular dated 17-9-75 when the Modvat scheme was introduced. In the present case, as the respondent claimed remission in respect of breakage of aerated water bottles which were below 0.5%, therefore, in view of the above Board circular, I find no infirmity in the impugned order. The appeal is dismissed.

(Order dictated and pronounced in the open Court)

Note: The impact of above said CESTAT Order has been nullified vide necessary amendment in CENVAT Credit Rules, 2004 and Board’s Circular No. 930/20/2010-CX, dated 09.07.2010

### 10.3. Mafatlal Industries Ltd.Vs. Commr. Of C. Ex. & Customs, Ahmedabad

Order No.	Order No. 437/2003-WZB/C-III, dated 12-3-2003 in Appeal No. E/1711/2002-Mum.]
ELT Ref No.	2003 (154) E.L.T. 543 (Tri. - Mumbai )
Subject	Remission of Central Excise Duty and Reversal of Cenvat Credit.
Section/Rule/Circular involved	Rule 49 of erstwhile Central Excise Rules, 1944.
Important Paras	Rule 57 L and 57 P of erstwhile Central Excise Rules, 1944 Para 4 and Para 5

**[Order per : C. Satapathy, Member (T)].** - Shri J.C. Patel, learned Advocate for the appellants states that the appellants have provided fire-fighting equipments in their factory and they have also trained their personnel for fire-fighting to deal with fire accidents. However, on 11-3-1999 a fire broke out in the appellants' factory premises and despite the fire brigade arriving within a few minutes there was some loss of the finished goods in the fire. He states that the excise authorities and police were also intimated. The New India Insurance Company Ltd. have drawn a survey report and have settled the claims regarding the burnt/damaged goods which does not include duty. The appellants were issued a show cause notice demanding central excise duty of Rs. 44,33,998/- on the finished goods burnt/damaged in the fire and also another amount of Rs. 2,28,834/- representing Modvat credit on the inputs contained in such burnt/damaged goods. He states that the Commissioner has confirmed these duty demands and has also imposed equivalent amount of penalty apart from charging interest at the of 24% on the ground that the benefit of Remission of Central Excise Duty cannot be granted as the appellants have no proof that the fire had taken place due to natural cause or unavoidable accident. He cites the following case laws in support of his contention that Remission of Central Excise Duty should be granted to the appellants :-

- (1) *Inalsa Ltd. v. CCE, New Delhi* - 1997 (90) E.L.T. 417 (Tri.)
- (2) *Commr. of Cus. ICD, New Delhi v. Shree Balaji Garments Inds.* - 2000 (122) E.L.T. 569 (Tri.)
- (3) *Plastikos Packaging v. CCE., Allahabad* - 2001 (128) E.L.T. 386 (Tri.-Del.)
- (4) *PravasaSahakariSakharKarkhana Ltd. v. CCE* - 1989 (44) E.L.T. 664 (Tri.)

2. Shri S.S. Bhagat, learned S.D.R. points out that Remission of Central Excise Duty can only be granted under Rule 49(1) of the Central Excise Rules, 1944 in the case of unavoidable accident. In this connection he cites the case laws relating to *Hindustan Insecticides Ltd. v. CCE., Cochin* - 1988 (33) E.L.T. 575 (Tri.) and *CCE., Meerut v. M/s. Dhampur Sugar Mills, Dhampur*- 1986 (24) E.L.T. 28A (Tri.). He also points out that in the insurance survey report the probable cause of the fire has been attributed to :-

- (1) Short Circuit
- (2) Carelessly discarded unabated cigarette/bidi
- (3) Electrical fault in cables etc.

According to him, none of these can be called unavoidable accident. He further supports the order of the Commissioner for demand of duty, penalty and interest.

3. We have heard the rival submissions and perused the case records and case laws cited before us. Rule 49 of the Central Excise Rules, 1944 provides as under :

## Remission of Central Excise Duty

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“Payment of duty shall not be required in respect of excisable goods made in a factory until they are about to be issued out of the place or premises specified under Rule 9 or are about to be removed from a store-room or other place of storage approved by the (Commissioner) under Rule 47 :

Provided that the manufacturer shall on demand pay the duty leviable on any goods which are not accounted for in the manner specifically provided in these rules, or which are not shown to the satisfaction of the proper officer to have been lost or destroyed by natural causes or by unavoidable accident during handling or storage in such store-room or other approved premises:

Provided further that the proper officer may not demand duty due on any goods claimed by the manufacturer as unfit for consumption or for marketing subject to such conditions as may be imposed by the (Commissioner) by order in writing.”

It is clear from the above that if it is shown to the satisfaction of the proper officer that the goods are lost or destroyed by natural cause or by unavoidable accident during storage, the duty on such goods is not payable. This is also the ratio of the decision in the case of *Hindustan Insecticides Industries* cited by the learned S.D.R. In the instant case, the insurance company has settled the claim of the appellants. The survey report records that as per the fire brigade report the fire was accidental. The police panchnama also stated that the fire was accidental and nothing was confiscated from the fire site for investigation. The survey report further states that though the cause of the fire could not be established, the surveyors were of the view that either short circuit or electrical fault or carelessly discarded cigarette/bidi might have caused the fire. The fire brigade report, the police report as well as the insurance report all point to the fact that the fire was accidental and that there was no identifiable cause for the fire though the survey report conjectures three possible reasons for such fire. In the absence of any definite reason being found for the fire, it has to be concluded that the fire was accidental and unavoidable and its cause cannot be attributed to the appellants when they had taken all necessary fire fighting measures and had also called the fire brigade immediately on detection of the fire. It is also pertinent that the insurance company has settled the claim for the value of the goods destroyed on the basis of the said survey report. If there was any doubt that the appellants were any way responsible for the fire, the insurance company would not have obviously settled their claim. It is also seen that the excise authorities were informed about the fire accident and there is no report from the excise officers to the effect that the fire was not the cause of unavoidable accident.

4. The case law relating to *Inalsa Ltd.* cited by the learned Advocate has ruled that the inputs used in the finished goods damage in fire had been put to intended use of manufacturing the final products and therefore entitlement to Modvat credit on such inputs cannot be denied even though the final products destroyed in the fire was granted Remission of Central Excise Duty. In the case of *Commissioner of Customs v. Shree Balaji Garments Industries*, it has also been held by the Tribunal that the police report, insurance claim determination and customs verification fail to point out any wilful act, negligence or default and since there was no legal obligation to insure goods for duty, failure to do so did not amount to negligence. In the case of *Plastikos Packaging v. CCE, Allahabad* it has been held that when no evidence has been adduced in the show cause notice or brought on record in the adjudication to prove that goods which have been removed without payment of duty in the garb of fire accident, Remission of Central Excise Duty is permissible under Rule 49.

5. In view of these decisions and in the light of the fire brigade, police and insurance survey reports, we have no hesitation in coming to a finding that in the instant case Remission of Central Excise Duty on the goods burnt/damaged in fire is admissible. As far as the demand of the Modvat credit taken on inputs used in the finished goods burnt/damaged in the fire is concerned, we are in agreement with the decision of the Northern Bench of the Tribunal in the case of *Inalsa* that Remission of Central Excise Duty on the finished goods cannot be equated with exemption to goods and that the inputs can be considered to have been put to the intended use of manufacturing of final products. However, with great respect we disagree with the conclusion of the said Bench that in a case where the duty is remitted on finished goods destroyed in fire, a manufacturer can avail of the credit of inputs duty and use the same for paying duty on other goods. The appellants have already been compensated by the insurers for the value of the finished goods which is inclusive of the value of the inputs. We are allowing Remission of Central Excise Duty on the finished goods. The intention of the Modvat scheme is that the duty paid on inputs can be taken credit for paying duty on

## Remission of Central Excise Duty

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the finished goods to give relief against the cascading effect of excise duty. When the duty on the finished goods is being remitted, allowing credit of duty paid on inputs would confer a totally unintended benefit on the appellants. Allowing such credit when the finished goods suffer no duty would amount to allowing a cash refund as it can be utilised for paying duty on other goods. There is no provision in the Central Excise Rules to either allow refund of duty paid on inputs or to grant remission of such input duty when the finished goods made from such inputs get burnt/destroyed in fire. The Modvat scheme cannot be interpreted in a way to allow such a refund/Remission of Central Excise Duty on the inputs which is not provided for in the Rules. We therefore hold that credit of duty taken on inputs used in the finished goods burnt/damaged in fire, is demandable from the appellants since the Remission of Central Excise Duty on such finished goods is being allowed by us.

6. As regards the penalty, we are of the opinion that the same is not imposable in the circumstances of the case. Interest on the Modvat credit dis-allowed will be payable at the rates specified under Rule 57-I of the Central Excise Rules, 1944.

7. Appeal is partly allowed as indicated above.

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