IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/70705/2017-EX[SM]

(Arising out of Order-in-Appeal No. 40-CE/ALLD/2009 dated 31/03/2009 passed by Commissioner of Central Excise (Appeals), Allahabad)

M/s Tulsipur Sugar Company — **Appellant**

Vs.

Commissioner of Central Excise, Allahabad — **Respondent**

Appearance:

Shri Rahul Agarwal, Advocate — for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), — for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing	:	01/02/2018
Date of Decision	:	01/02/2018

FINAL ORDER NO-**70778 / 2018**

Per: Anil Choudhary

The appellant is a manufacturer of sugar and molasses. The molasses is stored in steel tanks. The sugar season is from October to September every year. Towards the end of the sugar season, the sales of sugar and molasses are almost completed and the appellant is required to clean their tanks for the ensuing sugar season. The appellant by their letter dated 02/08/2005 and 27/08/2005 informed the Range Superintendent that they had cleaned the molasses storage tanks number five and six, in question and the molasses produced during the sugar season were totally cleared and sold out. On inspection of the tank, it was noticed that some quantity of molasses have been lost, by way of storage loss and/or evaporation etc. Such loss was about 1.79 or 1.94% which was less than 2%. A copy of the intimation is also given to the inspector of Central Excise, located or posted at the factory of the appellant. Thereafter, the appellant by way of abundant caution, although it was a case of normal loss, applied for remission of duty under Rule 21 of CER. 2002 by submitting remission application dated 27/08/2005 for remission of duty involved amounting to Rs.2,45,136+ Rs.1,49,450/-. In response to the remission application show cause notices were issued in March, 2008 alleging that on scrutiny of remission application it is found that appellant have filed remission application for remission of duty, simply to enjoy the benefit of Board Circular dated 06.02.1982, which prescribes for allowance of normal loss of 2% in view of storage loss. The show cause further alleged that molasses were stored in steel tank which are very safe and secure and there can be no loss.

3. Heard the parties.

4. Having considered the rival contentions and on perusal of records, I find that the show cause notice is in gross violation of the Board Circular No.261/15–CC/1/80–CX–8 dated 06.02.1982. Further, I find that the show cause notice had been issued belatedly by way of change of opinion, almost after three years of filing application for remission.

Accordingly, I hold that the extended period of limitation is not available and that the show cause notices are not maintainable.

5. Accordingly, the appeal is allowed and the impugned order is set aside. The appellant shall be entitled to consequential benefits, in accordance with law.

(Dictated in Court)

(Anil Choudhary)
Member (Judicial)

akp