CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated. 29/2/2016

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/ 70077/2016 DB dated 24/02/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/3442/2010DB	UPPER DOAB SUGAR MILLS SHAMLI DISTT- MUZAFFARNAGAR(UP) PIN-247776
	Name and Address of Respondent	CCE, MEERUT I EXCISE CHOWK, UNIVERSITY ROAD,MANGAL PANDEY NAGAR MEERUT-250005

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH A.P.MATHUR,ADV
167, TAGORE TOWN
ALLAHABAD(UP)

4 Bar Association, CESTAT, ALLAHABAD

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector 30, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Panjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex. Appeal No. E/3442/2010 (DB)

Arising out of Order-in-Original No. 13/Commissioner/Meerut-I/2010-11 dated 15.7.2010 passed by Commissioner of Customs & Central Excise, Meerut-I.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3.	Whether His Lordship wishes to see the fair copy of the Order?	: Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	: Yes

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Upper Doab Sugar Mills ...APPELLANT

VERSUS

Comm. of Central Excise, Meerut-I RESPONDENT

APPEARANCE

Shri A.P. Mathur, Advocate, for the Appellant
Shri Pawan Kumar Singh, Superintendent (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 24.2.2016

Final ORDER NO. 70077/2016

CUSTOMS, EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Ashok K. Arya:

Both sides have been heard.

2. The issue here concerns with remission of duty for the loss of 39282.40 quintals of molasses involving duty of Rs.30,34,565.40 which has been stated to be lost in the bursting of tank due to "natural causes".

3. The appellant viz. M/s. Upper Doab Sugar Mills, Muzaffarnagar (UP), mainly argues that the goods viz. molasses (39282.40 quintals) were lost when one of the tanks (No.5) in the factory/plant having storage capacity of 71750 quintals, where total 60985.65 quintals of mosasses were stored, was burst due to natural causes.

3.1 The appellant represented by Mr. A.P. Mathur, ld. Advocate, *inter alia* argues that the bursting was due to heavy pressure generated by formation of gases. He says that the department has wrongly refused their request of remission under Rule 21 of the Central Excise rules, 2002. In support, he cites the following case laws:-

(i) *CCE* vs. *M. Kumar Udhyog (P) Ltd.* reported in 2014 (306) ELT 19 (All.);

(ii) *CCE, Lucknow* vs. *DSM Sugar* reported in 2015 (326) ELT 693 (Tri.-All.).

4. Revenue represented by learned AR, Shri Pawan Kumar Singh, argues that the loss on account of bursting of one of the tanks in the factory premises is not an accident and cannot be called due to natural causes. He says that the findings by the Commissioner in order-in-original say that the appellant did not take enough precautions and because of failure on their part in taking precautions and enough care, the *bona fides* of the assessee were not found satisfactory and the accident cannot be called unavoidable and remission under Rule 21 of the Central Excise Rules, 2002 has, therefore, been rightly rejected.

4.1 The learned AR refers to Survey Report by Insurance Company, wherein it has been mentioned that the said occurrence is not accidental in nature and had occurred because of wear and tear of weakening of tank which was constructed 27 years ago. The Insurance Company, therefore, did not find the said incident as covered under the scope of the insurance policy and the appellant was not indemnified by the Insurance Company.

5. We have carefully considered the facts on record and the submissions of both the sides.

6. There is no dispute that this incident of loss of molasses (39282.40 quintals) involving duty of Rs.30,34,565.40 happened on 27.4.2008, when one of the tanks (No.5) of the plant in the factory premises of the appellant-assessee was burst. The Insurance Surveyor's Report, though is valid for purpose of insurance rules, opines that the bursting the tank was not accidental in nature and occurred due to wear and tear and weakening of the granular structure of the failed plate of the tank which was constructed 27 years ago. On the other hand, there is a report from Chartered Engineer, Mr. Dinesh Gupta whose report titled as "Failure Analysis report of Sugar Molasses Tank Burst" concludes as under:-

> "The various studies carried out on bursting of molasses storage tank at Shamli have established that the storage tank was in sound mechanical condition and fit for the desired duty. The rupture or bursting of tank may be due to unknown degradation chemical reactions as cited in the literature."

6.1 There is on record a Certificate dated 28.10.2003 from the Controller of Standard Weights and Measures, wherein it says that they have inspected tank No.5 and it has been claimed by the appellant that this certificate certifies the capacity etc. for five years. In other words, the certificate was valid till 27.10.2008 whereas this accident occurred on 27.4.2008 before the expiry of the last date of the certificate. Therefore, there is a plea from the appellant that there was no negligence on their part and this incident is definitely in the nature of an accident.

6.2 Rule 21 of the Central Excise Rules, 2002, whereunder remission claim has been considered by the Revenue, is given as under:-

> "**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."

6.3 This Rules makes a mention that wherever loss or destruction of the goods is because of natural causes or by unavoidable accident any time before removal of the goods, the Commissioner is empowered, on his satisfaction, to remit the duty payable on such lost or destroyed goods. We find that the Commissioner on the record in the order-in-original has not completely considered all the facts and accompanied circumstances and thus coming to an erroneous conclusion that the loss claimed for remission was not on account of natural causes or unavoidable accident. Consequently, he erroneously rejected the request of remission of the assessee. We are of the view that the report of the Insurance Company, though has got persuasive value, cannot become the reason for rejecting the request for remission unless we see the full picture of the facts and circumstances. From the facts on record, a prudent individual cannot say that the assessee themselves invited this incident. There has been on record the certificate from the Controller of Standard Weights and Measures regarding the capacity and soundless of the tank. The appellant during the hearing has claimed that the tank may last even beyond 40 years. In their appeal papers, the appellant has given the year of installation of seven tanks, their storage capacity, stock of molasses etc., which is given below:-

Tank No.	Year of Installation	Storage Capacity of Tanks (Qtls)	Stock of Molasses as 27.4.2008 (qtls)	Date of Transaction
			11562.00	26.4.2008
2	1958-59	21,040.00	17301.00	26.4.2008
3	1960-61	22,092.00	14624.00	26.4.2008
4	1977-78	21,790.00	60980.65	31.3.2008
5	1980-81	71,750		

6	1991-92	71,750.00	64326.00	2.4.2008
7	2000-01	71,750	67853.00	5.4.2008

6.4 From above table, we note that their storage tank No.2, which was installed in the year 1958, was found to be working alright already though there might have been some repairs done time to time. Tank No.5 which was installed in 1981 got burst on 27.4.2008, which would be called in the nature of an unexpected event and which was not anticipated by their operation and production staff. From the record we do not find any convincing reason for not accepting that this incident of 27.4.2008 was not unexpected and that there was some deliberate negligence and deliberate omission on the part of the appellant, which may weaken their request for remission under Rule 21 of the Central Excise Rules, 2002. It is to be noted that the burst by natural causes and accident under Rule 21 have to be interpreted in the background of the facts and circumstances and they should not be interpreted so as only to [illegible] refuse remission of duty on assessee. Wherever there is unavoidable accident proved and which has been caused by the circumstances beyond the control of the assessee, when the assessee had taken enough reasonable care and precaution, remission of duty is admissible to the assessee for the loss of goods under Rule 21 of the Central Excise Rules, 2002.

6.5 The Revenue has not been able to convincingly prove that the appellant has been careless and has not taken reasonable care and precaution in this regard. Here, the Hon'ble Allahabad High Court's decision in the case of *M. Kumar Udhyog (P) Ltd.* gives support to the case of the appellant.

7. Considering the discussion made above, the appeal is allowed with consequential relief, if any.

(Pronounced in the open Court)

Sd/-
(ASHOK K. ARYA)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)