

**IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NO: E/1389/1997

Arising out of: Order-in-Original No. 46/47 dated 11/06/1997

Passed by: Commissioner of Central Excise (Appeals),
Mumbai Zone – II.

<i>Appellants – Represented by:</i> Tatya Saheb Kate Warana SSK Ltd	<i>Appellants – Represented by:</i> Shri V.B. Gaikwad, Advocate
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versus

CCE, Pune-I	<i>Respondent – Represented by:</i> Shri A.B. Kulgod, Assistant Commissioner (AR)
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Date of hearing: 20/11/2018
Date of pronouncement: 28/02/2019

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Hon'ble Shri Ajay Sharma, Member (Judicial)

ORDER NO: A/85419 / 2019

The instant appeal has been filed by the appellant from the impugned Order-in-Original dated 11.6.1997 passed by the Commissioner, Central Excise & Customs, Pune by which the Id. Commissioner confirmed the demand of Central Excise duty amounting to Rs.12,53,770.32p against the appellant under Section 11A of the Central Excise Act, 1944. The issue involved is about the remission of duty on the molasses lost due to accident.

2. The Appellant are engaged in manufacturer of sugar and molasses in their factory. They stored these molasses in steel tanks

having capacity of 6000 MT each. According to the appellant, on 8.5.1995 an explosion took place in one of the tanks i.e. Tank No.1 and 5224.043 MT of Molasses flushed out of the said tank. The said occurrence was immediately informed to the concerned authorities. The technical team after visiting and inspecting the said tank found that the accident occurred due to the formation of Carbon dioxide gas [Co₂] through the whole volume of the molasses which raised the hydrostatic pressure inside the tank and caused bursting of the tank at the welded portion. Central Excise Officers also conducted the necessary enquiries and recorded the statement of the concerned persons.

3. According to the Appellant since the loss of molasses was due to unavoidable accident during the storage of molasses in steel tank, they submitted an application for remission of duty on the loss of molasses as provided under Rule 49 of the Central Excise Rules alongwith work sheet of net loss of molasses and certificate from National Insurance Co. Ltd. regarding non insurance coverage of Central Excise duty in respect of loss of molasses in storage in the factory premises. But in reply, the revenue issued a show cause notice dated 27.9.1995 to the Appellant alleging negligence on the part of the appellant, as to why:-

- (i) Central Excise Duty to the tune of Rs.12,53,770.32/- should not be demanded and recovered from them under Rule 9(2) and 1730(1) of the Rules read with section 11(A) of the Act as detailed in Annexure – B.
- (ii) The remission of duty should not be denied and why the application for remission of duty should not be projected.
- (iii) Penalty should not be imposed on them under Rule 9(2), 52(A) (8), 1730 of the Rules.

The ld. Commissioner i.e. the Adjudicating Authority vide impugned order dated 11.6.1997 while observing that the Appellants have not shown satisfactorily that the molasses were lost or destroyed by natural cause or by unavoidable accident during storage, confirmed the demand of Central Excise duty amounting to Rs.12,53770.32p against the appellant under Section 11A of the Central Excise Act, 1944.

4. I have heard ld. counsel for the Appellant and ld. Authorised Representative for the Revenue and perused the records. The Learned Counsel for the Appellant submitted that since the accident was unusual and unexpected therefore they referred the matter to the Vasant Dada Sugar Institute to study the case to find out the cause of explosion and the technical team found that the accident occurred due to formation of carbon dioxide gas through the whole volume of molasses and the trapped carbon dioxide gas, due to hydro static pressure, caused the bursting of the tank at the welded portion. He further submitted that certain types of accidents are unavoidable even in spite of taking all precautions and that bursting of tank due to the formation of carbon dioxide gas and increase of hydro-static pressure is one of such types of accidents. He further submitted that no sugar manufacturer can avoid the formation of carbon dioxide gas and that when the formation of carbon dioxide gas is not avoidable, there is every possibility of increase in the hydro-static pressure inside the tank which may result in the bursting of the tank if the said pressure increased abnormally beyond the resistance strength of the tank.

According to him, the hydro-static pressure is so powerful that it can easily burst the steel tank of sufficient strength even if strength tests are carried out before restoring the molasses. He also submitted that the hydro-static pressure tests, thickness tests, etc., are the tests which can give the knowledge about condition of the tank but they cannot avoid the bursting of the tank and therefore failure to carry out the said tests cannot amount to negligence on the part of the Appellant. According to the Appellant, the construction and maintenance of steel tank is the job of civil department and the civil engineer in charge of the department is the proper person whose statement is reliable and the civil engineer has specifically stated in his statement that it is not necessary to carry out the hydro-static pressure test each and every year before taking the steel tank into use and that when in the normal course no deterioration or damage of the steel tank is visible there is no need of inspecting the tank thoroughly. During the course of arguments he also stated that the state excise authorities after proper verification of the entire matter has condoned the said loss of the molasses vide order dated 27.12.1996 but the learned Commissioner failed to take into consideration the said order despite the same being produced by the Appellant. The Learned Authorised Representative on behalf of the Revenue reiterated the findings recorded in the impugned order and prayed for the dismissal of appeal.

5. There is no dispute about the bursting of the tank and the consequent loss of molasses. The only issue required to be decided is to whether such bursting/accident could have been avoided by the Appellant or not. There is no dispute that rise in temperature can lead

to a rise in storage tank pressure which in turn lead to an explosion of the tank. It is not the case of the Revenue that the Appellants are habitually negligent, due to which such losses or destruction of this nature had also occurred in past. The Chief Sugar Technologists & head of Sugar Technology Department in his communication dated 01.06.1995 has specifically mentioned that explosion of tanks are fairly common in sugar industry and such occurrence are also recorded in literature in Egypt, Hawaii, Puerto Rico and India. As per the first proviso of Rule 49 the manufacturer shall on demand pay duty leviable on any goods which are not shown to the satisfaction of the proper officer to have been lost or destroyed by natural causes or by unavoidable accidents during handling or storage. The finding of the learned Commissioner that the Appellant had been negligent in safeguarding molasses is not reasonable as the Appellant's stake in the destroyed molasses was much higher than the stake of the Revenue. Nobody would deliberately indulge in such act or exercise which may result in huge loss and therefore while interpreting Rule 49 the authorities are required to be liberal.

6. Needless to mention that all the accidents occurred due to lack of protections of the personnel responsible for avoiding such accidents and nobody indulges in such accidents purposely. If the observation as made by the learned Commissioner is accepted then it would make the said rule redundant. It is not the case of the Revenue that there is any malafide on the part of the Appellant to make the accident occur resulting in loss of molasses. The accident has occurred due to the formation of carbon dioxide gas through the whole volume of the

molasses which raised the hydro-static pressure inside the tank and caused bursting of tank. Although in the impugned order, the learned Commissioner has mentioned that there were negligence on the part of the Appellant but on what material this finding has been given is lacking in the order.

7. Having considered the rival submissions, I find that the finding recorded by the learned Commissioner in the impugned order, while rejecting the Appeal filed by the Appellant, is not sustainable. The expression "Natural causes" or "Unavoidable accidents" used in Rule 49 of the erstwhile Central Excise Rules, 1944 have to be interpreted in their ordinary and natural connotation in reasonable manner to subserve the object of legislature in introducing the remission of duty. An unavoidable accident is an event which lies beyond the control of the assessee and which has taken place despite the exercise of due and reasonable care and protection. In view of the facts as well as the communication by the sugar institute and also in view of the statements of civil engineer, I am of the view that the accident which has caused the loss of the molasses to the Appellant was unavoidable and therefore, the appeal filed by the Appellant is allowed with consequential relief, if any.

(Pronounced in Court on 28/02/2019)

(Ajay Sharma)
Member (Judicial)