

Remission of Excise Duty

Introduction

The term remission, in this context, means waiver or cancellation of excise duty legally payable. Sometimes it so happens that certain goods are destroyed or completely damaged before removal from factory; in such cases the assessee need not pay any excise duty on such goods and can seek remission under Rule 21 of Central Excise rules, 2002.

Situations under which remission is granted

Where it is shown to the satisfaction of the Central Excise officer 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, the officer may remit the duty payable on such goods, subject to such conditions as may be imposed by him by a written order.

Powers of various Central Excise officers to grant remission

- Where such duty does not exceed Rs 10,000, the Superintendent of Central Excise has the power to grant remission.
- Where such duty exceeds one thousand rupees but does not exceed Rs 1 lakh, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, has the power to grant remission.
- Where such duty exceeds two thousand five hundred rupees but does not exceed Rs 5 lakh, the Joint Commissioner of Central Excise or the Additional Commissioner of Central Excise, has the power to grant remission.
- The Commissioner has the power to grant remission without any limit but normally any amount exceeding Rs. 5 lakhs will be looked up by him.

The procedure to be followed for destruction of goods and remission of duty

- A manufacturer desiring to destroy and seek remission of duty in respect of the excisable goods manufactured in his factory, in terms of proviso to sub-rule (1) of rule 49 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 recognised laboratory.

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- The application will be quickly processed by the Range Office. 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 the superior officer, he will forward the application along with his recommendation to the Deputy/Assistant Commissioner within 15 days of receipt.
- The Deputy/Assistant Commissioner will scrutinise the application and based upon the information given by the assessee, if found in order, allow destruction of goods and remission of duty, if the case is within 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.
- 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 duty may be allowed.
- 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 Customs House Laboratories or any other Government recognised laboratories where the aforementioned laboratories cannot test the samples. The testing of samples will be done in the manner specified in the Basic Excise Manual as modified by the instructions issued, if any, by the Board in this regard.
- 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.
- Actual destruction of goods should be supervised by the officers according to the monetary limits as specified above. 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.
- 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.
- 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 on the invoice.

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Manner of destruction

As far as possible, destruction should be made inside the factory.

- 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 officer supervising the destruction must endorse under his signature the relevant records/ documents such as AR-1, invoices, RG-1, EB-4, RG23A, RG23C or other relevant factory records indicating the description and quantity of the goods destroyed in his presence at which time and on which day.
- 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 in the prescribed form.
- Where excisable goods are manufactured out of inputs goods on which CENVAT credit was availed, proportionate credit should be reversed before destruction of such goods.
- There will be no limit on the executive powers of the Commissioners to order remission of duty in such cases. However, it has been decided that as a measure of administrative control and information, where the duty amount exceeds Rs.5 lakhs in a case, the Commissioners will send a report to the Board giving sufficient details of such cases.
- No remission of duty in case of theft should be allowed, since the goods are available for consumption somewhere.

Situations under which remission is granted

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, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed.

Thus reversal of CENVAT credit taken on capital goods and input services are not required to be reversed.

Case laws pertaining to remission

- Sarada plywood industries Ltd v. CCE 1987 (32) E.L.T 116 (T) – Remission of duty is grantable though the assessee has received compensation of fire accident.
- Yashwant SSk Ltd v. CCE (1990) (49) E.L.T 534 (T) - Once the goods are ordered for destruction, duty gets extinguished on the goods claimed as unfit for marketing or consumption.
- UOI v. Hindustan Zinc Limited (2009) – The expressions ‘natural causes’ and ‘unavoidable accident’ have to be given reasonable and liberal meaning.

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Remission of duty thus helps an assessee forego the payment of Excise on the goods which is damaged during bad times. Though there are some procedural aspects relating to remission, but are worth undergoing instead of paying duty on goods not available for sale.