

REMISSION OF DUTY AND DESTRUCTION OF GOODS

11.1 STATUTORY PROVISIONS

Rule 21 of the Central Excise Rules, 2002 provides for remission of duty in certain situations.

Where it is shown to the satisfaction of the Central Excise Officers specified in the Table below 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 as specified in the corresponding entry in the said Table, subject to such conditions as may be imposed by him by order in writing. The competence to supervise destruction of excisable goods claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal has also been specified in column 4 of the said Table. Destruction shall be carried on only after the competent officers have passed the order for remission.

	Competent Central Excise Officer	Amount of duty to be remitted	Monetary limit to supervise destruction
1.	Commissioner	Without limit, but normally any amount exceeding Rs.5,00,000	Not required
2.	Additional/Joint Commissioner	Rs.1,00,000 to Rs.5,00,000	Not required
3.	Deputy/Assistant Commissioner	Rs.10,000 to Rs.1,00,000	Exceeding Rs.20,000

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4.	Superintendent	Below Rs.10,000	Rs.5,000 but not exceeding Rs.20,000
5.	Inspector	None	Below Rs.5,000

The proper officer may not demand duty (remit duty) due on any excisable goods, including 'tea', claimed by the manufacturer as unfit for consumption or marketing provided the goods are destroyed irrecoverably under the supervision of the proper officer, and subject to the procedure, specified hereinafter.

11.2 PROCEDURE FOR DESTRUCTION OF GOODS AND REMISSION OF DUTY

The procedure to be followed for destruction of goods and remission of duty thereon shall be, as follows:

- (i) A manufacturer desiring to destroy and seek remission of duty in respect of the excisable goods manufactured in his factory 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.
- (ii) The application will be quickly processed by the Range Officer. In case the Range Officer is competent to allow destruction and remission (in terms of para 11.1 above) 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 within 15 days of receipt.
- (iii) 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 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 duty may be allowed.

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- (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 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.
- (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 limits specified in column (4) of the Table in para 11.1 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.
- (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 liquid, 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.
- (x) As far as possible, destruction should be made inside the factory.

11.3 MANNER OF DESTRUCTION

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

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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.

The officer supervising the destruction must endorse under his signature the relevant records/ documents such as AR-1, invoices and 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 on which Cenvat credit was availed, proportionate credit should be reversed before destruction of such goods. Proportionate credit should also be reversed in respect of inputs that are destroyed as such.

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. This Board's instruction is contrary to case laws decided.

11.4 CASE LAWS PERTAINING TO REMISSION OF DUTY

Particulars	Citation
1. Theft of goods is loss due to unavoidable accident. Hence, remission of duty is allowable.	<i>CCE v. GTC Industries Ltd.</i> 1994 (71) E.L.T. 806 (T). See contrary decision in <i>CCE v. International Woollen Mills</i> 1987 (28) E.L.T. 310 (T). Authors note: Theft is an unavoidable accident. In <i>Sialkot Industrial Corporation v.</i>

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	<i>UOI 1979 (4) E.L.T. J329</i>, the Delhi High Court held in the context of Sec.23 of Customs Act, that the term lost or destroyed postulates theft, fire, accident including pilferage. Though the excise rules use loss by unavoidable accident or natural causes, we feel that a narrow interpretation should not be given.
2. Loss of molasses due to rain not a loss due to natural cause. No remission grantable. (The latest decisions do not conform to this view)	<i>CCE v. Dhampur Sugar Mills 1993 (66) E.L.T. 416 (T)</i>. See contrary decision in <i>Saroj Sahakar Chini Mills Ltd. v. CCE 1995 (75) E.L.T. 336 (T)</i> Author's note: It is strange that everywhere rain and floods are held to be natural causes but this is not recognised by this decision.
3. Loss of molasses due to auto combustion is an unavoidable accident and remission is admissible.	<i>Shankar Sugar Mills v. CCE 1994 (71) E.L.T. 753 (T)</i>
4. Remission of duty should be granted even if it could be argued that the loss could have been prevented.	<i>Purna Sahakari Sakhar Kharkhana Ltd. vs CCE 1998 (100) E.L.T. 513 (T)</i>
5. Under second proviso, once the goods are ordered for destruction, duty will be extinguished on goods claimed as unfit for marketing or consumption.	<i>Yashwant SSK Ltd. v. CCE 1990 (49) E.L.T. 534 (T)</i>
6. Though second proviso uses the word "may" duty cannot be demanded when there is no allegation that the goods are marketable/fit for consumption.	<i>Godavari Sugar Mills Ltd. v. CCE 1992 (57) E.T.L. 159 (T)</i>
7. Remission of duty is grantable though the assessee has received compensation for fire accident.	<i>Sarada Plywood Industries Ltd. v. CCE 1987 (32) E.L.T. 116 (T)</i>

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8. Remission of duty is permitted when the assessee has taken steps to prevent the combustion of molasses in the tank including the spraying of water on the tank.	<i>Balarpur Chini Mills Ltd. v. CCE</i> 2000 (120) E.L.T. 184 (T)
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Self-examination questions

1. Discuss the provisions in respect of remission of duty.
2. Explain the procedure for destruction of goods and remission of duty.
3. Briefly outline the manner of destruction of goods.

