

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 71479 of 2013

(Arising out of Order-in-Original No. CCE/BBSR-II/Tech/Rem/No. 01/Commissioner/2013 dated 31.10.2013 passed by the Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-II C. R. Building, Rajaswa Vihar, Bhubaneswar-751007)

M/s. Odisha Mining Corporation Ltd.

: Appellant

OMC House, Unit-V, PMG Square,
Bhubaneswar-751001, Odisha

VERSUS

**Commissioner of Central Excise, Customs and
Service Tax,**

: Respondent

Bhubaneswar-II Commissionerate,
C. R. Building, Rajaswa Vihar, Bhubaneswar-751007

APPEARANCE:

Shri Jnanesh Mohanty, Advocate
MS. Shreya Mundhra, Advocate for the Appellant

Shri D. Sue, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75736/2026

DATE OF HEARING / DECISION: 17.06.2026

Order: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. CCE/BBSR-II/Tech/Rem/No. 01/Commissioner/2013 dated 31.10.2013 passed by the Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-II C. R. Building, Rajaswa Vihar, Bhubaneswar-751007, wherein the application for remission of Central Excise duty filed by M/s. Odisha Mining Corporation Ltd, Bhubaneswar-

751001, Odisha (herein after referred as the Appellant) under Rule 21 of the Central Excise Rules, 2002, has been rejected.

2. The facts of the case are that the Appellant, M/s. IDCOL Kalinga Iron Works Ltd, is a wholly-owned subsidiary of the Industrial Development Corporation of Odisha Ltd. (IDCOL), a Government of Odisha undertaking, holding Central Excise Registration No. AAACI9143DXM001, and is engaged in the manufacture of Pig Iron, C.I./D.I. Spun Pipe and Iron Castings falling under Chapter Sub-Headings 7201.1000, 7303.0030 and 7325.100 respectively of the First Schedule to the Central Excise Tariff Act, 1985, at its plant at Matkambada, Barbil, District Keonjhar, Odisha.

2.1. Pig Iron is, by its very nature, a brittle product. In the course of casting of hot metal in the pig casting machine, and during the consequent in-process mechanical handling, storage and intra-plant transportation, Pig Iron Chips, Dust and Dross are inevitably generated on an ongoing basis, a part whereof is inevitably irrecoverable. As per the settled practice of the pig iron industry, the physical stock of Pig Iron is generally ascertained on eye-estimation basis for the purpose of accounting, whereas sale is effected on actual weight basis. A difference between the book stock (RG-1) and the actual physical stock of Pig Iron is, therefore, inherent and inevitable in any pig iron manufacturing unit.

2.2. The Appellant's Blast Furnace was shut down from March 2011 to November 2011 for maintenance purposes. During the said period there was no production, but removals continued to take place regularly, resulting in substantial depletion of physical stock and rendering the long-accumulated

difference between book stock and physical stock perceptible even on eye-estimation. The Appellant thereupon carried out actual weighment of the physical stock of Pig Iron during the period 19.04.2012 to 25.04.2012 and ascertained that the actual physical stock was short of the RG-1 stock by 5490.601 MT. The said variation was disclosed by the Appellant in Note No. 38 of the Notes on Financial Statements forming part of its audited Annual Accounts for the Financial Year 2011-12, and thereupon became the subject matter of audit observation.

2.3. The Additional Commissioner (Audit), Bhubaneswar-II, vide letter C.No.V(1)545/IA/B-II/2012/21989-A dated 16.11.2012, called upon the Appellant to clarify the reported shortage of 5490.601 MT of Pig Iron. By its application bearing Ref. No. IKIWL/COM/MKT/PID/551 dated 27.04.2013 (the '**Remission Application**'), the Appellant applied to the jurisdictional Commissioner for remission of Central Excise duty on the said 5490.601 MT of Pig Iron under Rule 21 of the Central Excise Rules, 2002, on the ground that the shortage represented inevitable, irrecoverable handling losses of Pig Iron Chips, Dust and Dross that had accumulated and snowballed over the period 2001-02 to 2011-12. In support, the Appellant relied upon the Supplement to the Manual of Departmental Instructions on Excisable Manufactured Products (Iron and Steel — Chapter 72) issued by the Central Board of Excise and Customs [Board's letter F.No.12/28/62-CX.VII dated 07.01.1963 read with GIMF(DR) F.No.223/31/73-CX.6 dated 26.10.1979], which prescribes the permissible extent of condonable losses for iron and steel products. The

Appellant demonstrated that, as against the total production of 9,96,907.535 MT of Pig Iron during the said period of eleven years, the accumulated irrecoverable loss of 5490.601 MT works out to a mere 0.55%, which is well within the condonable limit of 2% fixed by the Board for Pig Iron.

2.4. The said Remission Application was rejected by the Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar-II vide Order No. CCE/BBSRII/Tech/Rem/No.01/COMMISSIONER/2013 dated 31.10.2013 (the '**Impugned Order**'), inter alia, on the grounds that:

- (i) Rule 223A of the erstwhile Central Excise Rules, 1944 is no longer in vogue and the operative provision is Rule 21 of the Central Excise Rules, 2002;
- (ii) the loss of 5490.601 MT is not attributable to any natural cause such as flood, fire, cyclone or earthquake, and there is no evidence to correlate the said loss with any natural cause or accident; and
- (iii) the Appellant ought to have undertaken timely stock-taking and reconciliation.

2.5. The Impugned Order was passed in reliance upon the reports of the jurisdictional Range Superintendent, Barbil and the Assistant Commissioner, Rourkela-II Division, without affording the Appellant any opportunity of personal hearing and without furnishing copies of the said reports to the Appellant. Being aggrieved by the Impugned Order, the Appellant begs to prefer the present appeal.

3. The submissions made by the appellant in support of their case are summarized below:

That the shortage represents an inevitable and irrecoverable handling/process loss inherent to the manufacture of Pig Iron, squarely qualifying for remission under Rule 21 of the Central Excise Rules, 2002, the inevitability whereof has not even been disputed in the Impugned Order.

3.1. The Appellant submits that Rule 21 of the Central Excise Rules, 2002 empowers the Commissioner to remit duty where it is shown to his satisfaction that the goods have been "*lost or destroyed by natural causes or by unavoidable accident... at any time before removal*". The expression "*unavoidable accident at any time before removal*" is wide enough to embrace inevitable handling and process losses occurring before removal of the goods. The Appellant further submitted that it is an undisputed fact that the generation of Pig Iron Chips, Dust and Dross, and the consequent irrecoverable loss of a part thereof, is inevitable and inseparable from the very process of manufacture of Pig Iron. In paragraph 8 of the Impugned Order, the Ld. Commissioner has confined his objection only to the alleged omission on the part of the Appellant in carrying out timely stock-taking and reconciliation, without in any manner disputing the inevitability of the irrecoverable loss. Having thus not disputed the inevitability of the loss, the Ld. Commissioner had no basis whatsoever to reject the claim for remission. It is well settled that handling and process losses occurring before removal qualify for remission under Rule 21.

3.2. Reliance in this regard is placed on the judgment of the Hon'ble High Court of Rajasthan in ***Union of India v. Hindustan Zinc Ltd. 2009***

(233) E.L.T. 61 (Raj.), wherein, while affirming the grant of remission under Rule 21 in respect of handling and storage losses of lead and zinc concentrates (occasioned by de-bagging, shifting of concentrates, seepage of rain water, and storage and loading on trucks), the Hon'ble High Court held that the expressions "*natural causes*" and "*unavoidable accident*" occurring in Rule 21 are required to be given a *reasonable and liberal* meaning, lest the provision, in so far as it relates to the admissibility of remission on these two grounds, be rendered "*altogether otiose*". It was held that a more practical approach is called for, observing that even in the case of an "*unavoidable accident*" it can always be contended that the accident could have been avoided by recourse to one or more measures, and that, if such a stand were accepted, no loss or destruction would ever fall within either clause.

3.3. The aforesaid view was affirmed, and the principle carried forward, by the Hon'ble High Court of Rajasthan in ***Union of India v. Hindustan Zinc Ltd. – 2017 (48) S.T.R. 422 (Raj.)***, wherein, in a case of short receipt of inputs of the order of about 0.05% accounted for by the assessee by writing off the shortage in its books on the strength of dryage of moisture content and slight differences in weighment, the Hon'ble High Court declined to disturb the grant of credit, holding that it would be "*too impracticable and unrealistic to ignore... the ground realities and the natural causes*" attendant upon such handling, and that, absent any evidence of diversion of duty-paid inputs with intent to evade duty, credit could not be denied. The Hon'ble High Court applied the principle

laid down in ***Union of India v. Hindustan Zinc Ltd. — 2009 (233) E.L.T. 61 (Raj.) (supra)***, and reiterated that the expressions "*natural causes*" and "*unavoidable accident*" in Rule 21 must be given a *reasonable and liberal* meaning and that a more practical approach is called for in such matters. The said principle applies with greater force to the present case, where the irrecoverable loss of a mere 0.55% is, on any view, occasioned by natural causes attendant upon the manufacture and handling of a brittle product, and where no clandestine removal has even been alleged.

3.4. Reliance in this regard is also placed on the ruling in the case of ***J.K. Sugar Ltd. v. CCE, Meerut reported in 2005 (185) E.L.T. 300 (T)*** wherein it was held that Rule 21 of Central Excise Rules, 2002 does not specifically mention "handling", and that the reference in the Rule to "unavoidable accident at any time before removal" would cover handling losses. The said decision was followed in ***Rosa Sugar Works v. Commissioner of C. Ex., Lucknow 2009 (241) E.L.T. 218 (Tri. - Del.)***, wherein the Hon'ble Tribunal accordingly allowed remission of duty in respect of storage/handling losses found to be within the permissible limit prescribed by the Board, and that there was no material to show that the losses were incurred deliberately or otherwise.

3.5. The said principle was also laid down in ***J.K. Sugar Ltd. v. Commissioner of Central Excise, Meerut-II — 2016 (344) E.L.T. 604 (Tri. - All.)***, wherein the Hon'ble Tribunal, holding that the loss in question was a recurrent and inevitable phenomenon and that the assessee had taken all plausible steps to mitigate the same, allowed remission of duty

under Rule 21, and further held that a bald allegation of negligence, unsupported by any finding, cannot constitute a ground to deny remission. The said decision was affirmed by the Allahabad HC as reported in **2017 (346) E.L.T. 559 (All.)**.

3.6. Further, in ***Hindustan Zinc Ltd. v. Commissioner of Central Excise, Visakhapatnam — 2004 (172) E.L.T. 244 (Tri. - Bang.)***, the Tribunal held that shortages of inputs detected during annual stock-taking and written off in the books of account, being attributable to handling loss, dryage and the volumetric/estimation method of stock verification, constitute losses occurring in or in relation to manufacture, in respect whereof duty/credit cannot be denied. The said decision has been affirmed in **2014 (307) E.L.T. 273 (A.P.)**.

3.7. The Appellant submits that the Ld. Commissioner has rejected the claim on the reasoning that there can be a number of natural causes "*such as flood, fire, cyclone, earthquake etc.*", and that the loss is not attributable to any such natural cause or accident. This reasoning proceeds upon an impermissibly narrow construction of Rule 21, which is not confined to such catastrophic events alone but extends to all losses occasioned by natural causes or by unavoidable accident before removal — including inevitable, irrecoverable handling and process losses inherent to the manufacturing process, such as the irrecoverable loss of Pig Iron Chips, Dust and Dross occasioned by oxidation and admixture with the ground. Such inevitable and unavoidable losses are squarely within the remissory ambit of Rule 21 is borne out by the judgments cited above wherein remission was

allowed in respect of losses arising from a recurrent natural phenomenon and from handling, respectively, neither of which constituted a catastrophic event of the kind contemplated by the Ld. Commissioner.

3.8. In view of the foregoing, the Appellant submits that the loss of 5490.601 MT of Pig Iron, being an inevitable and irrecoverable handling/process loss generated in the very course of manufacture and occurring well before removal, falls squarely within the remissory ambit of Rule 21 of the Central Excise Rules, 2002. The Ld. Commissioner, having nowhere disputed the inevitability or the irrecoverable character of such loss, was bound to allow the remission claimed, and the Impugned Order, in rejecting the same, is unsustainable in law and liable to be set aside.

That the accumulated loss of 0.55% of total production is well within the condonable limit of 2% fixed by the Board for Pig Iron, and the product-specific instructions of the Board, being binding on the Department, could not have been ignored by the Ld. Commissioner.

3.9. The Appellant relies upon the Supplement to the Manual of Departmental Instructions on Excisable Manufactured Products (Iron and Steel — Chapter 72), issued by the Central Board of Excise and Customs vide GIMF(DR) F.No.223/31/73-CX.6 dated 26.10.1979 (Circular No. 52/79-CX), which prescribes permissible loss to the extent of 2% of the quantity produced, in case of Pig Iron. The Appellant submits that as against the total production of 9,96,907.535 MT of Pig Iron during the period 2001-

02 to 2011-12, the accumulated irrecoverable loss of 5490.601 MT works out to a mere 0.55%, which is less than one-third of the condonable limit of 2% fixed by the Board for Pig Iron. It is submitted that the said product-specific condonation norms have been consistently applied by the Tribunals to losses of pig iron and steel detected during stock-taking.

3.10. In ***Steel Authority of India Ltd. v. Commissioner of C. Ex., Mysore – 2006 (200) E.L.T. 229 (Tri. - Bang.)*** and in ***Rashtriya Ispat Nigam Ltd. v. Commr. of Cus. & C. Ex., Visakhapatnam – 2009 (235) E.L.T. 248 (Tri. - Bang.)***, the Tribunal, having regard to the guidelines on condonation of losses contained in C.B.E.C. Circular No. 52/79-CX dated 26.10.1979 and to the marginal nature of the shortage, held that demands founded on such stock-taking shortages of pig iron/steel could not be sustained. Having recorded that the loss is a mere 0.55%, well within the 2% limit fixed by the Board, the Ld. Commissioner gravely erred in proceeding to reject the claim in utter disregard of the binding instructions of the Board, without recording any finding whatsoever as to the applicability or binding effect thereof. Further, the difference, being merely the inherent and inevitable result of eye-estimation vis-à-vis actual weighment, no denial of remission can be founded upon such estimated stock discrepancies.

3.11. The Impugned Order refers to the Appellant's application as one filed under Rule 223A of the erstwhile Central Excise Rules, 1944, whereas the Appellant never invoked Rule 223A and the Remission Application was expressly made under Rule 21 of the Central Excise Rules, 2002. The erstwhile Central Excise Rules, 1944 had long ceased

to exist during the relevant period, having been replaced first by the Central Excise (No. 2) Rules, 2001 and thereafter by the Central Excise Rules, 2002. The Impugned Order is liable to be set aside on this ground alone. The circumstance that the Board's product-specific condonation norms were originally issued with reference to Rule 223A of the erstwhile Rules does not, in any manner, detract from their continued applicability under the present remission regime; indeed, in ***Steel Authority of India Ltd. (supra)*** and ***Rashtriya Ispat Nigam Ltd. (supra)***, the guidance contained in C.B.E.C. Circular No. 52/79-CX was applied notwithstanding the migration of the statutory rules.

3.12. Thus, the Appellant submits that the impugned Order denying remission to the Appellant is liable to be set aside on this ground also.

That the Impugned Order, having been passed in gross violation of the principles of natural justice without affording the Appellant any opportunity of personal hearing and in reliance upon reports without furnishing copies thereof, is liable to be set aside in limine.

3.13. The Appellant submits that the Impugned Order has been passed without affording the Appellant any opportunity of personal hearing whatsoever. On this short ground alone, the Impugned Order, being violative of the rule of *audi alteram partem*, is liable to be set aside *in limine*. The Impugned Order further proceeds upon, and relies upon, the purported reports of the jurisdictional Range Superintendent, Barbil and the Assistant Commissioner, Rourkela-II Division, which

were obtained by the Ld. Commissioner behind the back of the Appellant and without furnishing a copy thereof to the Appellant to enable it to contest the contents thereof before passing the Impugned Order. This constitutes a further and independent violation of the principles of natural justice, vitiating the Impugned Order.

3.14. Thus, the Impugned Order being wholly unsustainable in law and on facts, the Appellant submits that they are entitled to remission of duty as claimed, together with consequential relief, if any.

4. The Ld. A.R. reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. The Appellant is a manufacturer of Pig Iron, which by its very nature, a brittle product. In the course of casting of hot metal in the pig casting machine, and during the consequent in-process mechanical handling, storage and intra-plant transportation, Pig Iron Chips, Dust and Dross are inevitably generated. In the normal course no physical stock verification was conducted and stock was verified on eye estimation basis. Hence, the actual loss was not ascertained over a long period.

6.1. The Appellant carried out actual weighment of the physical stock of Pig Iron during the period 19.04.2012 to 25.04.2012 and ascertained that the actual physical stock was short of the RG-1 stock by 5490.601 MT. The Appellant applied to the jurisdictional Commissioner for remission of Central Excise duty on the said 5490.601 MT of Pig Iron under Rule 21 of the Central Excise Rules, 2002, on

the ground that the shortage represented inevitable, irrecoverable handling losses of Pig Iron Chips, Dust and Dross that had accumulated and snowballed over the period 2001-02 to 2011-12. However, the Ld. Commissioner has rejected the remission application of the appellant.

6.2. In this regard, we refer the Supplement to the Manual of Departmental Instructions on Excisable Manufactured Products (Iron and Steel — Chapter 72), issued by the Central Board of Excise and Customs vide GIMF(DR) F.No.223/31/73-CX.6 dated 26.10.1979 (Circular No. 52/79-CX), which prescribes the permissible extent of condonable losses observed during annual stock-taking in the following terms:

"As regards the percentage of losses that can be allowed in relation to the various iron and steel items... following percentage of condonable losses observed during annual stock taking is fixed:—

(i) Steel ingots including steel melting scrap covered by the erstwhile T.I.26 and Iron or steel products covered by the erstwhile T.I.26AA — 1%;

(ii) Pig iron — 2%;

(iii) Iron and any crude form — 0.25%."

6.3. In the present case, we find that the total production of Pig Iron during the period 2001-02 to 2011-12 was 9,96,907.535 MT. As against this quantity of Pig Iron produced, the accumulated irrecoverable loss was 5490.601 MT, which works out to a mere 0.55% and it is less than one-third of the condonable limit of 2% fixed by the Board for Pig

Iron. We find that the said product-specific condonation norms have been consistently applied by the Tribunals to losses of pig iron and steel detected during stock-taking.

6.4. In ***Steel Authority of India Ltd. v. Commissioner of C. Ex., Mysore – 2006 (200) E.L.T. 229 (Tri. - Bang.)*** and in ***Rashtriya Ispat Nigam Ltd. v. Commr. of Cus. & C. Ex., Visakhapatnam – 2009 (235) E.L.T. 248 (Tri. - Bang.)***, the Tribunal, having regard to the guidelines on condonation of losses contained in C.B.E.C. Circular No. 52/79-CX dated 26.10.1979 and to the marginal nature of the shortage, held that demands founded on such stock-taking shortages of pig iron/steel could not be sustained. Having recorded that the loss is a mere 0.55%, well within the 2% limit fixed by the Board, we observe that the Ld. Commissioner has erred in proceeding to reject the claim of the Appellant, disregarding the binding instructions of the Board.

6.5. We find that in the Impugned Order, the Ld. Adjudicating authority refers to the Appellant's application as one filed under Rule 223A of the erstwhile Central Excise Rules, 1944, whereas it is a fact on record that the Appellant never invoked Rule 223A and the Remission Application was expressly made under Rule 21 of the Central Excise Rules, 2002. The erstwhile Central Excise Rules, 1944 had long ceased to exist during the relevant period, having been replaced first by the Central Excise (No. 2) Rules, 2001 and thereafter by the Central Excise Rules, 2002. Thus, we observe that the Impugned Order is liable to be set aside on this ground also.

6.6. In view of the discussions above, we hold that the Appellant is eligible for the remission of Central Excise duty on the 5490.601 MT of Pig Iron found short for the period 2001-02 to 2011-12, as provided under Rule 21 of the Central Excise Rules, 2002. Accordingly, we hold that the impugned order rejecting the remission applied by the Appellant is not sustainable.

7. In the result, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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