

Sr. No.	Date	Orders
		<p>24.8.2004</p> <p>Present: Mr. Pradeep Jain for the petitioner Mr. Gaurav Duggal for respondent/UOI</p> <p><u>WP(C) NO. 469/2001</u></p> <p>This petition is directed against the order dated 17.11.2000 made by Government of India, Ministry of Finance, Department of Revenue in exercise of revisional powers under the provisions contained in the Central Excise Act, 1944 (hereinafter referred to as the Act). The government was approached as the applicant was aggrieved by an order-in-appeal no. 1203/CF/DI.H/99 dated 1.12.1999 which was made by Commissioner of Central Excise (Appeals), New Delhi.</p> <p>The Assistant Commissioner disallowed an amount of Rs. 3,82,062/- being MODVAT credit availed by the applicants on the inputs said to have been stolen from their premises on 19.5.1996 under Rule 57-I of the Central Excise Rules, 1944 (hereinafter referred to as the Rules) and ordered its recovery. The Assistant Commissioner also confirmed an amount of Rs. 2,57,059/- under Rule 9(2) being the Central Excise duty leviable on the finished goods stolen on the same occasion.</p> <p>The issue involved in this petition relates to interpretation of Rule 147 of the Rules which reads as under:-</p> <p style="text-align: center;"><b>"147. POWER TO REMIT DUTY ON WAREHOUSED GOODS LOST OR DESTROYED- If any</b></p>

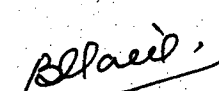
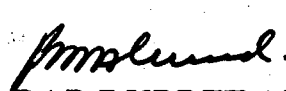
Signature Not Verified

Digitally Signed By: AMULYA  
Certify that the digital file and  
physical file have been compared and  
the digital data is as per the physical  
file and no page is missing.

29

Sr. No.	Date	Orders
		<p>goods lodged in a warehouse are lost or destroyed by unavoidable accident, the Commissioner may in his discretion remit the duty due thereon:</p> <p>Provided that if any goods be so lost or destroyed in a private warehouse, notice thereof shall be given to the officer-in-charge of the warehouse within 48 hours after the discovery of such loss or destruction."</p> <p>The revisional authority dealt with the said aspect in the following manner :-</p> <p>"The proviso clearly lays down that notice of any goods lost or destroyed in a private warehouse <u>shall</u> be given to the officer-in-charge of the warehouse within 48 hours after the discovery of such loss or destruction. Thus time limit is a mandatory one and is part of the statute. The applicants are unable to produce evidence to the effect that such an intimation was given to the proper officer within time. Both the SCN and the original order describe that letter dated 21.05.96 narrating the incident was addressed to the proper officer, but when was it delivered is not clear. The applicants in their reply dated 01.01.97 had categorically stated that the said intimation was submitted on 23.05.96 i.e., clearly after the 48 hours stipulation. Hence the lower authorities orders cannot be assailed, especially when FIR was lodged on 20.05.96 at 07/15 A.M. with the local police authorities and that the theft took place when the factory was working on the night of 19<sup>th</sup>/20<sup>th</sup> instant."</p> <p>It is clear that there is no provision for condoning any delay. However, the learned counsel for the petitioner submitted that this being procedural aspect it should have been condoned. According to the counsel it is not a substantive provision and delay should not come in the way of the applicant more particularly when the first information report was lodged with the police immediately after the assessee came to know about the</p>

*[Signature]*

Sr. No.	Date	Orders
		<p>there. Reading the rule it appears that it is mandatory in nature and the Central Excise authorities are not given any power to condone the delay in notifying the loss of goods to the officer-in-charge of the warehouse. The decision cannot be faulted as it is strictly in accordance with law. The learned counsel states that this court in exercise of powers under Article 226 should direct the lower authorities to condone the delay and grant the benefits. That cannot be done. This provision is made with a view to give benefit. However, at the same time to see that there is no fraud and collusion or an attempt to evade the tax the provision prescribing a time limit is made. Presumably to achieve the two objects, namely prevention of fraud and facilitate administrative efficiency, the provision is made subject to a condition that the person claiming the benefit shall furnish information in the manner prescribed under rules. If the provision is liberally construed and the stipulation of time is disregarded then the same would facilitate the commission of fraud and introduce administrative inconveniences. It appears that with a view to avoid such risk the provision is harshly worded with the word "shall". In view of this we find no reason to interfere. The petition accordingly dismissed.</p> <p style="text-align: right;">             CHIEF JUSTICE         </p> <p style="text-align: right;">             BADAR DURREZ AHMED, J.         </p> <p>August 24, 2004 mv</p>