

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 12646 of 2013- DB

(Arising out of OIA-SRP/88/VAPI/2013-2014 dated 15/05/2013 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI)

Sun Pharmaceuticals Industries Ltd

.....Appellant

Survey No. 214, Plot No. 20,
Govt Indl Area, Piparia,
Silvassa, U T Of Dadra & Nagar Haveli

VERSUS

C.C.E. & S.T.-Vapi

.....Respondent

4th Floor...Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi
Vapi, Gujarat - 396191

WITH

Excise Appeal No. 11131 of 2014- DB

(Arising out of OIA-VAP-EXCUS-000-APP-411-13-14 dated 16/11/2013 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI)

Sun Pharmaceuticals Industries Ltd

.....Appellant

Survey No. 214, Plot No. 20,
Govt Indl Area, Piparia, Phase-II,
Silvassa, U T Of Dadra & Nagar Haveli

VERSUS

C.C.E. & S.T.-Vapi

.....Respondent

4th Floor...Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi
Vapi, Gujarat - 396191

APPEARANCE:

Ms. Nidhi Nawal, Advocate for the Appellant
Shri P.K.Singh, Superintended (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR**

Final Order No. A/11264-11265/2023

DATE OF HEARING: 20.04.2023
DATE OF DECISION: 15.06.2023

RAMESH NAIR

These two appeals are directed against Order-In-Appeal No VAP-EXCUS-000-APP-411-13-14 dated 16.11.2013 and Order-in-Appeal SRP/88/VAPI/2013-2014 dated 15.05.2023. The appeal No. E/11131/2014 was filed against Order-in-Appeal dated 16.11.2013 upholding rejection of remission of duty in respect of the goods lost in fire and appeal no. E/12646/2013 was filed against Order-In-Appeal dated 15.05.2013 whereby, the demand of excise duty in respect of the goods lost in fire was confirmed. Since both the matter are interconnected, we take the appeal no. E/11131/2014 for the purpose of narrating the facts of the case.

02. The brief facts of the case are that the appellant M/s. Sun Pharmaceuticals Industries Ltd. are engaged in the manufacture of medical equipments, they have filed their application dated 26.08.2010 for remission of duty on the finished goods destroyed in fire accident occurred in their factory on 07.06.2010 with the Assistant Commissioner, Central Excise & Customs, Division-II. The said application was subsequently revised by them vide their application dated 01.07.2011 on the request of the Assistant Commissioner, Central Excise & Customs, Division-II vide their letter dated 27.09.2010 and 27.05.2011. As per the remission application of the appellant they have claimed the remission of duty of Rs. 1,38,233/- involved in the PP medicine which were destroyed in fire accident. The adjudicating authority rejected the remission application under Rule 21 of the Central Excise Rules , 2002 mainly relying on the guidelines as prescribed under trade notice. The adjudicating authority found that the appellant have not taken proper precaution to avoid the fire accident. They have also not filed F.I.R. with police within 24 hours. The adjudicating authority likewise pointed out various discrepancies on the part of the appellant and concluded that the appellant have not fulfilled the conditions laid down in the Commissionerates Trade Notice No.36/2005 dated 15.04.2005 in as much as they failed to inform the department in due time , they did not take necessary precautions to safeguard the goods, they did not insured the goods, that they failed to claim in any proper pro-forma, claim was filed by them in proper pro-forma only on 01.07.2011 i.e. after almost one year after the fire accident on 07.06.2010. On this basis, the remission application was rejected vide Order-In-Original dated 31.07.2013 against which the appellant filed an appeal before the Commissioner (Appeals) who vide Order-In-appeal dated 16.12.2013 upheld the order of the original authority therefore, the present appeal No. E/11131/2014 was filed by the

appellant and other appeal no. E/12646/2013 is towards the confirmation of demand of duty in respect of same goods lost in fire accident for which the remission was rejected. The result of this appeal will be an outcome of appeal no. E/11131/2014 as consequential effect.

03. Ms. Nidhi Nawal, learned counsel appearing on behalf of the appellant submits that the appellant have admittedly intimated to the range officer about the fire accident, the officers visited the factory and recorded the panchnama wherein, no lapse on the part of the appellant was pointed out. She submits that the appellant have informed the fire brigade to control the fire and also informed to the insurance company. The insurance survey was conducted and the appellant was also granted the insurance claim. She submits that the appellant by following the provision of remission reversed the cenvat credit of Rs.92,061/- involve in the goods destroyed in fire accident.

3.1. As regard the allegation that the appellant have not informed to the police, she submits that since there is no human casualty which took place, there was no need to inform the police department therefore, no FIR was lodged. She submits that as per the above compliance made by the appellant, the remission of duty ought to have been granted by the original authority. She further submits that the fire was occurred accidentally and nothing is on record that it happened due to carelessness of the appellant. She submits that in the identical facts, this tribunal in various judgments allowed the remission of duty. She placed reliance on the following judgments:-

- Steelbird Hi Tech India Ltd. Versus Commissioner of C. Ex., Delhi II 2015 (322) E.L.T. 752 (Tri. - Del.)
- Feather Foam Enterprises Versus Commissioner of Central Excise, Vapi 2009 (233) E.L.T. 287 (Tri.-Ahmd)
- Commissioner of Customs, Bangalore Versus Sami Labs Ltd.. 2012 (278) E.L.T. 601 (Kar.)
- Aditya Industries Versus Commissioner of C. Ex., Ahmedabad-2009 (247) E.L.T. 567 (Tri. - Ahmd.)
- Grasim Industries Versus Commissioner of Central Excise Indore, 2007 (208) E.L.T. 336 (Tri. - LB)
- Supreme Industries Ltd. Versus Commissioner of C. Ex., Daman 2009 (236) E.L.T. 81 (Tri. - Ahmd.)
- Commissioner of C. Ex., Pune-II Versus GES Polymers Pvt. Ltd-2008 (225) E.L.T. 122 (Tri. - Mumbai)

- Anand Duplex Ltd. Versus Commissioner of Central Excise, Meerut-I 2008 (223) E.L.T. 283 (Tri. - Del.)
- MRIDUL ENTERPRISES V/S COMMISSIONER OF C. EX., JAIPUR, 2007 (213) E.L.T. 715 (Tri. - Del.)
- Government of India, Ministry Of Finance Ltd. in Re: Arraycom India Ltd.- 2006 (205) E.L.T. 1023 (G.O.I.)
- Commissioner of C. Ex., Guntur Versus Empee Marine Products Ltd. 2007 (220) E.L.T. 266 (Tri. - Bang.)
- Sami Labs Ltd. Versus Commissioner of Customs, Bangalore-2007 (216) E.L.T. 59 (Tri. - Bang.)
- Ergo Auto Ltd. Versus Commissioner of Central Excise, Faridabad 2008 (232) E.L.T. 154 (Tri. - Del.)
- Supreme Industries Ltd. Versus Commissioner of C. Ex Pondicherry 2011 (271) E.L.T. 241 (Tri. - Mumbai)
- M.M. Rubber Co. Ltd. Versus Commissioner of C. Ex., Bangalore 2006 (206) E.L.T. 282 (Tri. - Bang.)
- Deepa Cotton Versus Commissioner of Central Excise, Thane 2014 (307) E.L.T. 346 (Tri. Mumbai)

3.2 As regard the appeal no. E/12646/2013 she submits that since the remission of duty deserves to be granted in this appeal the demand of duty being consequential to rejection of remission will also not survive.

04. On the other hand, Shri Prakash Kumar Singh, Ld. Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that there is no dispute that the appellant have not followed the guidelines for remission of duty as laid down in the trade notice of Commissioner of Central Excise Ahmedabad dated 15.04.2005 therefore, for non-compliance of the guideline the remission of the appellant was rightly rejected and the consequential demand was correctly confirmed by the lower authorities. He placed reliance on the following judgments:-

- Suyash laboratories Ltd.- 2018 (364) ELT 431 (Tri.-Mumbai)
- Everest Organics Ltd.- 2015 (330) ELT 531

05. We have carefully considered the submissions made by both the sides and perused the records. We find that there is no dispute that the fire has occurred accidentally in the factory of the appellant and the goods were destroyed. The appellant has intimated to the range officer who visited the factory and drawn the panchnama. In the panchnama, there is no whisper about any mischief done by the appellant for the fire accident took place in

the factory of the appellant therefore, nothing is on record that the fire accident has taken place not accidental but intentional by the act of the appellant. In this position, without any evidence the allegation of the lower authorities that the appellant have not taken precaution has no basis. We further find that the appellant have filed an insurance claim with the National Insurance Company Ltd. against the goods lost in fire and the appellant have been granted the insurance claim in the survey report for the purpose of insurance, it is nowhere coming out that the fire has not occurred accidental but due to lack of precaution by the appellant or any mischief of the appellant therefore, the allegation made by the lower authorities for rejection of remission claim is based on assumption and presumption. It is pertinent to note that the revenue's stack is very minuscule as against the stack of insurance company. Therefore, once insurance company has granted the insurance claim for the principal amount of the goods destroyed which is much more than the duty implication in the goods destroyed. It can be conveniently inferred that the insurance company has scrutinized minutely each and every aspect of the accident of fire taken place and only thereafter the insurance claim was granted. It is also to be considered that the appellant as against the duty involvement of Rs. 1,38,233/- have reversed the cenvat credit involved in the destroyed goods amounting to Rs. 92061/- therefore, we found that appellant have made out a fit case for remission of duty which could not have been rejected by the lower authorities accordingly, we set aside the impugned order and allow the appeal No. E/11131/2014.

5.1 As a consequential effect of this allowance of the appeal on the issue of remission of duty, the impugned order in appeal no. E/12646/2013 will also not survive, hence the same is also set aside.

06. As a result, both the appeals are allowed with consequential relief.

(Pronounced in the open court on 15.06.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)