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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 10693 of 2020

(Arising out of OIO-VAD-EXCUS-TECH-002-COM-001-20-21 DATED 29.05.2020 passed by Commissioner of Central Excise, Customs and Service Tax-Vadodara-II)

THE SUPREME INDUSTRIES LTD ....**Appellant**
1307 & 216, GIDC INDUSTRIAL ESTATE, HALOL
PANCHMAHAL-GUJARAT

VERSUS

C.C.E. & S.T.-VADODARA-II ....**Respondent**
1ST FLOOR... ROOM NO.101,
NEW CENTRAL EXCISE BUILDING,
VADODARA, GUJARAT-390023

APPEARANCE:
Shri Sachin Chitnis, Advocate for the Appellant
Shri G. Kirupanandan, (Superintendent) Authorised Representative for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

Final Order No. A/ 11242 /2022

DATE OF HEARING:11.10.2022
DATE OF DECISION:19.10.2022

RAMESH NAIR

This appeal is directed against the order in original passed by the Commissioner rejecting the remission application of excise duty amounting to Rs. 40,47,645/- in respect of final product destroyed in fire which took place in the factory of the appellant. The adjudicating authority rejected the remission claim on the basis that as per the jurisdictional central excise officer's report on his physical verification, it was found that neither in the past nor in the present scenario there is any preponderance of fire fighting measure that the FSL report also indicate the electric wires of the company were ragged/ tattered at various places and were in a dilapidated condition which evidently indicated lethargy in their maintenance and lack of proper firefighting and checking arrangement on the part of the assessee. The assessee had taken the firefighting precautionary steps only after 2-3 months after the fire incident and had installed the water guns at the factory premises. With this observation, the adjudicating authority has contended that due to non-taking the precautionary steps by the appellant, the avoidable fire incident has taken place. It is the contention of the adjudicating authority that as per Rule-21 of Central Excise Rules, 2002, the remission can be granted only when it is shown to the satisfaction of the Commissioner that the goods have been lost or destroyed by natural cause or by unavoidable incident, therefore, the case of the appellant does not fall under Rule 21 of Central Excise Rules, 2002. As regard, the valuation of burnt goods and reimbursement of element of Central Excise duty by Insurance Company, it is observed that as against the price of the goods i.e. Rs. 139 per KG, they have claimed the loss of Rigidex film @ Rs. 149.16 per KG. He contended that increase in price includes the excise duty, therefore, the appellant have recovered the element of excise duty from the insurance company, for this reason also the remission is not admissible. On the basis of above contention, the adjudicating authority rejected the application of the appellant for remission of central excise duty of Rs. 40,47,645/- filed under Rule 21 of Central Excise Rules 2002, therefore, the present appeal filed by the appellant.

2. Shri Sachin Chitnis, learned counsel appearing on behalf of the appellant submits that the findings of the adjudicating authority is completely erroneous on the face of the fact that the appellant have taken all the precaution to avoid the fire incident but the fire incident taken place in the factory was beyond the control of the appellant. He submits that the adjudicating authority stated that no fire extinguisher was placed in the factory. In this regard, he referred to a chart of firefighting equipment installed in the factory for the period from January 1987 to January 2014. It is his submission that on this fact, the appellant have taken precautionary measures of firefighting. The adjudicating authority has wrongly said that after 2014 no expenditure was made on firefighting. In this regard, he

submits that once all the firefighting equipment have been installed, there is no need to spend on the same on regular basis, therefore, the finding in this regard of the adjudicating authority is on assumption presumption basis and baseless. He further invited my attention to report of Deputy Director (Industrial Safety & Health) whereby he submits that it was clearly recorded that the fire has taken place due to electric short circuit in the factory. There is no allegation against the appellant with regard to improper precautionary measure by the appellant. He submits that the appellant's industry is a reputed public limited company and it is certified ISO 9001-12008 due to which the appellant are supposed to take utmost precautions in respect of every aspect in the factory. Therefore, it cannot be alleged that the fire incident has taken place due to carelessness of the appellant. As regard the valuation of insurance claim, he submits that no excise duty claim was made from the insurance company regarding the price i.e. against Rs. Rs. 139 per KG, they claimed Rs. 149.16 per KG. He submits that increase in the price is only towards selling and marketing expanses and not against the excise duty on the finished goods. Therefore, the contention of the adjudicating authority that the enhancement of the price of the goods includes the excise duty is based on assumption and presumption and without any basis. He in support of his submission placed reliance on the following judgements:

- Motherson Automotive – 2017-TIOL-2082-CESTAT-ALL
- Railtronics India – 2017 (354) ELT 324 (ALL)
- M. Kumar Udhyog – 2014 (306) ELT 19 (ALL)
- Tej Shoe Factory – 2018 (363) ELT 863 (T)
- Sanskriti Packaging – 2015 (318) ELT 451 (T)
- Sumit Chemicals – 2016 (337) ELT 299 (T)
- Arhant Studes Ltd. 2016 (322) ELT 827 (T)
- Quest International India Ltd. – 1998 (100) ELT 358 (T)

- Ginni Filaments Ltd. 2001 (128) ELT 273 (T)
- Medicaps – 2011 (24) STR 572 (T)
- Parekh Plast – 2012 (25) STR 46 (T)
- Themis Medicare – 2014-TIOL-336-CESTAT-MUM
- Tata Advance- 2018-TIOL-2501-CESTAT-BANG

3. Shri G. Kirupanandan, learned authorized representative appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. I have carefully considered the submission made by both the sides and perused the records.

5. I find that the main contention of the adjudicating authority in rejecting the remission application is that fire was avoidable and due to not taking proper care by the appellant, the fire took place, therefore fire incident is not due to unavoidable circumstances. I find that the appellant have been regularly installing the firefighting equipment in their factory from 1987-2014. The fire took place in the factory on 07.01.2017. The contention of the adjudicating authority is that the appellant have not made any expenditure towards firefighting measures from 2014 onwards and that is the reason the fire has taken place. I completely disagree with the said contention of the learned adjudicating authority for the reason that once all the firefighting equipment have been installed in the factory i.e. upto January 2014, only in case of any need the firefighting equipment is required. Only because there is no expenditure in respect of firefighting measures after 2014, it cannot be said that the appellant have not equipped their factory with firefighting measures. I also find that there is absolutely no adverse remark in any of the various reports made in respect of the incident of fire in the factory. Be it of Inspector of Police, Fire Brigades, Deputy Director, Industrial Health and Safety Industry, Nagarpalika and from various reports, it is clear that the fire incident has taken place due to

short circuit. The short circuit is clearly beyond the control of anyone and it is general that in majority of cases fire takes place due to short circuit and the same cannot be predicted by anyone in advance. Therefore, I am of the considered view that the appellant have taken abundant precaution as regard firefighting measure and there is no lapse on the part of the appellant to hold that the fire incident could have been avoided. Moreover, it is not the case of the department that the appellant had conscious intention to allow the incident of fire in the factory. From the various reports, it has been established that the fire has taken place due to the natural cause, hence, the case is clearly covered under Rule 21 of Central Excise Rules 2004. As regard the valuation of goods that price for the purpose of insurance claim was enhanced from Rs. 139 per KG to Rs. 149.16 per KG. From the calculation, it is absolutely clear that this enhancement does not include the excise duty. The enhancement is only due to inclusion of various expenses such as marketing and selling expenses, therefore, it is beyond doubt that the appellant have not included the amount of Central Excise duty. Therefore, on this count also the remission of duty cannot be varied or denied. The judgements cited by the appellant are clearly supporting the appellant's case.

6. Accordingly, I am of the clear view that the appellant is entitled for remission of duty in respect of final product lost or destroyed in fire incident. Needless to say that the appellant needs to reverse the cenvat credit in respect of the inputs, if any availed, contained in the final product in respect of which the remission is sought for. With the above observation, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 19.10.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

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