CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 3

CUSTOMS APPEAL NO. 10336 OF 2023

[Arising out of AHM-CUSTM-000-COM-037-22-23 dated 16/03/2023 passed by Commissioner of Central Excise, Customs and Service Tax-Ahmedabad]

DISHMAN CARBOGEN AMICS LTD **Appellant**
[Earlier M/s. Dishman Pharmaceuticals & Chemicals Ltd (100% EOU)]
Plot No. 47 Paiki 1, Village: Lodariyal,
Ta: Sanand, Dist: Ahmedabad-382220

Vs.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX-AHMEDABAD **Respondent**
Customs House, Near All India Radio,
Navrangpura, Ashram Road,
Ahmedabad – 380 009

WITH

EXCISE APPEAL NO. 10527 OF 2023

[Arising out of AHM-EXCUS-002-COMMR-38-2022-23 dated 07/02/2023 passed by Commissioner of Central Excise, Customs and Service Tax-Ahmedabad]

DISHMAN CARBOGEN AMICS LTD **Appellant**
[Earlier M/s. Dishman Pharmaceuticals & Chemicals Ltd (100% EOU)]
Plot No. 47 Paiki 1, Village: Lodariyal,
Ta: Sanand, Dist: Ahmedabad-382220

Vs.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX-AHMEDABAD **Respondent**
Customs House, Near All India Radio,
Navrangpura, Ashram Road,
Ahmedabad – 380 009

AND

EXCISE APPEAL NO. 10226 OF 2024

[Arising out of AHM-EXCUS-002-APP-314-23-24 dated 08/04/2024 passed by Commissioner of Central Excise, Customs and Service Tax-CGST & Central Excise Ahmedabad North]

DISHMAN CARBOGEN AMICS LTD **Appellant**
[Earlier M/s. Dishman Pharmaceuticals & Chemicals Ltd (100% EOU)]
Plot No. 47 Paiki 1, Village: Lodariyal,
Ta: Sanand, Dist: Ahmedabad-382220

Vs.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX CGST & CENTRAL EXCISE AHMEDABAD NORTH **Respondent**
Cgst & Central Excise Commissionerate Ahmedabad North,
1st House, Customs House, Near All India Radio,
Navrangpura, Ashram Road, Ahmedabad – 380 009

Appearance:
Shri R. Subramanya, Advocate for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. 12704-12706/2024

Date of Hearing : 21.08.2024
Date of Decision : 12.11.2024

RAMESH NAIR

The brief facts of the case are that the appellant M/s. Dishman Cargo Ltd (100%AIO) is engaged in the manufacture of bulk drugs and fine chemicals falling under chapter 30, 34 and 38 of the first schedule to the Central Excise Tariff Act 1985. The appellant have availed Cenvat credit on input and input services on capital goods and they have also procured the goods under CT3 from DTA and also imported under procurement certificate without payment of Central Excise/custom duty. A fire accident has occurred at the manufacturing premises of the appellant on 07.03.2017 at 7.15 PM, the appellant had immediately informed about the incident to the fire brigade, police, FSI and Central Excise Authorities. The appellant also had reported the fire incident to the Deputy Commissioner with copy to Range Superintendent vide the letter dated 08.03.2017. The jurisdictional Range Superintendent/Sector officer visited the factory premises on 10.03.2017 and had drawn a panchanama dated 10.03.2017 and recorded the loss of the stock of raw material, semi-finished/finished goods and capital goods present in the factory premises due to fire accident. The appellant filed an application dated 04.05.2017 to the Deputy Commissioner of Central Excise division on-IV Ahmedabad-II (now division-IV Ahmedabad north) along with date of goods lost and destroyed in fire for remission of duties of excise on indigenous goods and custom duty on imported goods. On the application for remission, the Commissioner of CGST & Central Excise Ahmedabad North had issued the show cause notice No. IV-16-04-MT-2019-20 dated 28.10.2022 proposing to reject the application for remission of Central Excise Duty of Rs. 1,60,30,411/- under rule 21 of Central Excise Rules 2002 further the show cause notice was adjudicated vide order-in-original no AHM-excus-002-COMMR-38/2022-23 dated 07.02.2023 whereby the remission application was rejected.

Being aggrieved by the order-in-original dated 07.02.2023 rejecting the remission application, the appellant filed appeal which is registered as E/10527/20202. During the process of remission matter the appellant were issued show cause notice dated 28.10.2022 proposing demand of custom duty on duty free imports against procurement certificate which were destroyed in fire and also show cause notice dated 01.05.2019 proposing excise duty of Rs.39,23,874/- on domestic purchase of goods against CT 3 form which were destroyed in the fire accident. Consequent upon the rejection of the remission application the learned Commissioner of Customs Ahmedabad adjudicated the show cause notice dated 28.10.2022 passed order-in-original no. AHM-CUSTM-000-CUM-037-22-23 dated 16.03.2023 confirming the demand of custom duty involved in the duty free imported goods under procurement certificates which were destroyed in the fire accident against which the appellant filed appeal bearing no. C/10336/202023. The show cause notice dated 01.05.2019 proposing the demand of Central Excise duty on the domestically procured goods under CT 3 was also adjudicated whereby the demand of Excise duty has been confirmed vide order-in-original no. 55/AC/D/2022-23/AM dated 23.03.2023 against which an appeal was filed before Commissioner Appeal which was rejected vide OIA AHM-EXCUS-002-83-317/23-24 dated 28.03.2024 against which appeal is filed before this tribunal bearing no. E/10226/202024. Thus the appeal no. C/10336/2023 and appeal no. E/10226/2024 are consequential to the rejection of remission of duty by the Commissioner which is a subject matter of appeal no. E/10527/2023.

2. Shri R Subramaniyam learned counsel appearing on behalf of the appellant submits that there is no dispute about the fire accident has taken place and the goods were destroyed in such fire accident, the insurance also processed the claim and sanctioned the insurance claim of the goods destroyed in fire. There is no evidence that the fire incidence is occurred due to negligence of the appellant or due to any malafide intention therefore the case of remission is squarely covered by Rule 21 of the Central Excise Rules, 2002 as well as section 23 of customs Act, 1962. He submits that in the identical facts in number of cases remission has been allowed. He placed reliance on the following judgment.

- 2023 (4) TMI 656 – CESTAT, Ahmedabad – PGP Glass Pvt Ltd Vs CCE & ST, Surat-II
- 2022 (7) TMI 90 – Bombay High Court – Peekay International Pvt Ltd Vs. UOI & Ors.
- 2008 (10) TMI 63 – High Court of Rajasthan – UOI Vs Hindustan Zinc Ltd
- 2012 (12) TMI 386 – CESTAT, New Delhi – Sheela Foam Pvt Ltd Vs CCE, Noida
- 2009 (247) ELT 751 (Tri.-Bang.) – Vamsadhara Paper Mills Ltd Vs. Commer. of Cus., Visakhapatnam.
- 2006 (206) ELT 1015 (Tri.-Bang.) – Next Fashion Creators Pvt Ltd Vs. Commer. Of Cus., Bangalore
- 2012 (280) ELT 374 (Kar.) - CC Vs. Next Fashion Creatos Pvt Ltd
- 2017 (357) ELT 220 (Tri.-All.) – Tej Shoe Tech Vs. Commissioner of C. Ex., Kanpur
- 2005 (188) ELT 206 (Tri.-Mumbai) – Milton Plastic Industries Vs. Commissioner of C. Ex., Vadodara
- 2017 (350) ELT 443 (Tri.-Hyd.) – Laxmi Avanti Life Sciences Pvt Ltd Vs. CC., C. Ex. & S.T., Hyderabad-IV

Since, they have made out of strong case of remission of duty, consequential demand of duty in appeal no. C/10336/2023 and

E/10226/2024 are not sustainable, hence all the three appeals may be allowed.

3. Shri Rajesh K Agarwal learned Superintendent (AR) appearing on behalf of the revenue reiterates the findings of the impugned order. He further submits that the burden to prove that accident is unavoidable due the natural causes is on the assessee. In the present case the assessee could not prove that the fire accident occurred is avoidable or otherwise. Therefore, the remission application of the appellant was rightly rejected by the learned Commissioner. In support of this, he placed reliance on judgment of Hon'ble Allahabad High Court in the case of Commissioner of Central Excise Vs. Bangeshwar Ltd 2015 (322) ELT 444 Allahabad.

4. We have carefully considered the submissions made by both the sides and perused records. We find that there is no dispute of the fact that the fire incident has occurred in the factory of the appellant and it is also not in dispute that the goods imported as well as the indigenously procurement raw materials were destroyed in fire. The appellant were also sanctioned the insurance claim by the insurance company. From the record it is not coming out that there is any mischief on the part of the appellant in the incident of fire in the factory. Moreover, there is also no evidence that the fire accident is occurred due to carelessness of the appellant.

Despite the above fact the learned Commissioner has pointed out various deficiencies. The observation of the Commissioner in the impugned order passed on remission application are reproduced below:-

> *"12. The Noticee vide their letter dated 04.05.2017 submitted the data of goods lost/destroyed in fire containing the description, quantity, value, Duty involved etc. of the various goods, included inputs which were issued for manufacture and lying at various stages of production process, including inputs contained in semi- finished/intermediate goods of value Rs.6,26,72,679/- with Duty involved of Rs.1,16,30,411/-. It appeared from this data that the inputs lost in fire accident consisted of imported inputs and*

indigenous inputs procured without payment of Duty under the provisions of Notification No.52/2003-Cus. and No.22/2003-C.Ex respectively and Duty paid indigenous inputs. It further appeared that the Noticee had availed and utilized Cenvat credit towards the Duty paid on the inputs lost in the fire accident. The Noticee vide their letter dated 04.05.2017, provided the figures of Duty forgone on the inputs procured Duty free under the provisions of the said Notifications which were lost in fire accident and the Cenvat Credit availed and utilized on the inputs lost in the fire accident as below:-

Sr. NO.	Particulars	Value of Goods (as per Excise record) (in Rs.)	Duty involved (in Rs.)
(I)	Duty free imports against procurement certificate	2,94,28,264.00	76,09,344.00
(II)	Domestic purchase against CT-3 from	3,26,33,312.00	39,23,874.00
(III)	Duty paid domestic purchases	6,11,103.00	97,193.00
	Total	**6,26,72,679.00**	**1,16,30,411.00**

13. The Noticee during the panchnama dated 10.03.2017 had stated that they would submit the copy of FIR within a weeks' time. Vide their letter dated 04.05.2017 also, they informed that the copy of FIR will be submitted as soon as they receive the same.

13.1 The jurisdictional Range Superintendent vide letter F. No. AR-V/Dishman/ 2016-17 dated 18.05.2017 had requested the Noticee to submit details such as Copy of FIR, Copy of Insurance Survey Report, and Copy of FSL Report etc. to ascertain the nature and cause of fire. The jurisdictional Range Superintendent also observed that the documents submitted by the Noticee were neither certified nor did they submit any supportive documents of the same. Further, the Noticee had also stated in their letter dated 04.05.2017 that they "crave leave to add, alter, modify or rescind the submissions made" by their application, either wholly or in part.

13.2 Therefore, vide letter dated 18.05.2017, the jurisdictional Range Superintendent asked the Noticee for clarification in this aspect. Further, vide letters dated 06.10.2017, 25.01.2018 and 15.03.2019, the Noticee were reminded to submit the documents sought vide letter dated 18.05.2017. A number of telephonic calls were also made to the Noticee in this regard. As considerable time has been elapsed and, no reply has been received from the Noticee, the jurisdictional Range Superintendent vide letter dated 18.03.2019, requested the Noticee to pay up the duty amount of Rs. 1,16,30,411/- being the Duty amount on the goods domestically procured without payment of Duty against CT-3 Form, imported Duty free against *procurement certificates and Duty paid indigenous goods on which Cenvat Credit had been availed by them, the details of which were submitted by the Noticee vide their letter dated 4th May, 2017.*

14. It further appeared that various raw-materials/inputs destroyed/lost in the fire accident as detailed above, consisted of Duty free raw materials/inputs procured indigenously under the provisions of Notification No. 22/2003-CE dated 31.03.2003, Duty free raw materials/inputs imported under the provisions of the Notification No.53/2003-Cus, dated 31.03.2003 and duty paid inputs/raw materials purchased from various manufacturers within the country. It further appeared that the Noticee had availed Cenvat credit towards the Duty paid on the inputs purchased from the manufacturers, which were lost in fire.

15. Further, as per the condition No. 10 of the conditions laid down to the B-17 Bonds which were executed by the Noticee, they undertook that they shall fulfill the conditions stipulated in the Customs/Central Excise Notifications as amended under which the specified goods had been sourced and pay on demand an amount equal to the Central Excise Duties leviable on the goods as are not proved to the satisfaction of the Assistant/Deputy Commissioner of Central Excise to have been used in the manufacture of Articles for export and any penalty imposed under the Customs Act, 1962 or the Central Excise Act, 1944 and Rules or Regulations made there under as the case may be. In the present case, the Noticee also failed to fulfill the conditions laid down under the B-17 Bond executed by them."

From the above observation, it appears that the learned Commissioner has raised various deficiency for deciding the remission application however, it appears that the appellant had no occasion to explain the above queries of the learned Commissioner before the adjudication, therefore in our considered view this matter should go back to the learned Commissioner for reconsideration of the appellant's remission application the appellant should be given proper opportunity to explain their case and the queries raised by the learned Commissioner in the impugned order. As regard other appeals, since, in those appeals the demand of duties were confirmed consequential to the rejection of remission application, we are of the view that all the three matters should be decided by the learned Commissioner who is competent to decide the remission application.

5. Accordingly we set aside the impugned orders and allow the appeals by way of remand to the adjudicating authority for passing fresh orders.

(Order pronounced in the open Court on 12.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C. L. MAHAR)
MEMBER (TECHNICAL)

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