

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I
(E-Hearing)

Excise Appeal No.70725 of 2019

(Arising out of Order-in-Original No.01/Remission/Principal
Commr./CGST/Noida/2019-20 dated 29/07/2019 passed by Commissioner of
Central Goods & Services Tax, Noida)

M/s Paragon Apparel Pvt. Ltd.,

(D-71 & 72, Hosiery Complex,
Phase-II, Extension, Noida)

.....Appellant

VERSUS

Commissioner of Central Excise, Noida

(C-56/42, Sector-62, Noida)

....Respondent

APPEARANCE:

Shri Bipin Garg, Advocate for the Appellant

Shri A.K. Choudhary, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70275/2024

DATE OF HEARING : 28 March, 2024
DATE OF DECISION : 28 March, 2024

SANJIV SRIVASTAVA:

This appeal is directed against order in original No. 01/Remission/Principal Commr./ CGST/ NOIDA/ 2019-20 DATED 29.07.2019 of the Principal Commissioner Central Goods and Service Tax Noida. By the impugned order following has been held:

ORDER

- (i) I reject the Remission Application of M/s Paragon Apparel Pvt. Limited, D-71 & 72, Hosiery Complex, Phase-II Extension, Noida in view of the reasons discussed supra.

- (ii) I confirm the demand of Central Excise duty amounting to Rs. 23,40,874/-(Rupees Twenty Three Lakhs Forty Thousand Eight Hundred Seventy Four Only) under Section 11A of the Central Excise Act, 1944 read with Section 174 of the CGST Act, 2017, as mentioned in the show cause notice vide C. No V(30) Tech./Div- VI/SCN/Paragon/CGST-Noida/39/2018 dated 15.06.2018
- (iii) I confirm the demand of Interest on the aforesaid amount at the appropriate rate under Section 11AA of the Central Excise Act, 1944 read with Section 174 of the CGST Act, 2017
- (iv) I impose a Penalty of Rs. 2,34,087/- (Rupees Two Lakhs Thirty four Thousand Eighty Seven Only) under section 11AC (1) (a) of the Central Excise Act, 1944 read with Section 174 of the CGST Act, 2017 as discussed supra. If the amount of Central Excise duty confirmed at para (ii) above and interest payable thereon is deposited by the party within a period of thirty days of the date of communication of this order, the penalty shall be twenty five percent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

3.1 I have heard Shri Bipin Garg Advocate for the appellant and Shri A K Choudhary, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that,-

- a fire accident occurred in appellant factory at early hours on 20.7.2016 in the basement of the factory where raw materials as well as finished goods (garments) were lying. The appellant claimed remission of duty under Rule 21 on finished goods lying in the factory which were destroyed by fire accident.
- the remission application has been rejected for the reasons given in para 4.1-4.7 of the impugned order and holding

that the loss and destruction of goods because of accidental fire which took place in the party's factory does not fall within the meaning of the phrase "goods have been lost or destroyed by unavoidable accident".

- there is no dispute that fire took place. It is also clear from the fire brigade report that the accident took place due to short circuit. It is not in dispute that the appellant had full security systems in their premises.
- in Para 4.3 of the order the adjudicating authority himself observed that the appellant submitted report of fire department dated 30.07.2016 which shows reason for such accident as electric short circuit. It is submitted that it is an unavoidable accident.
- impugned order observes that the intimation was given with unusual delay of five days. The delay in filing intimation cannot be the ground for rejecting the remission application.
- the fire survey report is on record which contains all the details relating to occurrence and damaged/destroyed the finished goods.
- the appellant also submitted certificate of Chartered Accountant who has certified that insurance claim given by the insurance company does not include the central excise duty involved.
- the observations in the impugned order that goods lost by fire accident does not fall under 'goods have been lost or destroyed by unavoidable accident for the purpose of remission of duty under Rule 21 of Central Excise Rules 2002 is not sustainable. The appellant's case is duly covered under provisions of Rule 21 of Central Excise Rules 2002 as the goods were destroyed by fire accident which was unforeseen/unavoidable accident.
- whole of the demand is time barred. The department was intimated on 25/26.07.2016 about the incident and the Show Cause Notice is dated 19.06.2018. In the Show

Cause Notice neither extended period is invoked nor any allegation of suppression - fraud is alleged

3.3 Arguing for revenue learned authorized representative reiterates the findings recorded in the impugned order.

4.1 I have considered the impugned order along with the submissions made in the appeal and during the course of arguments.

4.2 Impugned order records the findings as follows:

"I have carefully perused the records of the case, facts on record and the version of the party made during the course of personal hearing held on 07.02.2019. I shall decide the remission application of the party and the show cause notice dated 15.06.2018 in a single order.

First of all it will be legitimate to discuss the remission application of the party on the basis of the following documents submitted by the party:

- (a) The First Intimation Report (FIR) dated 20.07.2016 filed by the party to the police department.*
- (b) The intimation dated 25.07.2016 filed by the party to the jurisdictional Superintendent of Central Excise Range.*
- (c) The report dated 30.07.2016 of the U.P. fire Service*
- (d) The remission application dated 19.08.2016 along with it's' enclosures*
- (e) The undated claim form filed by the party to the insurance company.*

4.1 FIR dated 20.07.2016 - The party has informed that they have filed the First Information Report (FIR) to the police department on 20.07.2016 but they have not submitted the acknowledged copy of the said FIR by the police station.

4.2`Intimation to the jurisdictional Superintendent -The party has intimated he jurisdictional Superintendent about the fire accident on vide thei letter dated 25.07.2016 which received on 26.07.2016 whereas; the fire incident took place in the midnight

of 19/20.07.2016, which is unusual delay of 5 days. Such substantial delay has not been justified by the party. During these five days the party has shown the production of dutiable goods and entered in their RG-1 register. Simultaneously, they continued showing the stock of goods as claimed by them as burnt in the fire accident, in their RG-1 register. In such circumstances, the department was not in a position to assess the extent of damage and duty involved on damaged finished goods

4.3 Report of the Fire department: - The party has submitted the report of the fire department dated 30.07.2016 which shows the date and time of fire accident and the reason of such accident as electric short circuit.

4.4 Remission application dated 19.08.2016 - I find that the party has filed the remission application which received in the office of the jurisdictional Superintendent on 22.08.2016. Along with the application, the party has also submitted the copy of RG-1 register (daily stock account). On perusal of the said register it found that the party has continuously shown their dutiable finished goods available with them in their daily stock account till 28.07.2016 however, they claimed it as burnt in the midnight of 19/20.7.2016. The party has no convincing reason for showing such goods in the daily stock register till 28.07.2016

4.5 The claim filed with the insurance company - The party has submitted that they have filed the insurance claim form to the insurance company but they have not submitted the acknowledged copy of the said fire insurance claim by the insurance company. I find that the party in their insurance claim shown the value of the burnt stock of finished goods as Rs. 5,24,13,749/- without showing quantity of the said finished goods. Such value of claim involved both the dutiable (MRP more than Rs 1,000/-) and non dutiable (MRP less than Rs. 1,000/-) finished goods. However, as per their RG-1 register, the assessable value of these finished goods has been declared by them as Rs. 13,75,63,971/ (i.e . after abatement of 40% from

MRP) Out of which Rs. 11,70,43,683/- for 88,575 dutiable pcs and Rs. 2,05,20,288/-for 43,107 non dutiable pcs of finished goods.

In such circumstances, it is not feasible to verify the losses shown of the finished goods in the remission application to the claim filed with the insurance company.

4.6 The insurance claim filed by the party may contain Excise duty which has not been substantiated with any document to the effect that the monetary compensation (insurance claim) does not include Central Excise duty on the finished goods destroyed in fire.

4.7 Besides above, the party has not provided the surveyor report, the final report of the police department to ascertain the cause of the fire accident. The party has also not produced any evidence showing the settlement of their refund claim by the insurance company. All these documents/reports are vital to decide whether the fire accident was unavoidable incident and the quantum of burnt dutiable goods during fire, which are essential ingredients for deciding the remission application of the party filed by them under rule 21 of the Central Excise Rules, 2004.

4.8 In view of the above, I find that the loss and destruction of goods because of accidental fire which took place in the party's factory does not fall within the meaning of the phrase "goods have been lost or destroyed by unavoidable accident for the purposes of remission of duty under Rule 21 of Central Excise Rules, 2002"

4.9 Therefore, I reject party's remission application on the ground as discussed above Now, I discuss the show cause notice in the instant case

4.10 I find that the allegations contained in the show cause notice have already been conversed in earlier paras while deciding the remission case. The remission application of the party is rejected on the merits of the case. Accordingly, I hold

that the Central Excise duty amounting to Rs 23,40,874/- on the goods which were destroyed in fire, the Central Excise duty is confirmed and same is recoverable from the party under Section 11A of the Central Excise Act, 1944 read with Section 174 of the CGST Act, 2017

4.11 The party has referred to the case of Mafatlal Industries Ltd Vs Commr of C.Ex. & Customs, Ahmedabad in support of their remission application. I have gone through this case law and find that the Hon'ble CESTAT Mumbai has allowed the appeal on the basis of the police report and insurance survey reports. However, in the instant case, the party has failed to provide such reports to the department. Therefore, the case referred by the party does not come in their support

4.12 As the demand of duty is confirmed, demand of interest on the duty not paid is also liable to be confirmed under Section 11AA of the Central Excise Act, 1944 read with Section 174 of the CGST Act, 2017

4.13 The penalty under Section 11AC has been proposed in the show cause notice. I find that, the party has failed to file the intimation of accident to the department timely. Thus, the department was not in a position to assess the damaged finished goods and the duty contained therein. The party has also failed to provide the Surveyor's report, Insurance Company's report in support of their remission claim. The party has failed to keep the dutiable goods secure. The party has failed to show the sufficient cause as required under rule 21 of Central Excise Rules 2002 read with Section 5 of the Central Excise Act, 1944 and thus, contravened the provisions of the Rule 21 of the Central Excise Rules, 2002 and the Section 5 of the Central Excise Act, 1944. Therefore, they are liable for penal action under Section 11AC (1) (a) of the Central Excise Act, 1944 read with Section 174 of the CGST Act, 2017."

4.3 The details of the goods destroyed in fire has been recorded in the impugned order as follows:

Name of the Goods	Packed Qunatity (Nos)	MRP	Assessable Value after 40% abatement	Excise Duty liability @ 2% (Rs.)
Pyzama	22,144	Above Rs 1000	2,73,13,294	5,46,266
Short/ Trousers	5,816		66,14,630	1,32,293
Skirt Top	593		9,75,604	19,512
Sweat Shirt	1,537		18,43,478	36,870
Track Suit	8,111		1,59,44,633	3,18,893
T Shirt	19,066		2,08,63,340	4,17,267
Skirt Top	586		7,64,424	15,288
Pyzama	5,593		1,16,38,076	2,32,761
Track Suit	10,386		1,69,63,064	3,39,261
T Shirt	14,743		1,41,23,140	2,82,463
Pyzama	294	Below Rs 1000	1,64,464	0
Short/ Trousers	99		56,581	0
Skirt Top	205		98,277	0
T Shirt	31,154		1,45,38,334	0
T Shirt	11,355		56,62,632	0
Total	131,682		13,75,63,971	23,40,874

Following excerpts from the survey report dated 05.07.2017, prepared by Ravi K Singhal Associates, Insurance Surveyor and Loss Assessor Pvt Ltd. clearly show that the appellant had not claimed the Central Excise Duty due on the finished goods from Insurer.

"Extent of Damages: Initially Insured informed the estimated loss of Rs 20,00,00,000.00 but after our inspection Insured has given the details of loss as under:-

Particulars	Amount Rs.
Fabric	6,14,20,202.00
Accessories	3,38,59,225.00
Work in Process	59,22,353.00
Finished Goods	<u>5,24,13,749.00</u>
Subtotal	15,36,15,529.00
Fire Fighting Expenses	<u>78,712.00</u>
Total	15,36,94,241.00

Costing

.....
Finished Goods

.....
Other Method of Valuation of Finished Goods i.e. deducting Gross Profit from Respective Sale Rate.

....
VAT Returns:

.....
Excise Returns:

Insured has submitted the photocopy of the Intimation Letter to Excise Department informing them about the fire occurred in their Premises situated at D-51, 52, 71, 72, Hoisery Complex, Phase II Noida, which is duly receipted by the Inspector, Central Excise Range 25, Div V Noida-I on dated 26.07.2016.

Insured has submitted ...

Insured mostly

On the basis of the above

Insured has submitted the photocopies of Monthly Excise Returns from March 2016 to June 2016, which on verifying are found in order.

Insured has also submitted the Photocopy of Excise Return for the month of July 2016, declaring Total 131682 Pcs of Readymade Garments damaged during the fire. We observe that as per Total Finished Goods detail Insured is showing Total 132424 Pcs of Readymade garments damaged during the fire, which is higher by 742 Pcs (132424-131682). Hence we have deducted the average value of of 742 Pcs from the total loss of Finished Goods.

...

Assessment: As per our visit, verification, inquiry and circumstantial evidences, it seems that the mishap did occur. The assessment is made as under:-

<i>Particulars</i>	<i>Amount Rs</i>	<i>Amount Rs</i>
<i>Raw material Fabric Loss as per Annexure "A"</i>		<i>5,34,27,461.00</i>
<i>Accessories Loss as per Annexure "B"</i>	<i>23494771.00</i>	<i>0</i>

Add Value of Accessories giving value less than Rs 15,000.00	7776886.00	3,12,71,657.00
Value of Damage Pcs in WIP as per Annexure "C"		39,87,910.00
Value of Damage Pcs of Finished Goods as per Annexure "F"	36061804.00	0
Less Value of Qty less declared in Excise Return.	202061.00	3,58,59,743.00
Sub Total		12,45,46,771
Add Fire Fighting Expenses		78,712.00
Gross Loss		12,46,25,483.00
Less; Dead Stock 5 (12,45,46,771.00 * 5%)		62,27,339.00
Sub Total		11,83,98,144.00
Less Salvage Net Realizable Value		17,32,456.00
Net Loss of Stock.		11,66,65,688.00

Under Insurance Clause: Since the total value of stock at the time of fire was Rs 29,34,53,966.00 and after deducting Dead Stock of Rs 62,27,339.00 the value comes to Rs 28,72,26,627.00, whereas it is insured for Rs 28,00,00,000.00 hence under insurance is applicable as under:-

$$11,66,65,688.00 / 28,72,26,627.00 \times 28,00,00,000.00 = 11,37,30,377.23$$

Assessment after under insurance:

<i>Particulars</i>	<i>Amount Rs</i>
Adjusted Loss of Stock	
11,37,30,377.00	
Less: Policy Clause 5%	
<u>56,86,519.00</u>	
Net Amount Payable	
<u>10,80,43,858.00"</u>	

From the survey report which has been placed on record it is evident that fire did occurred in the premises of the appellant resulting in the loss of raw material, work in process and finished goods. It is also evident that loss of finished has been assessed on the basis of the cost of production method without including the excise duty payable on the said goods. The value of the loss

of finished goods has been adjusted in accordance with the excise return for the month of July 2017. Thus in my view case for remission of duty under Rule 21 of Central Excise Rules, 2002 has been made out. Each and every ground raised in the impugned order for rejection of Request made under Rule 21 have been considered in the decisions which follow and have been rejected.

4.4. In case of Lord Chloro Alkali Ltd. [2013 (293) ELT 68 (T-Del)] following has been held:

"4. As is seen from above, there is no dispute about the fact of fire in the appellant's factory and the resultant damage to the goods. The Commissioner has not considered the excessive heat as a natural cause for destruction on the ground that the assessee had not taken adequate precautions to avoid such fire. We do not find any justifiable reason to uphold the above observation of the Commissioner. The appellants have adopted the same mode of stocking the goods for the last number of years without their being any mis-happening. As such they cannot be held liable for the sudden heat fire. The same was unintended and, has occurred on account of excessive heat for which appellant cannot be held responsible. If the observation of Commissioner is accepted, the same amounts to saying that if the driver of a car would have taken precaution, while driving, he could have avoided car accident. We all know that accidents occur and nobody can be held liable for the same or at least liable for not taking adequate precautions. It is not the revenue's case that the appellant had not taken adequate precaution to avoid such accident but if the same happened on account of excessive heat and other external causes, assessee cannot be held liable for the same. It is well settled that nobody intentionally invites such accidents and they happen on account of various natural causes.

5. At this point we may refer to Rajasthan High Court decision in the case of Union of India v. Hindustan Zinc Ltd. -

2009 (233) E.L.T. 61 (Raj.), laying down that expression "natural causes" and "unavoidable accident" are required to be given reasonable and liberal meaning and a more practical approach is required to be taken. As such we are satisfied that the fire was not on account of any lapse on the part of the appellant. Tribunal in the case of Kisan Sahkari Chini Mills Ltd. - 2008 (222) E.L.T. 540 (Tri.-Del.) observed that all accidents occur due to lack of precaution in which case none would be covered by the expression "unavoidable accident."

6. In view of above observation, we find no reasons to deny remission of duty to the appellant in respect of the finally manufactured goods destroyed in fire. Accordingly, confirmation of demand of duty of Rs. 13,57,018.71 involved in such goods and confirmed in the second appeal is set aside."

4.5 In case of Rajdhani Crafts {2016 (344) ELT 1109 (T-Del)] following was held:

5. After hearing both the sides and after going through the impugned order, I find that the Commissioner has rejected the appellant's remission application by simpliciter observing that the remission of duty is subject to satisfaction of Commissioner. However, no reasons stands given by the adjudicating as to why he was not satisfied about the factum of fire and the consequent destruction of the final products. Various evidences on record clearly lead one to believe that the fire had admittedly occurred, for which FIR was launched and fire brigade were summoned and insurance claim was made. As such I am of the view that it was not just and fair on the part of the Commissioner to reject the remission claim in respect of final product on the sole ground that he was not satisfied.

6. Next ground adopted by the Commissioner for rejection of the remission is that assessee had not taken sufficient measures to protect the portion of the value of the goods which represent duty element while the goods were in his

possession. Undisputedly the value of the goods was insured by the appellant and there is no requirement or legal provision for insuring the duty element. If the duty element is also required to be insured and reimbursed by the insurance company, then there is no need for the assessee to ask for remission of duty in which case the provision of remission of duty would become redundant.

As regards remission in respect of inputs, the adjudicating authority observed that since inputs were procured without payment of duty, in terms of the notification and there is no provision for remission of duty in the said notification the duty cannot be foregone. I find that an identical issue was the subject matter of the Tribunal's decision in the case of Next Fashion Creators Pvt. Ltd. v. Commissioner of Customs, Bangalore - 2006 (206) E.L.T. 1015 (Tri.-Bang.) wherein it was held that import of the inputs in terms of Notification No. 52/2003-Cus., cannot be made the ground for denying the remission of duty in case of subsequent destruction of the inputs. The said decision of the Tribunal stands confirmed by the Hon'ble High Court of Karnataka reported as Commissioner of Customs, Bangalore v. Next Fashion Creators Pvt. Ltd. - 2012 (280) E.L.T. 374 (Kar.). In fact, all the three objections raised by the Commissioner stands covered in favour of the assessee by the said decision of Hon'ble High Court of Karnataka. To the similar to effects vide another decision of the Tribunal in the case of Aditya Industries v. Commissioner of Central Excise, Ahmedabad - 2009 (247) E.L.T. 567 (Tri.-Ahmd.) as also in the case of J.J. Foams Pvt. Ltd. v. Commissioner of Central Excise, Ghaziabad - 2015 (327) E.L.T. 349 (Tri.-Del.).

4.6 In case of Tej Shoe Factory [2018 (363) ELT 863 (T-All)] following was held:

"5. Having considered the rival contentions, we find that the Ld. Commissioner have erred in holding that the fire accident due to electric short circuit, does not come under the category

of unavoidable accident, is not sustainable under Rule 49 of CER, 1944 read with Rule 21 of CER, 2002. The conditions which has been prescribed for remission of duty, are natural causes, or unavoidable accident and the product becoming unfit for human consumption or marketing. The Ld. Commissioner have also erred in holding that electric short circuit in his view cannot be said to be a natural cause. Under the facts that all the records of the appellant had been destroyed in fire, the Ld. Commissioner have erred in observing that in the intimations given to the Revenue recording the fact of fire and loss given on 24-5-1999 and 7-2-2000 without any supporting or statutory records to the satisfaction of the Revenue Officer. The Ld. Commissioner is also in error in holding that the appellant failed to inform the Department about the exact loss of footwear and also did not produce or submit statutory records for the relevant period. The Ld. Commissioner have also erred in holding that on the goods manufactured but not cleared for home consumption as such, exemption from excise duty on the goods lying in store and got destroyed, is not available under the SSI exemption notification. The Ld. Commissioner have also erred in holding that the fire accident cannot be said to have occurred due to natural cause beyond the control of the assessee. We hold that it is the fire authority which is the competent authority for accepting the reason for the fire accident. We find from the copy of report issued by the fire authority wherein, they have accepted the cause of fire as electric short circuit. The Police Authority has also accepted the reason of fire as electric short circuit. Under the circumstances, we hold that the Ld. Commissioner have erred in substituting in his own findings for the cause of fire accident. We also take notice of the fact that the insurance company have also accepted the reason of loss and have settled the claim of the appellant. We also rely on the ruling of Hon'ble Allahabad High Court in the case of Commissioner of Central Excise v. M. Kumar Udhyog (P) Ltd. - 2014 (306) E.L.T. 19 (All.) wherein the question before the

Hon'ble High Court, was whether it was correct and proper for this Tribunal to hold that the fire having been caused in respondent's factory on account of electric short circuit, was covered by expression unavoidable accident for the purpose of remission of excise duty. The Hon'ble High Court analyzing words natural causes and unavoidable accident observed that these words have to be interpreted in their ordinary/natural connotation in reasonable manner to sub-serve object of legislature in introducing remission of duty. Unavoidable accident is event which is beyond control of assessee and has taken place despite exercise of due/reasonable care/protection. The Hon'ble High Court, further, held that fire accident due to short circuit, is an unavoidable accident for which an assessee is entitled to remission of duty under Rule 21 of CER of 2002. Accordingly, we allow the appeal and set aside the impugned order with consequential benefit to the appellant."

4.7 In case of Bajaj Herbals Private Ltd. [2022-TIOL-996-CESTAT-AHM] Ahmedabad Bench held as follows:

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

I find that there is no dispute that a fire has taken place in the factory of the appellant due to short circuit and the finished goods was destroyed along with other material like packing materials and consumables. It is observed that immediately when the fire took place the management of the appellant company has intimated to the concerned local authorities i.e. Police, fire brigade, excise department, insurance company etc., and these agencies have started their respective procedure immediately. Thereafter, the jurisdictional superintendent has visited the appellant's factory and recorded the punchnama. In the said punchnama the details were recorded about incident of fire and about the goods destroyed in fire. However, in the said punchnama, there is no mention about the allegation that the appellant have not taken

any precaution to avoid the fire incident. I further observe that the insurance survey was also carried out by New India Insurance Company Limited. In the said survey report also, there is no allegation against the appellant that the appellant had not taken proper precaution to avoid the fire incident. The most important agency in such accident is the insurance company, who is the major sufferer by the insurance claim as the same is much more than the excise duty involved in the present case has sanctioned the insurance claim without raising any objection about any misdeed on the part of the appellant, as regard the fire incident, therefore, it cannot be said that the appellant have any involvement or they have not taken any precaution to avoid the fire incident. From the record, it is appearing that the fire has taken place due to short circuit. In my considered view, the short circuit is a usual cause of fire in majority of cases, therefore, the fire due to short circuit cannot be attributed to any mala fide on the part of the appellant or it cannot be said that the appellant have not taken abundant precaution to avoid the fire incident. Even as per the forensic report also, it has been concluded that the fire has taken place due to short circuit. In this fact, the contention of the adjudicating authority that the appellant have not taken the proper precaution to avoid the fire incident is baseless and without any support. Therefore, on this ground rejection of remission claim is unsustainable. As regard, the reversal of cenvat credit, there is no dispute that the appellant is duty bound to reverse the cenvat credit on the inputs contained in finished goods which were destroyed in fire incident. However, on going through the Rule 3(5)(c) of Cenvat Credit Rules, it is absolutely clear that the reversal of the cenvat credit statutorily to be made only after the competent authority grant the remission of duty, therefore, the contention of the learned Commissioner that they have not reversed the credit before remission is without any basis.

5. As per my above discussion and findings, I find that the appellant's case is clearly covered under the four corners of

Rule 21 of Central Excise Rules, 2002 and the appellant is clearly eligible for remission of duty on the finished goods destroyed in fire incident. Hence, I set aside the order rejecting the remission of duty.

6. As regard, the other appeal wherein the demand of duty on the goods lost in fire was confirmed, I find that this duty confirmation is consequent to the rejection of remission application of the appellant. Since I hold that the rejection of remission is not sustainable, consequently, the demand in this appeal is also not sustainable."

4.8 Hon'ble Allahabad High Court has in the case of Raltronics India Pvt Ltd. [2017 (354) ELTR 324 (All)] observed as follows:

"13. *In view of the above, we are of the opinion that loss and destruction of goods because of accidental fire which took place in the appellant factory falls within the meaning of the phrase "goods have been lost or destroyed for natural causes or by unavoidable accident for the purposes of remission duty under Rule 21 of Central Excise Rules, 2002".*

14. *So far as the substantial question No. 2 is concerned, we are more than satisfied that learned Tribunal has not at all considered the material evidence available on record and jumped to the conclusion that fire took place due to the negligence of the appellant, on the basis of findings of Commissioner appeals, no independent application of mind is there by the Tribunal. So, finding of the Tribunal in rejecting the claim, cannot be said to be justified."*

4.9 In case of M Kumar Udhyog (P) Ltd. [2014 (306) ELT 19 (All)] Hon'ble Allahabad High Court has observed as follows:

"6. Rule 21 of the Central Excise Rules, 2002 provides as follows :-

"Remission of duty. -

Where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as

unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing :

Provided that where such duty does not exceed ten thousand rupees, the provisions of this rule shall have effect as if for the expression "Commissioner", the expression "Superintendent of Central Excise" has been substituted :

Provided further that where such duty exceeds ten thousand rupees but does not exceed one lakh rupees, the provisions of this rule shall have effect as if for the expression "Commissioner", the expression "Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be," has been substituted :

Provided also that where such duty exceeds one lakh rupees but does not exceed five lakh rupees, the provisions of this rule shall have effect as if for the expression "Commissioner", the expression "Joint Commissioner of Central Excise or Additional Commissioner of Central Excise, as the case may be," has been substituted."

7. Under Rule 21, a remission of duty is contemplated where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by (i) natural causes; or (ii) unavoidable accident; or are claimed by the manufacturer as being unfit for consumption or for marketing. The remission is to be granted subject to such conditions as may be imposed. The expressions "natural causes" or "unavoidable accident" have to be interpreted in their ordinary and natural connotation. An unavoidable accident is an event which lies beyond the control of the assessee and which has taken place despite the exercise of due and reasonable care and protection. Both the expressions have to be construed in a reasonable manner to sub-serve the object of the legislature in introducing the provision for remission of duty in Rule 21.

8. *In the present case, a finding of fact has been recorded by the Tribunal based on the material on record that the accident of fire had occurred due to a short-circuit. The Tribunal has, in our view, taken a broad and robust perspective in holding that this was an unavoidable accident based on the facts as they had been placed on the record. This aspect of the reasoning is unexceptionable and will not give rise to any substantial question of law.*

9. *On the second question as framed, it would appear that there was a conflict in the decisions of the Tribunal. In Mafatlal Industries Limited v. Commissioner of Central Excise - 2003 (154) E.L.T. 543, the Tribunal had held that in case finished goods are destroyed in a fire and a remission of duty has been granted, the Modvat credit which was involved in the inputs utilised in the manufacture of such goods has to be reversed. On the other hand the Tribunal in Electrolux Kelvinator Limited v. Commissioner of Central Excise, Jaipur - 2004 (163) E.L.T. 395, after following an earlier decision in Inalsa Limited v. Commissioner of Central Excise, New Delhi - 1997 (90) E.L.T. 417, held that in case of remission of duty being granted in respect of goods destroyed in a fire, Modvat credit on the inputs used in the manufacture of goods need not be reversed. The judgment of the Larger Bench of the Tribunal is reported in Grasim Industries (supra). The Tribunal held as follows :-*

"7. *We find that reading of Rule 49 of Central Excise Rules, 1944 and Rule 21 of Central Excise Rules, 2002 which provides for remission of duty in respect of goods lost or destroyed by natural cause or by unavoidable accidents or in case goods become unfit for consumption or for marketing at any time before removal does not provide reversal of credit in respect of inputs used in the manufacture of such goods. The Modvat rules prohibits the credit of duty paid in respect of the inputs which are used in the manufacture of exempted goods or which are chargeable to nil rate of duty. The Tribunal in*

both the cases, that is Mafatlal Industries (supra) and in the case of Inalsa Ltd. (supra) held that in case the goods were destroyed due to natural cause or by unavoidable accident during handling or storage, cannot be equated with exemption to goods and the inputs can be considered to have been put intended use for manufacture of the final product. Reading of rules under which remission is granted in respect of goods which were lost or destroyed by natural cause or by natural accident, does not provide any condition regarding reversal of credit taken in respect of inputs used on such goods, hence, we are unable to support the view taken in the case of Mafatlal Industries (supra) whereby it has been held that assessee has to reverse the credit taken of inputs used in such goods on which remission is granted. Therefore, we approve the view of the Tribunal taken in the case of Inalsa Ltd. (supra) in this regard. The issue to the Larger Bench is answered in the above terms and the matter be placed before the Regular Bench."

10. Now, it may be noted at the present stage that after the decision of the Tribunal in Grasim Industries (supra) which was rendered on 7 August, 2006, the Cenvat Credit Rules, 2004 were amended by Notification No. 33/2007-C.E. (N.T.), dated 7 September, 2007. With the amendment, sub-rule (5C) was introduced into Rule 3 to the following effect :-

"(5C) Where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed."

11. Consequently, upon the introduction of sub-rule (5C) into Rule 3 with effect from 7 September, 2007, the subordinate legislation has clearly provided that where the payment of duty is ordered to be remitted under Rule 21 of the Central Excise Rules, 2002 on goods manufactured or produced by an

assessee, the Cenvat credit taken on the inputs used in the manufacture or production of goods shall be reversed.

4.10 Thus in view of the decisions as above the remission request made by the appellant in terms of Rule 21 of Central Excise Rules,2002 needs to be allowed. As the said application for remission is allowed the demand of duty made and the penalties imposed are set aside.

4.11 In view of the discussions as above I do not find any merits in the impugned order.

5.1 Appeal is allowed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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