FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 07/04/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70330-70331/2017-EX[DB] dated 30/01/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/217/2009	**MOTHERSON AUTOMOTIVE TECHNOLOGIES &ENGINEERING LTD** B-135&206, Phase II, Noida
2	E/52159/2015	**Motherson Automotive Technologies And Engineering** B-135 And 206 Phase-ii NOIDA UP 201301
		Name and Address of Respondent
3		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
4		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

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Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier,
COLVIN ROAD, LOHIA MARG
ALLAHABAD-211001

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No.E/217/2009 & 52159/2015-EX[DB]

(Arising out of Order-in-Original No.42/COMMR/NOIDA/2008 dated 31/10/2008 & 10/COMMR/NOIDA-I/2014-15 dated 27.02.2015 passed by Commissioner of Central Excise & Customs, Noida)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s Motherson Automotive Technologies & Engineering Ltd.

Appellants

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri Atul Gupta & Shri Hrishikesh, Advocates for Appellant
Shri D.K. Deb, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 30/01/2017
Date of Decision : 30/01/2017

FINAL ORDER NO: 70330-70331/2017

Per: Anil Choudhary

Both these appeals filed by the assessee/appellant against Order-in-Original No.42/COMMR/NOIDA/2008 dated 31/10/2008 & 10/COMMR/NOIDA-I/2014-15 dated 27.02.2015.

2. Both these appeals are filed by the assessee/appellant arising from the same facts being accidental fire and loss thereto. In Appeal No.E/217/2009 the issue is regarding denial of remission claim under Rule 21 of Central Excise Rules, 2002 and in the other Appeal No.E/52159/2015, the issue is the consequential demand which is under dispute by the appellant-assessee.

3. The brief facts of the case are that the appellant was engaged in the manufacture of plastic moulded components for T.V., Washing Machines and Automobiles and they were availing credit of the duty on inputs and capital goods in accordance with the statutory provisions. A major fire accident took place in the factory premises on 20th May, 2007 on which date inputs lying in stock were valued at Rs.10,76,995/-, finished goods valued at Rs.35,77,594/- and semi finished goods or work in progress was to the tune of Rs.53,87,503/-. Further, it appeared that capital goods worth Rs.5,52,52,233/- were also destroyed. As per the admitted facts the appellant informed the revenue on 21/05/2007 regarding the accident of fire, which was also reported in the local newspapers. The appellants filed application for

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remission on 31/08/2007 wherein it was stated that due to major fire accident occurring in the late evening of 20th May, 2007 in which semi finished goods, finished goods and capital goods worth about Rs.6,42,17,330/- got destroyed. The incident of fire was immediately reported to the Fire Service Department and the team arrived soon thereafter. The firefighting operation took nearly 22 Hrs. which was concluded in the evening hours of the next date that is 21/05/2007, as per the report issued by the Fire Department. The fact of earlier intimation to revenue was reiterated on 21/05/2007 by stating that formal FIR was launched with the police Department at Police Station Noida, Phase-II, District Gautam Budh Nagar, annexing a copy of the FIR. It was further stated that they have exercised necessary precautions and have done all necessary to mitigate the loss and/or the fire but the incident was beyond their control and the same occurred due to electrical short-circuit. It was further stated that finished goods valued at Rs.35,77,594/- were destroyed involving Central Excise duty of Rs.05,72,415/-+ Education cess Rs.11,448/-+ S.H. Ed Rs.5,742 totaling Rs. 5,89,588/-. Further the detail of the goods lost in fire was also annexed separately correct. It is further stated that at the time of the fire accident the finished goods were lying in the factory premises and were already entered in the daily stock account. Daily stock account was also found. It is further stated that some semi finished goods/work in progress valued at about Rs.53,87,503/- had also been completely destroyed in fire and the details of which were annexed separately further stating that the credit availed by the assessee on the inputs which had been used in the semi finished goods/work in progress, destroyed in fire was not required to be reversed in view of the ruling of this Tribunal in the case of Commissioner of Central Excise Vs Indchem Electronics 2003 (151) ELT 393, which have been affirmed by Hon'ble Supreme Court reported at 2003 (157) ELT A206 (S.C.). It was further stated that inputs (trolleys and packing materials) lying in stock as such, valued at Rs.10,76,995/- vide details contained in Annexure had also been damaged in the fire, further undertaking to reverse the credit attributable to the inputs (which had not been issued for manufacturing process) damaged in the fire, as and when the same are removed from the factory. It was further stated that in the said fire accident capital goods namely plant and machinery including accessories valued at Rs.5,52,52,233/- have also been damaged in the fire, further undertaking was given that the required credit would be paid at the time of removal of the said capital goods, which were not in removable condition. Accordingly, prayer was made for remission with respect to the Excise duty payable on the loss of finished goods completely destroyed in the fire.

4. The said remission application was decided by learned Commissioner vide Order-in-Original dated 31/10/2008. The learned Commissioner have been pleased to reject the remission claim under Rule 21 of Central Excise Rules, 2002 observing that from the examination of the case records it reveals that the fire broke out in the factory at 19:50 Hrs. on 20th May, 2007 whereas the appellant

informed the fire Department at 20:31 Hrs. on the same date after a considerable lapse of 41 minutes. Had the fire department been informed immediately as soon as the fire was seen at 19:50 Hrs, the damage so caused would have been saved. This shows serious negligence on the part of the appellants. The certificate of inspection in respect of firefighting of equipment belongs to the period post the fire incident which is not relevant. The instruction given by the fire Department to the factory/appellant that there should be proper up keeping of the equipment and proper use by the employee, also shows that firefighting equipment was not up to the mark as well as the employees of the factory were not aware of the use of the same. Further, it was observed that the appellant have not complied with the mandatory safety norms, like as in case of "driving a vehicle on road without brakes". Further the appellant have not arranged for verification of stock of destroyed goods by the proper officer within 48 hours of accident in the light of Trade Notice No.36/2005 dated 15/04/2005 issued by Commissionerate, Ahmadabad--III. It was further observed that under the facts and circumstances such loss of goods cannot be considered on account of natural causes or unavoidable accident. Accordingly, the remission claim was rejected relying on the Ruling of this Tribunal in the case of M/s Dharmpal Satyatpal Ltd. 2004 (167) ELT 291 (Tri.) wherein it was held that no remission of duty is allowable if goods are destroyed due to negligence of the manufacturer.

5. Being aggrieved, appellant is before this Tribunal. The learned Counsels for the appellant have urged that the findings of the learned Commissioner are vitiated. They are based on assumption and presumptions and not based on the records of the Department. He took us through the fire report wherein it is evident that the firefighting operation took about 22 hours to bring the fire under control and the fire Department have categorized the fire as massive (loss being more than Rs. 1 lakh and above). It is further evident that the time of fire have been recorded by the Fire Department based on the statement of some witness who are not the employees and/or responsible persons of the appellant. It is further evident from the fire report that there was no previous incident of fire in the appellant's factory. Further in the reasons recorded for fire accident, it is mentioned–"electrical short-circuit". It is further recorded that when the firefighting team reached the premises, they found that there is a large or big fire and which have spread to the building, plant, machines, packing material and furniture. Several fire engines from additional fire stations had to be called into fight the fire. The Linter of the building had also caved in and fallen on the basement which also created hindrance in the firefighting operations. It was also stated that due to the large/huge nature of fire, it spread at joining factory of Onida company and their also about Rs.22 Lakhs worth of goods etc. were destroyed. It is also stated in the fire report that the loss as stated by the Fire Department after appreciating the facts and circumstances is about Rs.34 Lakhs +8, 50,000/-+25,50,000/-. At the end of the fire report under the head

briefing and measures for future it is mentioned that the officers/management of the factory present were instructed to be more vigilant and keep the fire fighting equipments in working order and also regular training to the workmen for the user etc. The learned Counsel urges that it is nowhere coming out from the fire report that there was any negligence on the part of the appellant, being the reason for fire or the factory was being operated without consent of the fire Department and/or was lacking in any terms of the consent. Under these facts and circumstances the rejection of the remission claim is unjustified and accordingly, he prays for allowing the appeals with consequential benefits.

6. The learned A.R. for revenue has relied on the impugned order.

7. Having considered the rival contentions, we find that the findings of the learned Commissioner are unsubstantiated and are not based on the evidences on record. It also appeared that the learned Commissioner misinterpreted the fire report. We are satisfied that there is no negligence on the part of the appellants in the incident of fire which was beyond their control and there is also no case of negligence made out on the part of the appellants in mitigating the loss. We also hold that it is the fire Department which is the authority to conclusively decide the reasons for the fire and also if there was any negligence on the part of the manufacturer assessee in compliance with any safety standards or conditions of consent to operate. Accordingly, we hold that the rejection of remission claim is bad.

Thus we set aside the impugned orders and allow the appeals. We hold that the appellant is entitled to the remission claim.

Appeal No.E/52159/2015

8. During the pendency of the remission claim, revenue issued a show cause notice dated 12/05/2008 more or less on the same allegations as it has been noticed hereinabove requiring the appellant to show cause as to why duty amount of Rs.18,26,869/- being on the finished goods as per details in Annexure-A and on the work in progress as per details annexed in Annexure-B should not be demanded and recovered along with interest and further Cenvat credit amounting to Rs.55,03,520/- involved on capital goods destroyed in fire should not be disallowed and recovered under Rule 14 of CCR, 2004 along with interest. The said SCN was adjudicated on contest and the proposed demands were confirmed to be recovered along with interest on the finding that in view of the amendment in the Cenvat Credit Rules wherein Sub-Rule 5(C) was introduced in Rule 3 with effect from 07/09/2007 vide notification No.33/2007–CE. The said Rule provides as follows –

Rule 5(C) – 'where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under Rule 21 of the CER 2002, the Cenvat credit taken on the inputs used in the manufacture or production of said goods shall be reversed.'

9. The learned Commissioner further placed reliance on CBEC Circular No. 907/27/2009–CX dated 07/12/2009 which deals with

respect to Excise duty involved on the finished goods, work in progress, written off in the books of accounts. The said circular provides that Excise duty is chargeable on the activity of manufacture or production. Therefore in case of remission under Rule 21, if the value of finished goods is written off, the manufacturer would be liable to pay Excise duty or he would be required to reverse the credit on the inputs used if duty has been remitted on finished goods. Similarly as regards work in progress--if the WIP has reached the stage, when it can be considered as manufactured goods, in that case, the same treatment as applicable to finished goods would apply. However, if the activity carried out on the WIP cannot be considered as not amounting to manufacture, in that case, the said goods should be considered as input and the treatment for reversal of credit applicable to input would be applicable.

10. Having considered the rival contentions, we find that the said amendment–introduction of Sub-rule (5C) in Rule 3 of Cenvat Credit Rules, 2004 has been brought about much after the incident of fire and as such the said amendment/provisions are not applicable in the facts of this case. Further, as regards work in progress the observations of learned Commissioner and reliance on the said circular is directly in the teeth of the Ruling of Hon'ble Supreme Court in the case of Indchem Electronics (supra). Accordingly, we find that the impugned Order-in-Original dated 27.02.2015 is against the provisions of law and the Ruling of Hon'ble Supreme Court. Accordingly, we allow the appeal and set aside the impugned order. The appellant will be entitled

to consequential benefits in accordance with law in respect of both the appeals. As regards capital goods the learned counsel has stated that as per Rule 3(5A) the demand of Cenvat credit by way of reversal on the capital goods arises only in case of removal of such capital goods. Admittedly, there being no removal of such capital goods the demand is fit to be set aside on this score also.

11. Accordingly, we allow both the appeals filed by appellant-assessee, with consequential benefits.

(Dictated in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

akp

प्रमाणित प्रति / Certified True Copy
24/04/17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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