REGISTERED / AD

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

To

Dated: 28/09/2016

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70880/2016-EX[DB] dated 08/08/2016

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/1712/2007	TEJ SHOE FACTORY AGRA 10TH -11TH KM STONE AGRA MATHURA ROAD ARTONI AGRA,UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT,UTTAR PRADESH-250005

Copy To

3 Advocate(s) / Consultant(s):

Anil Singh Sisodia, Advocate,
B-35, PRATAP NAGAR,
AGRA,UTTAR PRADESH
282010

4 Bar Association, CESTAT, Allahabad

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

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

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

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

9 Easy Service Tax Online ~~Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15~~

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No. : E/1712/2007-[DB]

Arising out of O/O No. 2/Commr/Tech./Remission/2007 dated 26.03.2007 passed by Commr. of Central Excise, Customs & S. Tax, Kanpur.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. H. K. THAKUR, MEMBER (TECHNICAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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M/s Tej Shoe Factory, Agra

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Kanpur

...RESPONDENT(S)

APPEARANCE

Shri K.K. Anand (Adv), Mrs. Surabhi Sinha(Adv), for the Appellant(s)
Shri Pawan Kumar Singh (Supdt.), A.R. for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. H. K. THAKUR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 21.01.2016

Final ORDER NO. 70880/2016

Per Mr. Anil Choudhary :

The appellant, a manufacturer of shoes, is in appeal against the order of the Commissioner of Central Excise, Kanpur dated 26-03-2007, by which the claim for remission of duty on footwear lost in fire accident which occurred on 22-05-1999, was rejected raising a demand of Rs 19,67,342/-.

2.1 The brief facts of the case are that the appellants are engaged in the manufacture of Footwears and Parts thereof falling under Chapter 64 of Central Excise Tariff Act, 1885. The appellants unit is registered with the Central Excise department vide Registration No. 176/Footwear/R/III/Agra/93-94. The goods manufactured are cleared by them for export as well as for home consumption.

2.2 That due to an electric short circuit in night hours on 22-05-1999 at around 01.00 A.M. the appellants factory situated at Mill Compound, Jeoni Mandi, Agra caught fire and burnt in uncontrolled fire. In this incident the factory building, machines, raw materials, finished goods, office equipment and books of accounts & records were destroyed. The news of this incident was reported by the daily news papers namely the Dainik Jagran dated. 22-05-1999 (front page), The Taj dated 22-05-1999 and Amar Ujala dated 23-05-1999.

2.3 By the assistance of Fire Brigade Agra, Central Ordinance Depot, Agra, 509 Army Base Workshop, Military Engineering Service, Air Force Station and also by the assistance of Military and fire service centers in nearby districts including Mathura, Firozabad, and Fire Service Mathura Refinery, the devasting fire could be controlled by the evening of 24-05-1999.

2.4 The written information of above fire incident was given to the jurisdictional Police Station, Chatta, Distt. – Agra on 22-05-1999 which was received in the Police Station on the same day.

2.5 The appellants had also furnished the information of the aforesaid fire accident in the office of the Assistant Commissioner, Central Excise, Agra on 22-05-1999. A photocopy of said information is enclosed in the Paper- Book.

2.6 The above fire incident was also reported to Police Chauki, Jeoni Mandi, Agra. Photocopies of this report and the Police Final report are enclosed in the Paper-Book.

2.7 During the course of the said fire accident the officers of District Administration Agra have also obtained statement of Shri Ram Babu Sharma S/o Shri Sita Ram Sharma, Security Supervisor and statement of Shri Sudeep Singh Chadha, Factory Manager. Photocopies of their statement are filed in Paper- Book.

2.8 The appellants have also furnished details as required by the fire officer regarding the accident.

2.9 The appellants have obtained copy of fire report from the office of Chief Fire Officer, Agra, wherein the details of fire accident and losses occurred therefrom have been explained. A photocopy of said fire report is enclosed in the Paper-Book.

2.10 The General Manager of the appellants factory had prepared an internal inquiry report mentioning all the events occurred in connection with the fire. Photocopy of this report is enclosed the Paper-Book.

2.11 During the fire accident 'sole' manufacturing division and 'upper' manufacturing divisions were saved. In this regard the appellants have furnished their information before the Superintendent, Central Excise, Range-III, Agra vide their letter No. TSF/66-2000 dated 24-06-1999. A photocopy of said letter is enclosed in Paper-Book.

2.12 The appellants had furnished their RT- 12 returns for the Quarter April to June 1999 before the Superintendent, Central Excise, Range-III, Agra on 05-07-1999 wherein they have given the particulars from 23-05-1999 to 30-06-1999, because the quantity manufactured and cleared during the period 01-04-1999 to 22-05-1999 could not be worked out, as all the records as well as finished footwears were also burnt in the said fire accident. Hence, the appellants have taken NIL opening balance as on 23-05-1999. Photocopy of said RT- 12 return alongwith its forwarding letter is enclosed with Paper-Book.

2.13 The Superintendent, Central Excise, range-III, Agra vide his letter No. PF/TSF/R-III/98/1064 dated 29-10-1999 given direction to the appellants for furnishing the information about the total clearances of finished good i.e. Footwear and Footwear Parts from 01-04-1999 to 22-05-1999, total production of each commodity from 01-04-1999 to 22-05-1999, and balance as on 22-05-1999, total production of each commodity from 01-04-1999 to 22-05-1999, and balance as on 22-05-1999 of each commodity.

2.14 In compliance to the said letter dated 29-10-1999 of the Superintendent, Central Excise, Range-III, Agra, the appellants have replied vide their letter No. TSF/99-00 dated 01-11-1999 wherein the required informations were given. The appellants have expressed their inability to furnish the quantity of goods manufactured during the period 01-04-1999 to 22-05-1999 as the same was not ascertainable at that time.

2.15 The appellants have submitted vide their letter dated 21-12-1999 before the Superintendent, Central Excise, Range-III, Agra clarifying that the quantity cleared for home consumption during the period 01-04-1999 to 22-05-1999 was 1784 pairs instead of 1620 pairs, seeking amendment. A photocopy of said letter is enclosed in the PB.

2.16 The appellants have received a Show Cause Notice C. No. PF/TSF/R-III/Agra/99/13 dated 19-11-1999 issued by the Deputy Commissioner, Central Excise, Agra demanding Central Excise Duty amounting to Rs. 19,67,342/- involved on the destroyed 25,543 pairs of footwears, calculating the value of footwear @ 481.38 per pair, was demanded under Rule 49 of Central Excise Rules, 1944 read with Section 11-A of Central Excise Act, 1944, alongwith interest under Section 11-AA of Central Excise, Act, 1944. The quantity of 25,543 pairs was calculated on the basis of average production during the previous financial year 1998-99, which was not correct.

2.17 On the basis of withdrawal of amount from their bank for the sake of distribution of wages to workers of the appellants factory, they have calculated approximate quantity of excisable goods manufactured during the period 01-04-1999 to 22-05-1999. Keeping in view the approximate quantity of goods manufactured and cleared

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during the said period and on the basis of closing balance given in their RT- 12 return for the period January to March 1999 they have calculated the quantity of lost goods during the said fire accident i.e. 18,000 pairs of footwear @ 398.64 per pair valued at Rs. 71,25,520/- and 6,000 pairs of uppers @ Rs. 245/- per pair valued at Rs. 14,70,000/- total valued Rs. 86,45,520/- involving Central Excise duty @ 16% Adv. Amounting to Rs. 13,83,283/-. The information regarding the said quantity of goods destroyed during the fire accident was furnished by the appellants before the Superintendent, Central Excise, range-III, Agra vide their letter dated 31-01-2000. A photocopy of said letter alongwith its enclosure is enclosed in P.B.

2.18 The appellants submitted their representation before the Commissioner of Central Excise, Kanpur, through proper channel, for granting remission of duty Rs. 13,83,282/- involved on the destroyed goods during the fire accident. The appellants have further submitted that their application for remission of duty may kindly be considered against the show cause notice issued to them. A photocopy of said remission application dated 07-02-2000 is enclosed in P.B.

2.19 The appellants have submitted their defence reply dated 09-02-2000 before the Commissioner of Central Excise, Kanpur against the Show Cause Notice C. No. PF/TST/R-III/Agra/99/13 dated 19-11-1999 where in they have inter-alia submitted that the goods have been lost in unavoidable fire accident for which remission claim is pending and the goods have been destroyed within the factory, therefore demand of duty is not sustainable. A photocopy of the said defence reply is enclosed in PB.

2.20 The appellants have received another Show Cause Notice C. No. V(30)TECH/IV/36/2000/922 dated 20-01-2003 proposing rejection of the said remission application. The appellants submitted their defence reply dated 12-02-2003 wherein they have inter-alia submitted that as per the proviso to Rule 49 of Central Excise Rules, 1944 the reasons of loss of goods have been divided in two parts i.e. (i) **natural causes** and (ii) by **"unavoidable accident".** The fire accident occurred due to electric short circuit, is an unavoidable accident, which was not under the control of the appellants. The term accident has been defined as under:-

(i) An event that takes place without one's foresight or expectation, esp. one of afflictive or unfortunate character; a casualty; as an accident to a locomotive.

(ii) Chance; contingency; also, a contingent circumstance, relation etc.

(iii) The one which could not be avoided, in spite of all reasonable precaution taken diligently by a person of ordinary prudence.

2.21 The said fire accident occurred in the night hours of 21-05-1999 at around 01.00 A.M. due to electric short circuit in the factory. However, electric short circuit cannot be foreseen in a continuously running factory. The party was having no prior knowledge or control over the said fire accident. There is clear provision under the said rule for granting remission for loss of goods due to unavoidable accident. Hence, the application filed by the appellants should not be rejected on any artificial ground.

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2.22 The loss of such goods in a sudden fire accident cannot be stated under the control of human being. In this connection reliance was placed on the decision passed by the Hon'ble Tribunal in the case of **COLLECTOR V/S GTC INDUSTRIES (1974 (71) ELT 806)**. The detailed enquiry was conducted and thereafter the Chief Fire Brigade Officer, Agra had given his report wherein the reason of the said fire accident was stated as 'electric short circuit'. The written information pertaining to the aforesaid fire accident was given to the Jurisdictional Chatta Police Station, Agra on 22-05-1999. The news regarding fire accident was reported by the national level news papers. The appellants have also furnished information regarding the fire accident before the Superintendent, Central Excise, Range-III, Agra on Sunday 22-05-1999 at his residence. However, the said information was furnished in the office of the Assistant Commissioner, Central Excise, Agra on Monday 24-05-1999 as the said office was closed on 22 and 23-05-1999 being Saturday and Sunday. The reason of the said fire accident was clearly mentioned in the report dated 08-06-1999 of the Chief Fire Officer, Agra at page No. 5, that due to 'electric short circuit' in the factory. There was nothing in the said fire report regarding non availability of proper arrangement to prevent the fire accident. In absence of any proper evidence, the allegation of non-availability of proper safety and security arrangement in the appellants factory premises was baseless.

2.23 The appellants have filed insurance claim with the New India Assurance Company Limited, Civil Lines Branch, Agra on 11-01-2000 for the total amount of Rs. 2,54,43,385/- wherein the amount of raw material, finished goods and goods in process Rs. 1,49,60,000/- was also included. However the amount of Central Excise duty was not claimed in the said claim as the goods were lost inside the factory premises. The appellants have not received any payment from the said insurance company under the settlement of their claim. Photocopy of appellants reply dated 16-02-2003 is enclosed in PB.

2.24 Without prejudice to the other submissions, the appellants have submitted their common written submissions dated 14-07-2003 wherein they have inter-alia submitted that the goods manufactured by the appellants are cleared for export, as well as for home consumption. The appellants are an S.S.I. unit and eligible for availing full exemption upto the value of clearance of Rs. 50 lakhs for home consumption under Notification No. 9/99-CE dated 01-03-1999. During the financial year 1999-2000 the total value of clearances were as under:-

For Export	For home consumption
Rs. 7,08,69,320/-	Rs. 29,40,540/-

Keeping in view the eligibility of SSI exemption the value of the destroyed goods during the fie accident is included in the value of clearance for home consumption in the financial year in such a situation the said goods attracts duty as under:-

Full Exemption Limit	Rs. 50,00,000
Less actual value of clearance for home consumption	(-) Rs. 29,40,540
	(=) Rs.20,59,460

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2.25 The quantum of the destroyed goods has been taken by the department as 25,543 pairs of Footwears and the average value of the destroyed footwears has been taken @ 481.38 per pair merely on the basis of imagination and hypothesis, whereas the appellants have derived the quantity of 18,000 pairs and the average value has been taken @ 398.64 per pair on the basis of records and available evidences. Hence, the alleged demand of duty Rs.19,67,342/- is liable to be reduced to the extent of Rs. 5,03,770/-. Thus, the demand of duty (Rs. 19,67,342/- (-) Rs.5,03,770/-) 14,63,572/- is liable to be dropped on the above ground alone.

2.26 The appellants have taken sufficient safety measures to keep safe the entire finished goods. However, the loss occurred due to fire accident, which was beyond the control of the appellants. In such circumstances, the appellants have requested for remission from the demand of duty in terms of above calculations, and premises.

2.27 The learned Commissioner of Central Excise, Kanpur had not considered the appellants defence and passed the impugned Order-in-Original No. 2/Commr/Tech/Remi/07 dated 26-03-2007 rejecting the application for remission of duty and confirmed duty Rs. 19,67,342/- on 25543 pairs of Footwears raised by Show Cause Notice No. PF/TSR/R-III/Agra/99/13 dated 19-11-1999.

3 (i) The ld. Counsel for the appellants assailing the impugned order have urged various grounds, inter-alia, the loss of goods during fire accident has not been disputed by the learned adjudicating authority, but application for remission of duty has been rejected on the technical and procedural grounds. The series of incidents as well as

information at the various stages to the various Govt. department like, police and fire brigade are treated as proper source of informations and actions. But ignorance of the same is not legal and proper. It is well settled that assessee cannot be deprived from his legal right on the grounds of technicalities.

3 (ii) The remission claim has been rejected by the learned Commissioner on the sole ground that no statutory records for the relevant period were submitted by the appellants with the department to ascertain the actual loss of excisable goods. Whereas the appellants had immediately informed the Superintendent of Central Excise, Range-III, Agra on 22-05-1999 and thereafter to the Assistant Commissioner, Central Excise, Agra as on 24-05-1999. The occurrence of fire accident was reported by the national & local news papers on 22-05-1999 and 23-05-1999. It was always open to the department to conduct enquiry for verification regarding actual loss of excisable goods. The concerned Central Excise authorities have also visited for spot inspection. The appellants have specifically stated that the entire factory records have been burnt in the accident. Hence insistence for supplying the statutory records to ascertain the actual loss was uncalled for. On the other hand confirmation of demand of duty on the basis of assumptions and presumption is also bad. When the department is not sure about the actual loss, in such a position how the demand of duty can be confirmed. Hence, the impugned order itself is contradictory and cryptic, which has been passed on the basis of wild calculations, for from true state of affairs as pointed out by the appellants.

3 (iii) The finding of the learned adjudicating authority is wrong as the quantification of damaged goods has been done on the basis of information provided by the appellants. All the previous returns were available with the department. The appellants have submitted the desired information after obtaining the same from the office of their jurisdictional Superintendent of Central Excise, range-III, Agra, as all their records were burnt in the said fire accident. The appellants have never prayed for quantification of damaged goods on the basis of informations given in their RT- 12 returns for the previous financial year. Hence, the findings of the learned adjudicating authority are wrong.

3 (iv) The factory premises was occupied by the appellants on rental basis. As tenants they were having limited rights to use the building without any alteration in the structure of the building. The sudden electric short circuit at around mid night of 21-22.05.1999 cannot be termed as foreseen. The decision relied upon by the learned adjudicating authority in the case of M/s VOLTAS LTD V/s CCE (156) ELT 295 –T) has been decided in the favour of the assessee. It is not clear as how the adjudicating authority is considering the said fire accident as avoidable. The appellants factory is located adjacent to river Jamuna. Hence, there was no shortage of water near the factory. The fire report given by the Chief fire Officer is not indicating any negligency on the part of the appellants. Hence, conclusion arrived by the learned adjudicating authority is having no basis. The fire accident resulted in loss of the entire building, machinery, raw materials and finished goods speaks ipso facto that the entire quantity of finished

goods available in the factory was burnt in the said accident. Hence, denial of remission claim and demand of duty is bad and fit to be set aside.

3 (v) The circumstantial evidences of the fire accident were self explanatory to establish that entire goods lying in the factory have been lost. When this factual position of fire accident and loss of entire goods was brought to the notice of the department by way of furnishing of intimations, it was always open to the department to make verification of quantify of the damaged goods keeping in view the revenue interest. Hence, rejection of the remission application, putting entire responsibility upon the appellant is not proper. "

3 (vi) The RT- 12 returns filed by the appellants with the concerned range office are statutory records, which could have been ascertained by the learned adjudicating authority by way of conducting enquiry from the concerned range office, as entire records were destroyed in the said fire accident and no statutory records were available with the appellants. The appellants have informed their aggregate value of clearances during the said financial year vide their letter dated 14-07-2003. Hence, the impugned order is bad as it has been passed without ascertaining the correctness of the appellants claim.

3 (vii) The finding of the learned adjudicating authority is perverse and beyond the actual facts of the case, The fire Officer in his report has mentioned that the factory building, ways to godown and windows were not according to the rules due to which they had to face problems in fighting with fire. It is worthwhile to mention that the

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factory was duly registered under the Factory Act, 1948 and upto the date of fire the registration was valid. The concerned department renews the registration only after their satisfaction that all the arrangements are proper. If they find any material discrepancy with regard to compliance they do not renew the registration. Thus, it is self explanatory that the factory building & security arrangements for fire hazard were upto the mark. As far as the arrangement of water and fire fighting equipments are concerned, it is respectfully submitted that the river Yamuna is just 50 Mtrs. away from the factory building, therefore, there was no shortage of water as such. Proper fire fighting facilities, namely extinguishers (cease fire) of 5 Kgs. - 22 Nos., Soda Acid 9 Liters – 12 Nos. , Foam Type 9 Ltr – 18 Nos., Dry Powder 5 Kg – 14 Nos., D.C.P. 3.2 Kg – 09 Nos., and Sand Buckets – 15 Nos. have been mentioned in the internal report dated 25-05-1999 submitted before the Fire Officer, Agra were made available in the factory. But when the fire took place in mid-night when, no body was inside the factory except security at the gate. When the fire was noticed, the entire factory was filled up with dark smoke due to which it was not possible at all to enter in the effected premises and all fire fighting arrangements could not be used and also gutted in the fire. There are no such averments in the fire report that there was any negligency, omission or bad management in the appellants factory. The safety and security norms are always checked by various Govt. agencies from time to time. Hence, the basis on which the learned adjudicating authority has reached the conclusion is totally improper and based on assumption. Accordingly, the ld. Counsel prays for allowing their appeal with appropriate relief.

4. The ld. A.R. relies on the impugned order of the ld. Commissioner and further relies on the ruling of the Joint Secretary of the Government of India in **Bagaha Chini Mills Ltd. at 1991 (55) E.L.T. 140 (G.O.I.)** wherein, in the case of claim for remission of duty on goods lost or destroyed, being molasses stored by the assessee in Kutcha Pits situated in flood-prone area without taking the permission of department and goods have been lost due to flood. It was held that the loss is attributable to lack of due diligence on assessee's part and not due to natural causes. Remission granted by the Commissioner (Appeals) was set aside. It was urged that the remission is not grantable just because goods were not removed from the factory. Unless is lost, in unavoidable accident, so the demand of remission cannot be granted. Reliance is also placed on SMB Ruling of this Tribunal in the case of **Hindustan Insecticides Ltd. Vs. Collector of Central Excise, Cochin 1988 (33) E.L.T. 575 (Tribunal)** wherein the assessee had bought Benzene from Hindustan Steel, Bhilai and the spirit was sent in two railway tankers. There was a transit loss of 186 litres, whereas one of the two wagons did not arrive. The Revenue had started proceedings to demand duty on the quantum of benzene which did not reach destination and it was held that it is not shown satisfactory the benzene had been lost or destroyed by natural causes or unavoidable accident during transport. It was held by this Tribunal, loss must have been caused by natural causes or by unavoidable accident. Further it was observed that the satisfaction required is not

about the loss or the destruction have taken place but there is an inexorability about the agency for natural cause of loss or destruction. Unless the proper officer is satisfied that the loss or destruction was effected by causes which are natural or beyond the human control, the remission cannot be granted.

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 and have erred in observing that in the intimations given to the Revenue recording the fact of fire and loss given on 24-05-1999 and 07-02-2000 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 Vs 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

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Rule 21 of CER of 2002. Accordingly, we allow the appeal and set aside the impugned order with consequential benefit to the appellant.

(Operative part of the order was pronounced in the open Court)

Sd/-

(H.K.THAKUR)
MEMBER (TECHNICAL)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(Ansari)

प्रमाणित प्रति / Certified True Copy
25/10/16
सहायक पंजीयक / Asstt. Registrar
C.E.S.T.A.T.
38, M.G. MARG, ALLAHABAD-211001