

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38, M.G. Marg, CIVIL LINES, ALLAHABAD

Date: 5/5/2016

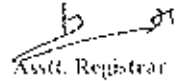
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70164/2016 SM dated 5/1/2016

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
	1/50269/2015	SANYO KOREATEX PVT LTD 8 TH FLOOR VANDANA BUILDING, TOLSTOY MARG NEW DELHI
		COMMISSIONER OF CENTRAL EXCISE, NOIDA
		Name and Address of Respondent
		C-56/42, SECTOR-62 NOIDA

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s) SH SHAMBU CHOPRA, ADV
CO PARTY

4 Bar Association, CESTAT, ALLAHABAD

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Purnani 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

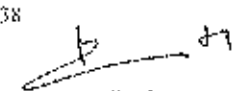
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-30, Faridabad 121003 (Haryana)

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 ICAI society, S2, Nagarjuna Hill, Punjagutta Hyderabad-500082

14 C.D.R. 15 Office Copy 16 Guard File


Asstt. Registrar
Regional Bench, Allahabad

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

Ex.Appeal No.50269/15

Arising out of OIA No.NOI/EXCUS/000/APPL/142/14 dated 25/07/2014
passed by the Commissioner (Appeals), Central Excise, Customs &
S.Tax, Kanpur

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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

M/s Sanyo Koreatex Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commissioner of C.Ex. & Customs, Noida

RESPONDENT (S)

APPEARANCE

Shri Shambhu Chopra, Adv. for the Appellant (s)
Shri Chatru Singh, Asstt.Commr. (A.R.) for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 05.01.2016

Final ORDER NO. 70164/2016



Per Mr. Anil Choudhary :

The Appellant, M/s Sanyo Koreatex Pvt. Ltd., is in Appeal against Order-In-Appeal No.NOI/EXCUS/000/APPL/142/14 dated 25/07/2014 passed by the Commissioner (Appeals), Central Excise, Customs & S.Tax, Kanpur.

2. The brief facts are that the appellant is a manufacturer of bonded sheet ^{and} in form sheets falling under chapter 94 of CETA, 1985 and registered with the Central Excise Department. The appellant is also availing Cenvat credit of duty on inputs received for the manufacture of the final product. It is the case of the appellant that there was a major storm on 17/4/2011, which resulted in damage of plant and machinery as well as the stock of raw materials, work in progress and finished goods. The appellant had filed the yearly return for the month of March 2011. Pursuant to the loss by storm the appellant, who was insured for loss with the National Insurance Co. Ltd. filed the claim of loss, pursuant to which, loss report was obtained by the insurance company being report dated 25/5/12 and 15/3/12. The claim was settled sometime in June 2012, wherein for loss of the stock an amount of Rs.1,31,796/- was approved and received. The appellant applied online on 20/3/12 for cancellation of the registration certificate. In pursuant thereto, the Range Officer sent letter dated 29/8/12 advising the appellant to deposit the Central Excise duty leviable on finished goods in stock and reversed the Cenvat credit on the stock of raw materials, as a precondition to accept the request for surrender which letter was returned undelivered. Thereafter, an other

letter was sent to the corporate office at Delhi being letter dated 20/12/13², which also was undelivered. Thereafter, Revenue sent ¹⁻²⁷ another letter dated 23/1/13 to another unit of the assessee and in pursuant thereto the assessee sent their letter dated 30/01/13, informing the loss suffered by them, due to the storm which occurred on 17/4/11. It appears that an SCN dated 6/6/12 was issued requiring the appellant to discharge the tax liability on the stock of finished goods and raw materials as well as work in progress, which SCN was returned undelivered, with the postal mark that the appellant firm does not exist at the address. It further appears that the request for surrender, was rejected by the Supt. Central Excise with the remark, that as the appellant have not paid the tax demanded on the finished goods and raw materials, their request for surrender cannot be accepted, vide letter dated 24/1/13. In response to the letter dated 30/1/13 of the appellant, giving information of loss along with copy of insurance claim, the show cause notice dated 17/4/13 was issued as to why not the request for waiver of duty and reversal of Cenvat credit, as sought, vide letter dated 16/3/13 be not rejected and further why not interest and penalty be levied. The appellant contested the SCN stating therein the fact of the damage in the occurrence of the storm, and further damage of the stock due to fire and also enclosed the copy of balance sheets as on 31/3/12, copy of insurance claim, further praying for condonation of the delay in information of loss to the revenue. The SCN was adjudicated vide order-in-original dated 10/1/14 observing that the information of loss have been, for the first time, received in the office of Revenue vide letter dated 30/1/13 after

[Signature]

much delay, and further formal request for waiver of duty had been made vide letter dated 16/3/13, and rejected the claim as the claim was not allowable in absence of any report of the jurisdictional Excise officer, or the copy of the FIR. He further observed that the damage or the salvaged stock was stored in open, due to which stocks were further destroyed in fire and it appeared to revenue that there was negligence on the part of the appellant assessee. Further the claim was rejected on the ground that the appellant have not followed the due procedure provided in law, as the assessee did not inform the Excise authority, soon after loss, nor applied for remission within a reasonable time, which could facilitate verification of the claim and in view of the fact that non-payment of duty could be known by the revenue, since April 2011, only on submission of surrender application, that is in August 2012.

3. Being aggrieved the appellant preferred appeal before Id. Commissioner (Appeals), who vide the impugned order have upheld the rejection of the claim, rejecting the appeal, observing that there is lack of sufficient evidence and the evidence produced in the shape of photographs, cannot be considered. The appellant have been negligent as they filed the claim after much delay.

4. Being aggrieved, the appellant is in appeal before this Tribunal on the ground that due to total destruction of the factory and the stock, due to ^{which} the whole operation was closed and there was no staff in the factory premises. It is further contended that the claim has been rejected only on technical grounds, being delay and refusal to verify



the claim which could have been verified, with support from the report of the survey of Insurance Company as well as audited balance sheet, et cetera. The Id. Commissioner (Appeals) have erred in rejecting the claim of rebate of duty. Accordingly, the Id. Counsel for the appellant prays that the impugned order may be set aside with a direction to the adjudicating authority to verify the claim, with respect to the documents available and allow the same.

5. So far the delay in preferring the claim is concerned, it is stated that the appellant was disturbed due to huge loss and that there was no malafide in preferring the claim late. Moreover, the appellant had applied for cancellation of registration as early as in August, 2012 and prior to that a show cause notice dated 6/6/12 was issued by the revenue, which shows that the revenue had some information regarding the evidence of loss which occurred in the factory of the appellants, due to storm in April, 2011.

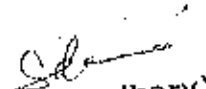
6. The Id. AR for revenue states that the appellant is not entitled to any rebate as they have approached the revenue for the first time after almost about 20 months of loss. The Id.A.R. further also relies on the ruling in the case of Virat Crane Agri Tech Ltd. Vs. Commissioner of Customs and Central Excise, Guntur : 2011 (271) ENT 510 (A.P.) wherein the High Court had upheld the rejection of claim holding that assessee is not entitled to remission of duty for destruction of stocks for which neither intimation was given nor analytical report produced by them before the authority.



7. Having considered the rival contentions I find that the revenue have not disputed the event of storm on 17/4/11. Secondly, the loss by storm have been surveyed by National Insurance Company through their surveyors and thus the details of loss have been verified and are unavailable on record. Further the balance sheets and also the accounting records are available with the appellant. In this view of the matter, I hold that the remission claim under Rule 21 cannot be rejected only on the ground that the appellant have approached the revenue after much delay of about 20 months. Further, I take note that the appellant had approached for cancellation of registration in August 2012 itself. Thus the revenue had some information about disturbance by storm in the appellant's unit, resulting into disruption of production et cetera. Accordingly, I remand the matter to the adjudicating authority for determining the quantum of claim allowable to the appellant in accordance with law. The appellant is also directed to appear before the adjudicating authority within a period of 8 weeks from the date of receipt of a copy of this order along with all of the supporting documents on which they wish to rely. The adjudicating authority shall dispose of the remission claim in accordance with law preferably within a period of 4 months from the date of receipt of a copy of this order.

8. Thus, the appeal is allowed by way of remand.

(Dictated and pronounced in the open Court)


(Anil Choudhary)
MEMBER (Judicial)

mm

प्रमाणित प्रति / Certified True Copy
27.5.16
आपातक निदेशक / Asstt. Registrar
आपातक निदेशक, आपातक निदेशक
आपातक निदेशक / (C.E.S.T.A.T.)
38, एन. जी. रोड, आपातक-211001
38, M. G. ROAD, ALAHABAD-211001

