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: 10/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71324-71325/2017-EX[DB] dated 09/10/2017

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/425/2009	**MOTHERSON SUMI SYSTEM LTD.** C-14, A & B, SECTOR-I, NOIDA. (U.P.)
2	E/52118/2015	**Motherson Sumi Systems Ltd** C-14a & 14b, Sector 1 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

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

ATUL GUPTA, (ADV.) 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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 19 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.E/425/2009& 52118/2015-EX[DB]

(Arising out of Order-in-Original No.43/Commissioner/Noida/2008 dated 05/11/2008 passed by Commissioner of Central Excise & Customs, Noida & Order-in-Original No.09/Commissioner/Noida-I/2014-15 dated 27.02.2015 passed by Commissioner of Central Excise, Noida-I)

M/s Motherson Sumi System Ltd., **Appellants**

Vs.

Commissioner of Central Excise, Noida (Appeal No.E/425/2009)

Commissioner of Central Excise, Noida-I (Appeal No.E/52118/2015)

Respondents

Appearance:

Shri Atul Gupta, Advocate for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 09/10/2017
Date of Decision : 09/10/2017

FINL ORDER NOs. 71324-71325/2017

Per: Anil G. Shakkarwar

APPEAL No.E/425/2009-EX[DB]

The present appeal is directed against Order-in-Original No. 43/Commr/Noida/2008 dated 05/11/2008 passed by Commissioner of Central Excise & Customs, Noida.

2. The brief facts of the case are that the appellants were manufactures of Wiring Harness. A major fire broke out in their factory on 29.06.2007. Through letter dated 29/08/2007 appellant submitted application for remission of Excise duty amounting to Rs.20,24,955/- on account of Central Excise duty + Rs.40,499/-on account of Education Cess + Rs.20,250/- on account of S.H.Cess, involved in the finished goods destroyed in the fire. The said application was decided by Learned Commissioner through the impugned Order-in-Original. The appellant submitted through their said letter dated 29/08/2007 that they had exercised necessary precautions and adopted all necessary firefighting and safety measures and that despite all the precautions, the fire broke out and the reasons for fire were beyond their control. They had submitted before the Original Authority that fire broke out due to electrical short circuit. The said application was made in terms of provisions of Rule 21 of Central Excise Rules, 2002. The Original Authority has given his findings, as follows:-

"I find that such loss of goods cannot be considered on account of natural cause of unavoidable accident. The Central Excise statute does not allow remission of duty in respect of goods lost due to negligence of the assessee."

He further disallowed the remission of duty sought by the appellant. Aggrieved by the said order, appellant is before this Tribunal.

3. The appellant in their grounds of appeal has contended that Fire Department report shows that appellant had installed fire extinguish in the factory and that fire was accidental and that there was no record to infer that there was any negligence on part of the appellant. The finding of Original Authority that fire was on account of negligence is without any basis.

4. Heard the learned Counsel for appellant who has submitted that report dated 29.06/2007 given by the Fire Department submitted at page No.27 of paper book, wherein the reasons for fire was stated as electric short circuit. He has further submitted that appellant had taken due care in the factory to keep firefighting equipment always ready and maintained regularly and also record was also maintained about the due date of re-filling of firefighting equipment with required firefighting materials like CO_2, M. Foam etc. He has submitted that the inspection reports issued by ASIATICE FIRE SHIELD over the period, a copy of which is available at page No.159-176 of the paper book indicate that around 60 firefighting equipments were placed at various locations

of the factory and they were regularly inspected and whenever required were repaired and regularly filled with firefighting chemicals and records were also maintained and date of re-filling was also maintained and therefore the finding of Commissioner that there was negligence on the part of appellant is without any basis.

5. Heard the Learned A.R. who has supported the impugned Order-in-Original.

6. Having considered the rival contentions and on perusal of records, as indicated hereinabove, we have satisfied that appellant has taken all due precautions required to avoid any sort of break of fire in the factory. Therefore, we do not agreewith the findings of Original Authority that the fire broke out because of such factors which were avoidable. We, therefore, set aside the impugned order dated 05/11/2008 and allow the remission of duty applied through said application dated 29/08/2007.

7. In above terms, the appeal filed by appellant is allowed.

Appeal No.E/52118/2015-EX[DB]

8. The present appeal is arising out of same fire broke out in the factory of assessee on 29/06/2007. The appellants were issued with a show cause notice dated

24/06/2008 wherein appellants were called upon to show cause, as to why Central Excise duty of Rs.20,24,955/- + Education Cess of Rs.40,499/- + Secondary & higher education Cess Rs.20,250/-was demanded on the goods manufactured and destroyed in the fire. Further, the demand of Rs.32,76,418/- + Education Cess of Rs.65,528/- + S. & H.E.Cess Rs.32,764/- was raised on semi-finished and in process goods. Further, there was a proposal to disallow the Cenvat credit of Rs.74,02,829.34/- involved in the inputs destroyed. Further, there was a proposal to recover Rs.55,48,232/- Cenvat credit availed on capital goods damaged in the fire. Through Order-in-Original No.09/Commissioner/Noida-I/2014-15 dated 27/02/2015 passed by Commissioner of Central Excise, Noida-I which is impugned for the present appeal, the demands were confirmed. Further, Cenvat credit of Rs.7,40,289.34/- involved on the inputs which were yet to be issued for manufacture whether reversed by the appellant by RG-23A part-II, Entry No.9659 dated 24.09.2007 were appropriated.

9. The Learned Counsel for appellant has submitted that in spite of taking of all precautions due to electrical short circuit fire broke out and finished goods, raw

materials and semi-finished goods were destroyed in the fire. They also submitted that Cenvat credit involved on inputs which were not so far issued for production was reversed on 24/09/2007 and submitted that the demand of duty on semi-finished goods is not sustainable because they had not reached to the RG-I stage and they have not become excisable when they have got destroyed in the fire.

10. Heard the Learned A.R. who has supported the impugned Order-in-Original.

11. As held in earlier part of the order, the demand of Central Excise duty of Rs.20,24,955/- + 40,499/- + 20,250/- which pertains to the remission of duty, as applied by the appellant. Accordingly, confirmation of the same is set aside. Further, the Central Excise duty confirmed in respect of semi-finished goods is also set aside, because the goods are only excisable after they have come into existence and they have passed the stage of RG-I. Therefore, the Central Excise duty was not payable on the same. Further, in respect of demand confirmed in respect of Cenvat credit on capital goods, we hold that the provisions of Cenvat credit Rules, 2004 required recovery of Cenvat credit availed on capital goods only when they are removed from the factory.

Therefore, we set aside the demand in respect of Cenvat credit on capital goods. In above terms, we modify the impugned Order-in-Original and allow the appeal.

12. In above terms, both the appeals are allowed, as indicated hereinabove.

(Dictated in Court)

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

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

akp

प्रमाणित प्रति/Certified True Copy
30/11/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/C.E.S.T.A.T.)
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38, M. G. MARG,ALLAHABAD-211001