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

REGIONAL BENCH - COURT No.-I

**Excise Appeal No.70450 of 2019**

(Arising out of Order-in-Original No.01/COMMISSIONER/G.B.NAGAR/2018-19 dated 04.08.2019 passed by Commissioner Central Excise & CGST, Gautam Buddh Nagar)

**M/s Sheela Foam Ltd.** **...Appellant**
(Plot No.51-A, Udyog Vihar, Greater
Noida-201306, Gautam Buddh Nagar, UP)

VERSUS

**The Commissioner, Central Excise** **...Respondent**
**& CGST, Gautam Buddh Nagar**
(3rd Floor, Wagmens Business Park, KP-III
Greater Noida, UP)

**APPEARANCE:**

Ms. Pravin Sharma, Advocate for the Appellant
Shri N.K. Mishra, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**Date of Hearing/ Decision: 02 August, 2022**

**FINAL ORDER NO. 70132/2022**

**JUSTICE DILIP GUPTA:**

This appeal is directed against the order dated 08 April, 2019 passed by the Commissioner to the extent it has denied remission of central excise duty on semi-finished goods destroyed in the fire accident.

2. By an order dated 03 July, 2015, the Tribunal had earlier remanded a specific issue to the adjudicating authority to ascertain the amount settled by the insurance company after verification of the documents. The Commissioner, on remand, noted that though the Tribunal had remanded a specific issue to the adjudicating authority,

but still proceeded to observe that since the entire order of the adjudicating authority was under appeal before the Tribunal, it was necessary to consider all the aspects covered by the earlier order that was under challenge before the Tribunal. Thus, after examining the entire matter, the Commissioner observed as follows:-

> "5. In view of above, pass the order as follows:
>
> a. I allow remission of duty of Rs. 1,19,232.00 only, pertaining to duty on finished goods.
>
> b. I drop demand of Central Excise duty of Rs.40,97,341.00.
>
> c. I confirm the demand of Rs.41,01,620.00 attributable to CENVAT credit on the inputs used in the manufacture of semi-finished goods/finished goods, destroyed in the fire accident. Since this amount had already been reversed by the party, I order for its appropriation against their liability.
>
> d. I confirm the demand of interest on CENVAT Credit of Rs.41,01,620.00."

4. Ms. Pravin Sharma learned counsel for the appellant submitted that the Commissioner should have restricted the discussion to the specific issue that was remanded by the Tribunal, namely to determine the actual amount settled by the insurance company after verification of the documents submitted by the appellant, but the Commissioner travelled beyond the remand order and recorded findings on issues which had been raised in the earlier order that was assailed before the Tribunal, and these issues, except what was remanded, were decided by the Tribunal.

5. Shri N.K. Mishra learned authorized representative appearing for the department has, however, supported the impugned order.

6. The appellant had contended that because of the instructions given by the jurisdictional officer, it reversed the CENVAT credit of Rs. 41,01,620/- availed on the inputs destroyed in the fire accident as well as inputs which were consumed/used in the manufacture of

finished/semi-finished goods destroyed in the fire accident and intimated the Department of this fact. The appellant also believed that remission of central excise duty was also required in case of finished and semi-finished goods destroyed in fire and, therefore, requested the Department for remission of the central excise duty on semi-finished goods as well as finished goods.

7. A show cause notice dated 27 August, 2009 was, however, issued to the appellant proposing to reject the remission of central excise duty on the ground that the fire accident cannot be treated as a natural cause or unavoidable accident and, therefore, central excise duty of Rs.40,97,341/- was payable by the appellant. The show cause notice also required the appellant to pay interest on CENVAT credit of Rs.41,01,620/- belatedly reversed by the appellant. The appellant submitted a detailed reply to the Commissioner.

8. By an order dated 10 July, 2013, the Commissioner denied remission of central excise duty and confirmed the demand of central excise duty of Rs. 40,97,341/- with interest. The Commissioner also confirmed demand of interest on the CENVAT credit of Rs.41,01,620/- belatedly reversed by the appellant. As regards the goods destroyed because of fire, the Commissioner observed that the documents did not reveal that the insurance claim filed by the appellant contained the element of excise of duty.

9. This order dated 10 July, 2013 passed by the Commissioner was assailed by the appellant before the Tribunal and the relevant portion of the order passed by the Tribunal is reproduced below:-

> "5. The Jurisdictional Commissioner has disallowed remission application on the ground that no reasonable steps were taken by the appellant to prevent fire. I find that in the impugned order at paragraph 7, it has been recorded that the fire accident has occurred in the factory

due to a short circuit. In this context, the Hon'ble Allahabad High Court in the case of **CCE** vs. **M. Kumar Udyog (P) Ltd. reported in 2014 (306) ELT 19 (All.)** has held that accident of fire due to short circuit is an unavoidable accident, for which the assessee is entitled to remission of duty under Rule 21ibid. **In view of the said judgment, the impugned order denying the benefit of remission on this ground is not justified.**

6. **Further, there is no justification in confirming the demand on the semi-finished goods, for the reason that excise duty is a levy on the manufacture of the goods and unless goods are removed from the factory, no duty liability can be fastened against the assessee.** In this case, since the semi-finished goods have not been removed from the factory, duty demand is not in conformity with the statutory provisions, as held by this Tribunal in the case of **Urmi Chemicals** vs. **CCE-Mumbai-II reported in 2014 (301) ELT 356 (Tri. - Mum**). **The Cenvat Statute** find that cenvat credit attributable to the inputs used in or in relation to manufacture of the final product and the semi-finished goods available in the factory were wrongly reversed by the appellant based on the request made by the Range Officers. nowhere provides that in case of fire accident, the cenvat credit attributable to the said goods has to be reversed. Further, sub-rule (5C) of Rule 3 of the Cenvat Rules calls for reversal of cenvat credit, in the eventuality, where the payment of duty is ordered to be remitted under Rule 21 of the Central Excise Rules, which is not the situation in the present case, in as much as, there mission application filed by the appellant has not been considered by the Jurisdictional Central Excise Authorities. In this context, I find support from the decision of this Tribunal in the case **M. Kumar Udyog (P) Ltd.** vs. **CCE-Kanpur reported in 2014 (302) ELT 385 (Tri. Del)**, wherein it has been held that semi-finished goods destroyed in fire having not attained marketable status, since remission of duty has not been granted, duty cannot be levied on those goods. **Thus, in absence of any provisions contained in the statute for reversal of Cenvat credit, there is no question of payment of any interest as confirmed in the impugned order.**

> 7. **The submission of the appellant that the Insurance Company has only settled the claim with regard to the finished goods destroyed in fire and not on the semi-finished goods, I am of the view that the Ld. Jt. CDR has rightly pointed out that the report furnished by the appellant is not clear about the same. Considering the fact that the report submitted by the appellant is not clear, I am of the opinion that the matter should go back to the original authority for consideration of the actual amount settled by the Insurance Company upon verification of the documents submitted/to be submitted by the appellant.**
>
> **8. Therefore, the appeal is allowed by way of remand to the Original Authority for ascertaining the claim amount settled by Insurance company. The appeal is disposed of accordingly."**
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> **(emphasis supplied)**

10. It is, therefore, clear that the adjudicating authority, on remand, had only to examine the actual amount settled by the insurance company upon verification of the documents submitted by the appellant, but the Commissioner proceeded to examine all the issues.

11. In this context, it needs to be noted that the Commissioner framed the following three issues for consideration:-

a. Whether the party is eligible for remission of duty;

b. Whether CENVAT Credit reversed by the party was unwarranted; and

c. Whether the party's settlement of insurance claim with respect to finished goods and semi-finished goods has any bearing on the case from revenue point.

12. In regard to the first issue, the Commissioner observed as follows:

> "**Out of the claim for remission of Rs.40,97,341.00 for both finished and semi-finished goods, the party**

> **is entitled for remission of Rs.1,19,232.00 on finished goods.** Once it is established that the party is entitled to remission of duty on the goods destroyed in fire accident caused due to reasons beyond the control of the party, the demand of duty on such goods is not sustainable. **I, therefore, hold that the demand of duty of Rs.40,97,341.00 on the goods, both semi-finished and finished, which were destroyed completely due to fire accident caused by Short Circuit, is not sustainable."**
>
> **(emphasis supplied)**

13. In regard to the second issue the Commissioner has observed as follows:-

> "Thus, I am of the opinion that the duty reversed by the party amounting to Rs.41,01,620.00 was correct."

14. The third issue was decided by the Commissioner in favour of the appellant.

15. The appellant has challenged that part of the order of the Commissioner by which the Commissioner denied remission of duty on semi-finished goods destroyed in fire. This issue had been decided by the Tribunal in favour of the appellant in the earlier round of proceedings. The Commissioner clearly exceeded his jurisdiction in deciding this issue by going beyond the terms of the remand order passed by the Tribunal as all that was required to be determined by the Commissioner on remand was to verify whether the element of excise duty involved in the goods destroyed by the fire accident was paid by insurance company or not. This issue has now been decided in favour of the appellant by the Commissioner.

16. The order passed by the Commissioner holding that the appellant is not entitled to remission of duty on semi-finished goods, therefore, cannot be sustained and is set aside. The appellant is

entitled to remission of duty availed on semi-finished goods burnt/damaged to the extent of Rs.35,60,087/-.

17. The order dated 08 April, 2009 passed by Commissioner to the extent it denies remission of duty on semi-finished goods to the extent of Rs.35,60,086/- burnt/damaged in fire is, accordingly, set aside. The remaining part of the order passed by Commissioner has not been challenged by the appellant. The appeal is, accordingly, allowed to the extent indicated above.

(Pronounced in open court)

**(JUSTICE DILIP GUPTA)**
**PRESIDENT**

**(P. ANJANI KUMAR)**
**MEMBER (TECHNICAL)**

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