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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/413 /2007 – SM & 1845 / 2008 –SM[BR] Date 09/02/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
(1-2) JINDIAL SHOE FACTORY
INDIRA MILLS COMPURND, JEONI MANDI AGRA

JINDIAL SHOE FACTORY Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 135 – 136 / 2009 - **SM[BR]** dated 4.2.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
C.C.E. KANPUR
117/7, SARVODYA NAGAR, KANPUR U.P.
2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI
3 S.D.R
4 ~~J.C.D.R~~.
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO.I**

Excise Appeal No. 413 of 2007 & 1845 of 2008 - SM

[Arising out of order-in-appeal No. 558/CE/APPL/KNP2006 & order-in-original No. 3/Commr/Tech/Rem./2008 dated 10.11.2006 & dt. 30.4.2008 passed by the Commissioner (Appeals) Central Excise, Kanpur]

Date of Hearing /Decision : 02.02.2009

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, Vice-President

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 Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Jandial Shoe Factory | Appellant
[Rep. by Mr. Bipin Garg, Advocate]

Versus

CCE, Kanpur | Respondent
[Rep. by Mr. Sansar Chand, DR]

CORAM: Hon'ble Ms. Jyoti Balasundaram, Vice-President

Final Order No. 135-136/09-SM (BR)

Per Jyoti Balasundaram:

The above appeals arise out of orders rejecting the assessee's claim for remission of duty on goods destroyed in fire accident and consequential demand of duty thereon.

2. I have heard both sides. Duty can be remitted on goods destroyed due to natural causes or by unavoidable accident etc. There is no dispute that there was a fire in the assessee's factory due to short circuit. The Commissioner has recorded a clear finding that the arrangements for safety and security of excisable goods in the factory was not proper to prevent the occurrence of the fire accident. The report of the Chief Fire Brigade Officer also notes that consequent upon specific enquiry conducted by the Fire Brigade Officers it was noticed that there was no staff working in the factory to make any attempt to capture the fire ~~and also~~ for the reason that there was scarcity of water inside the factory. The Commissioner has also noted that huge quantity of highly inflammable raw materials in drums was stacked in such a way that a sequential explosion occurred which thus aggravated the fire. He has also noted that the entrance and exit as well as windows were not proper and that narrow rooms and cabins were constructed with the use of small flaps, which also aggravated the fire. Therefore, the destruction of the goods cannot be said to have occurred beyond the control of the assessee i.e. it cannot be said due to unavoidable accident.

3. The case laws cited by the learned Counsel for the assessee namely, U.P. State Sugar Corporation Ltd., vs. CCE, Meerut 2004 (168) ELT 280 (Tri. Del.), Ergo Auto Ltd., vs. CCE, Faridabad -2008 (232) ELT 154 (Tri.-Del.), Chandpur Enterprises Ltd. vs. CCE, Meerut-I -2008 (229) ELT 133 (Tri.-Del), Wellbert Pharmaceuticals Pvt. Ltd., vs. CCE, Thane-2005 (184) ELT 396 (Tri.-Mumbai), Anand Duplex Ltd., vs. CCE, Meerut-I -2008 (223) ELT 283 (Tri.-Del), Plastikos Packaging vs. CCE, Allahabad -2001 (128) ELT 386 (Tri.-Del.) and CCE, Patna vs. Cownpore Sugar Works Ltd., -2001 (137) ELT 577 (Tri. –Kolkata) are distinguishable on facts for the reason that in those cases there was no finding that

the fire was caused due to circumstances beyond the control of the assessee and therefore remission was permissible as the goods were destroyed due to unavoidable circumstances. In the present case, the department's stand is that the fire was avoidable. I, therefore, uphold the impugned orders of rejection of claim for remission and the consequent duty demand and rejecting the appeals.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]