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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/2711/2009 - EX[DB] ,E/S/2794/2009-EX
E/2608/2008-EX

Date **10/05/2012**

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

To :
M/S SHEELA FOAM PVT. LTD.
51-A, UDYOG VIHAR, GREATER NOIDA.

M/S SHEELA FOAM PVT. LTD. Appellant

Vs

C.C.E. NOIDA Respondent

STAY ORDER NO.759/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/522-523 2012 EX[DB]** dated 03-5-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. NOIDA
C-56/42, SECTOR-62, NOIDA-
201307

2. Adv. / Consult
MR.PRAVEEN SHARMA
KF-84, KAVI NAGAR, GHAZIABAD

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, 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,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

<u>COURT NO. I</u>

<u>DATE OF HEARING/DECISION : 03/05/2012.</u>

Excise Appeal No. 2711 of 2009 with Stay Application No. 2794 of 2009 and
Excise Appeal No. 2608 of 2008

M/s Sheela Foam Pvt. Ltd. Appellant

Versus

CCE, Noida Respondent

[Arising out of the Order-in-Appeal No. 165-CE/APPL/NOIDA/2009 dated 29/06/2009 and Order-in-Original No. 37/Commr/Noida/2008 dated 29/09/2008 passed by The Commissioner (Appeals), Central Excise, Meerut -II, Noida and The Commissioner, Customs & Central Excise, Noida.]

Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether their Lordships wish to see the fair copy of the order? :
4. Whether order is to be circulated to the Department Authorities? :

<u>Appearance</u>

Shri Praveen Sharma, Advocate – for the Appellant.

Shri S.R. Meena, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY Order No. 759/2012-Ex(BA)
FINAL Order No/A/522-523/2012-Ex(BR)

Shri Justice Ajit Bharihoke :-

By this order we propose to decide these two connected appeals one arising out of the order of Commissioner (Adjudication), denying remission of excise duty to the appellant and other arising out of the order of Commissioner (Appeals), whereby he confirmed the duty demand of Rs. 18,08,292/- with interest as adjudicated vide order-in-original by the concerned Adjudicating Authority.

2. Briefly put facts relevant for the disposal of these appeals are that on 27th June 2005 (night) a fire incident took place at the factory of the appellant resulting in total loss of finished as well as semi-finished goods lying in their store. Intimation in this regard was given to the fire department. Intimation was also given to the department on 28th June 2005. Pursuant to the intimation, Superintendent Central Excise visited the factory premises of the appellant to ascertain the loss. Since entire section where the goods were stored was gutted the loss could not be assessed on that day. Subsequently, assessment of loss of finished as well as semi-finished goods was done and detail was submitted to the Department.

3. The appellant had availed Cenvat credit on the inputs used for manufacture of finished and semi-finished goods. The

appellant apply for remission of excise duty to the Commissioner (Adjudication) while those proceedings were pending, Jurisdictional Additional Commissioner issued a show cause notice to the appellant raising demand for excise duty in respect of goods destroyed in fire, and called upon him to explain as to why the demand should not be confirmed and penalty be not imposed. The appellant contested the demand notice, however, the proceedings culminated into confirmation of duty demand of Rs. 18,08,292/- with interest. The appellant preferred an appeal against the order-in-original but the appeal was dismissed by Commissioner (Appeals) vide impugned order which is subject matter of appeal No. 2711 of 2009.

4. The Commissioner (Adjudication) also vide order-in-original dated 29th of September 2008 dismissed the request of appellant for remission of excise duty. Appeal No. 2608 of 2008 relates to the aforesaid order-in-original.

5. The duty demand has been confirmed against the appellant on the ground that he is not entitled to benefit of Rule 21 of Central Excise Rules, 2002 because the fire was not the result of natural cause or unavoidable accident. The remission was also denied on the same ground. Beside this, the other ground for denying remission and for confirmation of demand was that that appellant had taken insurance claim in respect of the goods destroyed in fire, but he did not furnish any document, which could clarify whether or not the insurance compensation received by the appellant included the excise duty payable on the final

product. Learned Counsel for the appellants have submitted that impugned order of Commissioner (Appeals) as well as Commissioner (Adjudication) are not sustainable in law, firstly because they are based upon incorrect interpretation of Rule 21 of Central Excise Rules, 2002. Secondly, it is contended that even the plea that insurance documents were not supplied during adjudication proceedings is unfounded in view of the observations of Commissioner (Adjudication) in order-in-original which are inter-alia produce thus :-

> "Further, the R.O. vide letter dated 28/10/05 submitted the details of semi-finished and finished goods damaged by the fire. The value of finished goods destroyed was Rs. 1,05,44,042.28 and semi-finished goods was Rs. 5,36,172.97. The Assistant Commissioner, Central Excise, Division – IV, Noida, vide his letter dated 10/11/06 forwarded the verification report of Superintendent Range – 27. The R.O. vide his letter dated 25/01/07 also submitted that the insurance claim had been filed by the party and the claim had been calculated without including the duty element."

6. Learned Counsel further submits that admittedly the fire took place because of short circuit as it is apparent from survey report from fire department, as such, it can be safely said that the accident took place due to unavoidable reason. Accordingly, benefit of Rule 21 of the Central Excise Rules, ought to have been extended to the appellant. Thus, learned Counsel urges for setting aside of both the impugned orders.

7. Shri S.R. Meena, AR, on the contrary has argued in support of the impugned orders and submitted that Rule 21 of Central Excise Rules, is available only in those cases where the excisable goods are lost or destroyed by unnatural causes or by unavoidable accidents. Shri S.R. Meena submitted that obviously this is not a case of destruction of excisable goods by natural cause and the fire accident, which took place because of short circuit could have been avoided if the appellant had properly maintained the electric wiring in the factory as such Rule 21 is not attracted. It is further contended that Commissioner (Adjudication) was rightly in rejecting the application for remission of excise duty because only semi-finished goods and inputs on which Cenvat credit was availed were destroyed in fire.

8. We are considered the rival contention and perused the record. The facts in this case are not disputed. Only issue for consideration in these appeals is the interpretation of Rule 21 of the Central Excise Rules, 2002, which reads thus :-

> **Rule 21. Remission of duty** – Where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing :
>
> Provided that where such duty does not exceed one thousand rupees, the provisions of this rule shall have effect as if for the expression "Commissioner", the

expression "Superintendent of Central Excise" has been substituted :

Provided further that where such duty exceeds one thousand rupees but does not exceed two thousand five hundred rupees, the provisions of this rule shall have effect as if for the expression "Commissioner", the expression "Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be", has been substituted :

Provided also that where such duty exceeds two thousand five hundred rupees but does not exceed five thousand rupees, the provisions of this rule shall have effect as if for the expression "Commissioner", the expression "Joint Commissioner of Central Excise or Additional Commissioner of Central Excise, as the case may be", has been substituted."

9. On reading of Rule 21 of the Central Excise Rules, 2002 it is clear the assessee is entitled to remission of excise duty if he is able to satisfy the Commissioner, Excise, that the goods in question were destroyed as a result of unavoidable accident. This satisfaction envisaged by the Rule is not arbitrary satisfaction but the judicial satisfaction of the Commissioner based upon objective analysis of the facts. The Commissioner (Appeals) have rejected the plea of the appellant on the premise that the fire accident was avoidable by following mandatory safety norms by the appellant. This finding, however, is not supported by facts and reasoning. There is nothing on record of appeal No. 2608 of 2008 to suggest that there was any material available with the

Commissioner (Adjudication) to come to the conclusion that the appellant was not following the safety norms, therefore, we find it difficult to accept his finding in this regard.

10. As regards, the plea of Shri S.R. Meena, AR for the respondent that the appellant did not produce any material to show that he had taken insurance claim on the value of the goods including excise duty it may be noted that impugned order of Commissioner (Adjudication) itself reflects that as per the report submitted by Range Officer by letter dated 25th January 2007, the appellant has filed insurance claim without including the duty element. Thus, this plea raised by learned AR is not acceptable.

11. In view of the discussion above, we find it difficult to sustain the order of Commissioner (Adjudication) disallowing the remission of duty sought by the party particularly when the appellant has place sufficient material on record to show that finished/semi-finished goods were destroyed in fire accident cause due to short circuit.

12. The impugned order of Commissioner (Appeals) is based upon the dismissal of application of remission by the Commissioner (Adjudication), which have held to be not sustainable in law. Therefore, the order of Commissioner (Appeals) also cannot be sustained.

13. In view of the discussion above, we accept both the appeals. Order of Commissioner (Adjudication), declining

remission of excise duty to the appellant and the order of Commissioner (Appeals) confirming the duty demand against the appellant are set aside. The appellant is granted remission of excise duty pertaining to the goods destroyed in fire.

14. Appeals are disposed of accordingly.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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