**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I**

Appeal No. C/258/2012-CU[DB]

[Arising out of Order-in-Appeal No. 02/COMMR/CUST/IND/2012 dated23.02.2012, passed by the Commissioner of Central Excise, Indore]

M/s Techtextil **....Appellant**

Vs.

C.C.E., Indore **....Respondent**

Appearance:

Sh. Ashutosh Upadhyay, Advocate for the Appellant
Sh. Sanjay Jain, DR for the Respondent

CORAM:
**Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Shri V. Padmanabhan, Member (Technical)**

**Date of Hearing: 20.12.2016
Date of Pronouncement:23.02.2017**

FINAL ORDER NO. 51944 /2017-CU[DB]

Per V. Padmanabhan

The present appeal has been filed against the Order-in-Original dated 07.03.2012 passed by the Commissioner of Central Excise, Indore. The appellant is a 100% EOU, who has been granted permission by the Development Commissioner, SEZ, Indore for undertaking in-bond manufacture. The appellant procured inputs without payment of duty, partly from indigenous sources and partly from importer sources, for use in the manufacture of excisable goods and its subsequent export under 100% EOU scheme. A fire accident took place in the factory of appellant on mid-night of 27-28th February, 2010. Significant loss happened in the appellants' factory by which capital goods, raw-materials, finished goods, goods-in-process, inputs, consumable etc. got destroyed. Consequently, the Show Cause Notice dated 08.09.2010 was issued to the appellant proposing to recover.

i) Central Excise duty on the goods procured duty free against C.T-3 certificates from local sources.

ii) Customs duty on goods imported duty free against procurement certificates.

iii) Cenvat credit taken on inputs / capital goods.

2. The impugned order confirmed the demands by taking a view that the duty is recoverable for the reason that the appellant has failed to take steps to safeguard the capital goods, and materials procured without payment of duty for use in the 100% EOU. Against the impugned order, the present appeal has been filed.

3. With the above background, we have heard Shri Ashutosh Upadhyay, ld. Counsel appearing for the appellant and Shri Sanjay Jain ld. DR appearing for the Revenue.

4. The ld. Counsel's submission is that it is not disputed that fire actually happened in the mid-night of 27/28 February 2010. The

fire station Pithampur has certified vide their certificate dated 13.03.2010, that the fire was an accident inspite of having adequate fire fighting equipments and provisions of sufficient water available in the appellant's company. Inspite of that the ld. Commissioner has rejected the claim for remission filed by the appellant under Rule 21 of the Central Excise Rule as well as under Section 23 of the Customs Act, 1962. The Adjudicating authority has observed that the appellant has carelessly stored the final product in open space and has not followed the prescribed procedure for highly inflammable product. Accordingly, he has rejected the claim for remission of duty and passed the following order:

(i) Confirmed demand of Central Excise duty amount into Rs 28,94,401/- pertaining to goods procured duty free indigenously.

(ii) Confirmed the demand for custom amount into Rs 2,80,69,543/- on goods imported duty free.

(iii) Disallowed cenvat credit amount into Rs 2,05,350/- in respect of inputs destroyed.

(iv) Imposed penalty of Rs 5 lakhs under Rule 25 of Central Excise Rules.

(v) Penalty of Rs 5 lakhs under section 117 Customs Act than imposed penalty of Rs 3 lakhs under Rule 15 of the Cenvat Credit Rules. He also ordered for recovery of interest on the above demand.

5. Ld. Counsel submitted that there is no dispute that the fire incident, which happened on mid night of 27-28th February, 2010 was a pure accident inspite of having adequate firefighting equipment. Since, the capital goods and inputs procured without payment of duty and warehoused in the factory have been destroyed in the fire, remission of duty should be granted both under Rule 21 of the Central Excise Rules as well as Section 23 of the Customs Act, 1962.

6. Ld. DR opposed the above contention of the Ld. Counsel. He submitted that the goods were procured without payment of duty on the condition that the same should be used for manufacture of goods in the 100% EOU, which was meant to be exported. Since, this condition is not satisfied and the goods have been destroyed, the appellant will be liable to pay the duty forgone on goods procured duty free.

7. The appellant, who is a 100% EOU, has procured indigenous goods without payment of duty by availing the benefit of Notification No. 22/2003-CE dated 21.03.2003. Likewise, they also procured imported goods without payment of duty under Notification No. 52/2003-Cus dated 31.03.2003. In the fire, which took place in the factory on the mid-night of 27-28th February, 2010 all goods got destroyed. The claim for remission of duty filed before the Jurisdictional Commissioner stands rejected. Rule 21 of

the Central Excise Rules, 2002 and Sec 23 of Customs Act, 1962 read as follows:

> *Rule 21 of the Central Excise Rules, 2002:*
> *"Remission of duty- where it is shown to the satisfaction of the Principal Commissioner, as the case may be] 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"*
>
> *Sec 23 OF Customs Act, 1962:*
> *"Without prejudice to the provisions of Section 13, where it is shown to the satisfaction of the [Assistant Commissioner of Customs or Deputy Commissioner of Customs that any imported goods have been lost otherwise than as a result of pilferage or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods."*

Commissioner, in the impugned order, has denied to grant remission under the above provisions. He has taken the view that the goods have been lost in fire but cannot be considered as destroyed by natural causes, in as much as, the fire was a result of not taking proper care while storing the same within the factory.

8. We have perused the records of the case. We find that the District Fire Officer, Pithampur, has certified, vide his certificate dated 13.03.2010 that adequate firefighting equipment and provisions of sufficient water was available with the appellant and sufficient efforts were made to put off the fire by the company. Accordingly, the fire department has certified that there is no foul play and that the fire has due to reasons beyond the control of the appellants. This establishes the fact that the fire was nothing but an unfortunate accident. The appellant has relied upon, the following case laws to support the argument that they were entitled to the

grant of remission under Rule 21 of the Central Excise Rules as well as Section 23 of the Customs Act, 1962.

i. **Sumit Chemicals Pvt. Ltd. Vs. Commissioner of C. Ex., Kanpur 2016(337) E.L.T. 299 (Tri.- All.).**

ii. **Commissioner of Cus., Bangalore Vs. Next Fashion Creators Pvt. Ltd. 2012 (280) E.L.T. 374 (Kar.).**

In the case of M/s Joy Foam Pvt. Ltd, the Hon'ble High Cou rt has held as follows:

> *"8. We find that once the goods are destroyed or lost due to natural causes, remission of duty is granted on such goods. Since the inputs are considered to be put to intended use in the manufacture of finished products, it is deemed to have been consumed in the process of manufacture and since the foods are lost or destroyed due to unavoidable accident, the claim of reversal of credit cannot be countenanced, more so, when the said provision does not provide for reversal of credit, as has been observed by the Tribunal, which we approve."*

In the case of M/s Next Fashion Creaturs (Supra) of Hon'ble High Court of Karnataka has held as follows:

> *"4. The facts are not in dispute, the assessee is a 100% export oriented unit. It has imported goods without paying duty. If they have performed their export obligations, they were not liable to pay the duty. Before that obligation could be performed, where the goods were warehoused, there was a fire accident; in the fire accident, the entire goods which were imported were destroyed. It is nobody's case that there was any pilferage of these goods. Under these circumstances, when the claim of remission is made under Section 23 of the Act, legal requirements to be fulfilled by the assessee to claim remission stands fully satisfied. The Commissioner was wholly in error in denying the said benefit on the ground that the said benefit is not entitled to EOU under the notification and that the assessee did not take care of the goods imported and also on the ground that the Managing Director of the assessee admitted discrepancy in the figures. All these factors which weighed with the Commissioner are totally extraneous for considering the claim for remission under Section 23 of the Act. The Tribunal on proper appreciation of the material on record and correct interpretation of Section 23 of the Act was justified in setting aside the order passed by the Commissioner of Customs and in granting relief to the assessee. In that view of the matter, we do not see any merit in this appeal and accordingly, it is dismissed. No costs"*

9. In view of the facts as discussed above and keeping in view the decision of the Hon'ble High Court of Karnataka as well as Madras, we come to the conclusion that this is a fit case for grant of remission under both Central Excise as well as Custom provisions as above. Once remission is granted for Excise and Customs duties in respect of goods destroyed in the fire accident, there will be no justification for the demands made in the impugned order. Accordingly, the impugned order is set aside and appeal allowed.

[Pronounced in the open court on 23.02.2017]

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member(Technical)

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