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

COURT NO. III

DATE OF HEARING : 23/02/2016.
DATE OF DECISION : 23/02/2016.

Excise Appeal No. 2343 of 2006

[Arising out of the Order-in-Original No. 14/CE/JP-II/2006 dated 08/05/2006 passed by The Commissioner, Central Excise Commissionerate, Jaipur – II.]

For Approval and signature :
Hon'ble Shri S.K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, 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?	:

M/s Modern Woolens Ltd. Appellant

Versus

CCE, Jaipur – II Respondent

Appearance

Shri Ankit Totuka, Advocate – for the appellant.

Shri Govind Dixit, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 56513/2016 Dated : 23/02/2016

Per. S.K. Mohanty :-

This appeal is directed against the impugned order dated 08/5/2006 passed by the Commissioner, Central Excise, Jaipur – II, wherein remission application filed by the appellant was rejected on the ground that theft of excisable goods cannot be equated with goods lost or destroyed by natural causes or unavoidable accident, and thus, remission of duty on the stolen goods is outside the scope and purview of Rule 21 of the Central Excise Rules, 2002.

2. Brief facts of the case are that the appellant is engaged in manufacture of Wool Tops, Woolen Yarn and Poly-wool Yarn falling under Chapter 51 and 55 of the Central Excise Tariff Act, 1985. During the disputed period, the appellant had cleared 95 Bales of Wool Tops from its factory for export to M/s SEFITA, MOROCCO under cover of ARE-I dated 13/11/2003 under bond. The goods were exported through Mumbai Port on 29/11/2003 and the proof of export was submitted by the appellant to the Central Excise Department. Upon receipt of the information from the buyer that the container sent by the appellant was loaded with sand and stones instead of wool tops, the appellant filed the FIR before the Bhilwara Police Station. On investigation of the matter, the Police Department were able to recover 33 Bales of Wool Tops and handed over the same to the appellant, which were exported under the cover of ARE-I dated 04/6/2004. The Central Excise duty liability attributable to the balance quantity of

62 Bales of Wool Top alongwith interest was deposited by the appellant under protest. Subsequently, the appellant vide its letter dated 15/09/2004 had filed the remission claim before the Jurisdictional Commissioner of Central Excise, claiming remission of Excise duty alongwith interest already deposited earlier. The application of the appellant was rejected by the Commissioner of Central Excise on the ground that since theft has occurred after the goods were removed from assessee's premises, the provisions of Rule 21 ibid will not be applicable for remission of duty. Hence, this present appeal before the Tribunal.

3. Shri Ankit Totuka, learned Advocate, for the appellant submits that as per the agreed terms, sale of Wool Tops was on Free on Board (FOB) basis, according to which, the appellant was responsible for delivering the goods at the Port of Loading. Thus, the place of removal should be extended to the Port of Export. The learned Advocate further submits that since theft had occurred before removal of goods from the port of export, which is due to unavoidable circumstances, the remission of duty on the lost quantity is allowable to the appellant. To substantiate his stand that theft is an unavoidable accident and such event qualify for remission under Rule 21 ibid, the learned Advocate has relied on the decision of Tribunal in the case of **CCE, Coimbatore vs. Sree Narasimha Textiles Ltd.** reported in **2009 (239) E.L.T. 86 (Tri. – Chennai)**.

4. On the other hand, Shri Govind Dixit, the learned DR appearing for the Revenue submits that loss or destruction of excisable goods due to natural causes or unavoidable accident can only be remitted under Rule 21 ibid and not on the ground of loss due to theft. To support his above stand, the learned DR has relied on the decision of this Tribunal in the case of **Gupta Metal Sheets vs. CCE, Gurgaon** reported in **2008 (232) E.L.T. 796 (Tri. – LB)** and also relied on the judgment of Hon'ble Madras High Court in the case of **Golden Hills Estates vs. CCE, Madras** reported in **1997 (90) E.L.T. 301 (Mad.)**.

5. We have heard the learned Counsels of both sides and examined the appeal records.

6. It is an admitted fact on record that 62 Bales of Wool Tops removed by the appellant from its factory for export were stolen and not retrieved/recovered by the Police and Central Excise duty liability was discharge by the appellant and that such duty was claimed as remission under Rule 21 ibid. On perusal of Rule 21 ibid, it reveals that the Commissioner is empowered to grant remission of duty, in the eventuality, when the same have been lost or destroyed by natural causes or on account of unavoidable accident. Whether theft can be considered as unavoidable accident within the meaning of the said rule, so as to remit Excise duty on the goods so lost, has been answered negatively by the Larger Bench of the Tribunal in the case of **Gupta Metal**

Sheets vs. CCE, Gurgaon (supra). The relevant paragraphs in the said decision is extracted herein below:-

> "8. 'Natural cause' has to be understood in the sense of some natural phenomenon i.e. vagary of nature or some act of nature like fire, flood or a similar natural calamity. Besides, goods like molasses may also lose in quantity while in storage for environmental reasons. The act of forcibly removing the goods by any means - non-violent or violent - amounting to theft or dacoity under the Indian Penal Code cannot be said to be a natural cause. 'Theft' has been defined in the Indian Penal Code to mean dishonestly taking of any moveable property out of the possession of any person without his consent. Theft is robbery if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. When five or more persons conjointly commit or attempt to commit a robbery, they are said to commit dacoity. It would thus appear that 'theft' or 'dacoity' involves forcible removal of goods by non-violent or violent means, as the case may be, and this cannot be said to be a natural cause.
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> 9. The case of the appellant is that theft or dacoity is covered by the expression 'unavoidable accident'. Theft or dacoity, in our opinion, is an incident and not an accident, much less unavoidable. Accidents take place due to one's carelessness or negligence and it cannot be said to be unavoidable. As per the dictionary meaning, 'accident' means, an event without apparent cause, an unfortunate event, especially, one causing physical harm or damage,

brought about unintentionally; occurring of things by chance (see Concise Oxford Dictionary, Ninth Edition). Theft and dacoity are committed by a design and they cannot be said to be accident by any logic. By taking due care and caution they can be avoided and, therefore, it cannot be said that theft or dacoity is 'unavoidable accident'."

7. In view of the categoric findings of the Larger Bench of this Tribunal that theft cannot be considered as 'natural cause', we are of the view that the decision cited by the learned Advocate in the case of **CCE, Coimbatore vs. Sree Narasimha Textiles Ltd.** (supra) cannot be relied on as per the judicial decorum.

8. Therefore, we do not find any infirmity in the impugned order. Accordingly, the appeal filed by the appellant is dismissed.

(Operative part of the order pronounced in the open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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