

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench

Court – I

Excise Appeal No. 28258 of 2013

(Arising out of Order-in-Original No. 22/2013 (BVSNK) dt.22.08.2013 passed by
Commissioner of Central Excise & Customs, Visakhapatnam-II)

Regency Ceramics Ltd

IMS House, Near Katriya Hotel,
Somajiguda, Hyderabad – 500 082

.....Appellant

VERSUS

**Commissioner of Central Tax
Puducherry – GST**

Port Area, Visakhapatnam,
Andhra Pradesh – 530 035

.....Respondent

Appearance

Shri B.V. Kumar, Advocate for the Appellant.
Shri P. Amaresh, AR for the Respondent.

Coram:

HON'BLE MR. R. MURALIDHAR (JUDICIAL)

HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30162/2023

Date of Hearing: 08.06.2023

Date of Decision: 04.07.2023

[Order per: R. MURALIDHAR]

During the Hearing scheduled on 27.04.2023, learned AR had brought in the issue as to whether this Appeal can be taken up for Hearing in CESTAT Hyderabad or the same is required to be decided by CESTAT Chennai. He submitted that the change of Cause Title making the Commissioner of Central Tax, Puducherry GST was allowed vide Interim Order No. IO/E/4/2023 dated 19.04.2023. On that day, the Advocate representing the Appellant was not present. Therefore, along with the other issues raised by the Bench in this Appeal vide the Interim Order dated 19.04.2023, it was decided that this issue also will be taken up when the matter gets posted subsequently. Today learned AR raised this issue submitting a copy of the email received from Visakhapatnam Commissionerate stating that the concerned files have been forwarded to Puducherry Commissionerate. Learned Advocate, Shri B.V. Kumar, has

made a detailed presentation consisting of Central Excise Manual, Central Excise Rules, Notification No.14/2002 as amended from time to time, the provisions of GST Act, 2017 and extracts of General Clauses Act, 1897. A harmonious reading of these provisions clarify that jurisdiction in respect of the earlier cases booked in respect of Central Excise and Service Tax matters are still with the Commissioner of Central Excise & Customs, Visakhapatnam-II Commissionerate only. It is further observed that so far as the Jurisdiction of CESTAT is concerned for the cases emanating from Yanam the jurisdiction lies with Hyderabad CESTAT and cases pertaining to Puducherry the jurisdiction lies with CESTAT, Chennai.

2. Learned AR has also gone through these statutory provisions and admits that the jurisdiction would lie with Visakhapatnam Commissionerate only. So far the earlier Interim Order dated 19.04.2023 is concerned, it is a normal practice that when the Cause Title Petitions are taken up, the Appellant/Respondent (Assessee) generally not turn up and since the Miscellaneous Petition is filed by the Department, in most of the cases, all such Miscellaneous Petitions are allowed without going into the minute details because of which in the present case the statutory provisions might not have been looked into. After discussing this issue in detail, the AR's Office has given their consent to continue with the Appeal in this Tribunal. Accordingly, the Appeal has been taken up for Hearing by us.

3. This Tribunal vide their Interim Order dated 19.04.2023 had asked for certain details to be filed by the Appellant. They have filed the same on 24.04.2023 along with an Affidavit of the Executive Director of the Appellant. These are taken on the Record.

4. The Appellants are manufacturers of ceramic glazed tiles falling under CET 6908 and 6907. On 27.01.2012, due to the ongoing strike of their workers, a tense situation had arisen in Yanam (place where the Appellant's Company is located). On that day, huge damages to the assets of the Appellant were incurred. The mob raided the factory premises and caused damages to machinery, vehicles, raw materials, finished goods and set fire to the building with great violence. These violent incidents are reported in local newspapers on 28.01.2012 and 29.01.2012. After hearing about this news, the Central Excise Authorities wanted to have a factual report on the

extent of damage for the finished goods and other excisable goods which occurred on 27.01.2012. The Department sent their letter OC No.24/2012 dated 06.02.2012 asking the Appellant to estimate the extent of damage that has occurred to the finished excisable goods and inputs/ raw materials in stock during the said violence which took place on 27.01.2012. The Appellant sent their reply on 16.02.2012 that the situation was very tense and no one was in a position to enter the premises to carry out any work to determine the extent of loss. Several correspondence were exchanged between the Department and the Appellant on this count. The Appellant also filed copies of FIR filed by Yanam Police on the incidents occurred. The Appellants requested the Superintendent of Central Excise, Yanam to depute officers for inspecting the goods and take inventory of the same. The inventory of raw materials finished good and capital goods on 08.09.2012 was arrived at and these details were furnished to Central Excise Department. The Superintendent of Central Excise visited the unit on 18.09.2012 and recorded details of physical stock of finished goods and other raw materials. Thereafter, Show Cause Notice was issued, for the goods lost in fire and arson during the violence that occurred on 27.01.2012, demanding Rs.52,17,180/-, based on the fact that the value of the finished goods lost was to the extent of Rs.8,05,65,491/- and Rs.1,11,42,795/-. The Appellants submitted the detailed reply and clarified that due to labour unrest and violent behavior of the mob, which has resulted in huge damages and even death of an officer of the Company, the finished goods and semi-finished goods got burnt and damaged and correct quantification cannot be arrived at. They also provided all the documentary evidence to the effect that they have filed FIR and have taken the help of Fire Department to extinguish the fire which has spread in the Company and all other details pertaining to the arson and subsequent events. They submitted that even as on date, the company is not in a functioning mode. The damage has been so extensive that it is not possible to start the functioning of the unit for many years to come. The Appellants claimed that for the finished goods and semi-finished goods lost by them, they are entitled for Remission of Duty in terms of Central Excise Rules, 2002. The Adjudicating Authority, after due process, confirmed the duty demand and also confiscated the finished goods of worth Rs.8,05,65,491/- and semi-finished goods of worth Rs.1,11,42,795/- and gave the option to redeem the

same on payment of Rs.30 Lakhs and Rs.4 Lakhs respectively. She also imposed penalty of Rs.52,17,180/- and Rs.3 Lakhs. Being aggrieved by the impugned OIO, the Appellant is before the Tribunal.

5. The learned Counsel has taken us through the entire chronological events involved which resulted in massive arson and violence. He has also provided the documentary evidence for the complaints filed by them with the Police Department by way of FIR and help provided to the Appellant by the Fire Department in extinguishing the fire which has spread in the factory premises. He submits that in terms of Rule 21 of Central Excise Rules, 2001, they are entitled to get remission for the finished goods and semi-finished goods lost by them. Considering the specific facts of this case, he prays that the present Appeal may be allowed by setting aside the impugned OIO in toto.

6. The Appellant during the earlier Hearing was asked a specific query as to whether the insurance claim made by them had any component of Excise Duty on the finished goods or semi-finished goods lost in the fire and arson. The Appellant has filed an Affidavit signed by the Executive Director of the Appellant wherein he has stated under oath that they have filed a claim and they were approved by the Insurance Surveyor for Rs.16,54,60,841/- wherein component of Excise Duty amounting to Rs.52,17,180/- was not included. Learned Counsel was also asked to file the details of the insurance claim filed by them and claim settled in their favour. He has filed the complete set of the insurance claim filed and claim settled by the Insurance Company. It is seen from this record that the Appellants have claimed a total compensation of Rs.343.48 Crores. The Insurance Company, after going through the assessment by the Insurance Surveyor, has arrived at value of loss at Rs.16,54,60,841/-. From this report, it is seen that the value of stocks considered for claim by the Insurance Surveyor was only for Rs.3,06,51,000/-. The Appellant after this Report, have gone for Arbitration proceedings wherein the Arbitral Tribunal has awarded the amount of Rs.157.01 Crores. From the Table showing this award, it is seen that even here, the Arbitral Tribunal has considered the stocks value as: Rs.4.78 Crores only.

7. Learned AR reiterates the findings of the Adjudicating Authority and justifies the confirmed demands.

8. Heard both sides and perused the documents.

9. From the documentary evidence placed before us, it is clear that the Appellant's unit was undergoing severe labour unrest on 27.01.2012. A mob had gathered and violent incidents took place and huge damage was incurred for the assets of the Appellant. The mob had committed arson and also spread the fire within the factory premises which has resulted in total loss of more than Rs.300 Crores for the Appellant. The Appellant has filed the claim for more than Rs.300 Crores with the Insurance Company. The insurance valuer initially arrived at damage as only Rs.16.58 Crores. Being agitated by the same, the Appellants have approached the Arbitral Tribunal who have considered all these facts and then finally arrived at their damage for Rs.157 Crores and awarded this compensation to the Appellant.

10. At this juncture, it would be important to go through Rule 21 of Central Excise Rules, 2002 which is extracted below:

"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 [ten 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 [ten thousand rupees] but does not exceed [one lakh 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 [one lakh rupees] but does not exceed [five lakh 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."*

11. From a harmonious reading of the above Rule would clarify that when the loss is caused by natural causes or unavoidable accident, the Assessee should be granted remission of duty. Coming to the factual matrix of this case, it is very clear that the arson indulged in by the mob of the workers was absolutely

not an act which could have been avoided or controlled by the Management of the Appellant. The very fact that Appellant has lost assets worth about Rs.300 Crores (as per their estimate) for Rs.157 Crores (as estimated by the Arbitral Tribunal) shows that damage has been caused only on account of the situation which was completely unavoidable and was nowhere within the control of the Appellant. Further the very fact that the Insurance Company was made to pay the compensation of Rs.157 Crores by the Arbitral Tribunal shows that the damage was really serious and was within the scope of insurance claim made by the Appellant. If the Insurance Company was of the opinion that this fire/arson could have been avoided and no attempt was made by the Appellant to stop the same, they would not have entertained the claim at all. Though the Insurance Company has paid only a very paltry amount of Rs.16.5 Crores towards compensation, on Appeal before Arbitral Tribunal, which was headed by the eminent Ex-Supreme Court Judges, has come to a conclusion that the amount of damage caused to the extent was more than Rs.157 Crores. We also have to consider the fact that while the Department has valued the goods lost at Rs.9,17,08,286/-, the final figure towards the stock has been arrived at by the Arbitral Tribunal is only for Rs.4.78 Crores. Even on this count itself, it is observed that the amount demanded is higher by nearly 50%, and is based on arbitrary figures. The Appellant has filed Affidavit to the effect that they have not claimed the Excise Duty component in their claim with the Insurance Company. Even the Insurance Surveyor's Report does not contain any remark to the contrary.

10. Considering all these facts, we are of the opinion that this is a fit case where the Appellant should have been granted the benefit of remission under Rule 21 of Central Excise Rules, 2002 and no Duty demand should have been confirmed. Accordingly, we set aside the impugned OIO and allow the Appeal, with consequential relief, if any as per the law.

(Pronounced in the Open Court on 04.07.2023)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)