IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

<u>Excise Appeal No.75332 of 2017</u>
(On behalf of Appellant)

(Arising out of Order-in-Original No.47-48/Commissioner/CE/Haldia/De-novo/Adjn/2016 dated 24.11.2016 passed by Commissioner of Central Excise & Service Tax, Haldia)

Commissioner of Central Excise & Service Tax, Haldia
15/1, Strand Road, Kolkata-700001

Appellant

VERSUS

M/s Humcha Impex Private Limited
Jalan Complex,Gate No.1,Right Lane No.03,NH-6,Jungalpur,Howrah-711411

Respondent

WITH

<u>Excise Appeal No.75461 of 2017</u>
(On behalf of Appellant)

(Arising out of Order-in-Original No.54-55/Commissioner/CE/Haldia/De-novo/Adjn/2016 dated 15.12.2016 passed by Commissioner of Central Excise & Service Tax, Haldia)

Commissioner of Central Excise & Service Tax, Haldia
15/1, Strand Road, Kolkata-700001

Appellant

VERSUS

M/s Sarvopari Impex Private Limited
Jalan Complex,Gate No.1,Right Lane No.03,NH-6,Jungalpur,Howrah-711411

Respondent

<u>APPERANCE :</u>

Shri S.S.Chattopadhyay, Authorized Representative for the Appellant
Adjournment request for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO…76250-76251/2023

<u>DATE OF HEARING : 26 .07.2023</u>
<u>DATE OF DECISION : 26 .07.2023</u>

Per Ashok Jindal :

Revenue are in appeals against the impugned order.

2. The facts of the case that on 22.11.2009 at about 20.45 to 20.55 hrs., there broke out a devastating fire in the factory premises of the respondents wherein plants and machineries, raw materials as such and semi finished/finished goods lying in the factory were destroyed in the said fire. An FIR was lodged on 23.11.2009 and an enquiry was conducted wherein it was found that all the property including machinery articles, brick walls, packing materials, structures etc. has been damaged by the incident. It was also opined by the Fire Service Station Officer that the cause of fire could not be ascertained, it may be electrical short circuit. No foul play was detected behind this incident.

2.1 On 23.11.2009, the respondents intimated to the Range Superintendent regarding details of fire, which has broken out in the factory premises on 22.11.2009 and on 24.11.2009, the Superintendent visited the manufacturing premises of the respondents and submitted his report on 16.12.2009. Thereafter, the respondents submitted their remission application to the Range Superintendent. In consequence to that, the respondent was issued the show-cause notice demanding Central Excise duty for the cenvat credit on inputs and duty on finished goods destroyed on fire.

2.2 Thereafter, the adjudicating authority dropped the proceedings initiated in the show-cause notice and allowed the remission of duty of excise to the respondents.

2.3 Against the said orders, the Revenue is before us on the ground that the fire was avoidable and due to ignorance of the respondents, fire took place in the factory premises. Therefore, the impugned orders are to be set aside.

3. Heard the ld.A.R. for the Revenue and gone through the records before us.

4. In this regard, the report of the officer of Fire Service Station is available on record on the very next day. He has stated that the reason of the fire is not known. It may be short circuit of electricity and there is no foul play was found and the report of the officer of service station is the primary report for fire took place and the same is admissible as an evidence and not controverted by cogent evidence.

5. In that circumstances, it cannot be said that the incident of fire was avoidable.

6. Therefore, we do not find any infirmity in the impugned orders. Accordingly, by upholding the impugned orders, we dismiss the appeals filed by the Revenue.

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

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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