CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Excise Appeal No. 286 of 2010

(Arising out of Order-in-Original No. 19-20/ANS/09-10 dated 26.11.2009 passed by the Commissioner of Central Excise, Mumbai-III.)

M/s Vidyut Metallics Pvt. Ltd. ....Appellant
L.B.S. Marg, Wagle Industrial Estate,
Thane – 400 604

VERSUS

Commissioner of Central Excise, ...Respondent
Mumbai-III
3rd & 4th Floor, Vardaan Centre,
MIDC, Wagle Industrial Estate,
Thane – 400 604

APPERANCE:

Shri Mihir Mehta, Advocate for the Appellant
Shri Sanjay Hasija, Suptd. Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85788/2019

Date of Hearing: 17.12.2018
Date of Decision: 25.04.2019

SUVENDU KUMAR PATI:

In this third round of litigation, after matter has been remanded back twice to the lower authorities for a decision on remission application against finished and capital goods destroyed due to fire incidence, appellant has assailed the Commissioner order confirming such rejection of remission application.

2. Happenings that has been given rise to this litigation is that fire incident occurred in the appellants factory engaged in manufacturing of disposable safety razor blades, shaving kits etc. on 02.06.1998. Appellant reported the matter to the Fire Brigade, local Police Station, Thane Municipal Corporation and to the Insurance Authorities soon after the occurrence against which it got insurance reimbursement to the tune of ₹31,56,076/- on 22.03.2000 including fire damage and other losses. After being pointed out by the Audit Officer, appellant intimated the matter of loss of finished product and capital goods including plastic moulds on 12.01.2001 to the respondent-department and filed remission application under Rule 49 of the erstwhile Central Excise Rule but pending adjudication on such remission application, it was put to show-cause notice proposing duty demand of ₹2,16,860/- along with reversal of CENVAT credit of ₹13,54,253/- with interest and penalty. The matter was adjudicated, decided against appellant and this third round of litigation had taken place after the matter was twice remanded back. Present appeal is confined to the admissibility of such remission application and for non-reversal of MODVAT credit availed on capital goods.

3. In the memo of appeal and during the course of hearing of appeal, learned Counsel for the appellant Shri Mihir Mehta submitted that the primarily ground of rejection of its application by the

Commissioner was mainly two. First, remission application filed by the assessee under Rule 49 of the Central Excise Act, 1944 for the incidence of fire is not admissible as reporting was done more than two years after the incidence that casts a doubt on veracity and truthfulness of such occurrence. Second, MODVAT credit availed by the assessee on the goods and capital goods allegedly damaged in the fire is not recoverable for verification. Learned Counsel for the appellant, with reference to *Wellbert Pharmaceuticals Pvt. Ltd. Vs. Commissioner of Central Excise, Thane* reported in *2004 (184) ELT 396 (Tri.-Mumbai)*, *Mira Chemicals Vs. Commissioner of Central Excise, Surat-II* reported in *2009 (324) ELT 328 (Tri.-Ahmd.)* etc., submitted that no time limit is prescribed for filing application for remission and the internal manual prescribing reporting of such incidence to the department within 24 hours of occurrence is a procedural lapse which can be remediable and basing on the decision reported in *Commissioner of Central Excise, Nhava Sheva Vs. Hindalco Industries Ltd. - 2011 (272) ELT 161 (Bom.) and VFC Industries Pvt. Ltd. Vs. Commissioner of Central Excise & Service Tax, Vadodara-II - 2017 (352) ELT 507 (Tri.-Ahmd.)* etc., he further submitted that there was no requirement to reverse the credit availed on the inputs used in or in relation to manufacture of goods destroyed in fire, for which the Commissioner observation that the said goods which were lost in fire could not be put to use to make the credits admissible is erroneous and required to be set aside.

4. In response to such submission, learned AR Shri Sanjay Hasija, Superintendent for the respondent-department, in citing case laws reported in *2017 (352) ELT 507 (Tri.-Ahmd.)* and the judgment of Hon'ble Supreme Court first in *SLP (Civil) No. CC 2543 of 1995* argued that when assessee had not intimated the department about the loss, mere mentioning the same in the Balance Sheet would not be sufficient and credits taken on inputs are required to be reversed in such circumstances for which order passed by the Commissioner needs no interference by the Tribunal.

5. Heard from both sides at length and perused the case records. Incidence of fire has not been disputed in the show-cause notice nor in the order passed by the Commissioner as in para 53 of his order, he had mentioned that occurrence took place on 02.06.1998. The dispute therefore is confined to the loss and the extent of damage which varies between ₹2,50,000/- to ₹50,00,000/- as per assessment of police station head, Municipality and the Police superior officer but insurance had settled the damage claim at ₹31,56,076/- including other losses. Proviso to Rule 39 of the Corresponding Central Excise Rules provides for making demand for payment of duty leviable on any goods which are not shown to the satisfaction of proper officer to have been lost or destroyed by any natural calamity or by unavoidable event during handling or storage. Admittedly proper officer could not have got the particulars to assess the destruction as reporting was done about 2 ½ years of the occurrence but going by the show-cause notice, one can very well

infer that the duty demand has been made on the basis of damage assessed by the insurance authorities. This being so, it can be said that assessment had been made by the department concerning the exact damage on which duty demand has been raised but remission was refused for the reason that application for remission was put after an unreasonable delay. Unreasonable delay is, of course, a question of fact and the same varies from case to case. In the instant case, there was no strict adherence to the internal manual of the department noted in the Order-in-Original and Order-in-Appeal which prescribes that if the matter was not reported within 24 hours, no such remission is admissible. On the other hand, as found from the evidence and record, reporting was done within 24 hours to Fire Brigade and at the Police Station respectively but it was not done to the proper officer of the excise authority for determination of the extent of damage. In view of the decision cited above by the learned Counsel for the appellant, such procedure lapse cannot take substantial justice away. Further, any prudent man can make out from the factual sequence of the case that appellant was unaware of such requirement of reporting and it did so after being pointed out by the Audit Officer. I am, therefore, of the considered view that when damage due to fire had caused loss to the appellant, imposition of duty liability on the damage goods would further cause hardship to the appellant who has been struggling to get justice for over the last two years.

6. In respect of reversal of CENVAT credit on damage of capital goods like plastic moulds and other machinery, finding of the Commissioner appears to be very peculiar. Referring to Rule 57 of the MODVAT Rules, the Commissioner had observed that the goods on which appellant had availed MODVAT credit cannot have attained the character of inputs since appellant claimed that they had been destroyed in the fire for which there was no possibility of those goods being used (further) in relation to manufacture of final products and they were not fit for the intended use in the factory. If this is the observation of the Commissioner then in the normal circumstances, he would have treated those as unusable scrap having nil value and would not have ordered for reversal of credit availed on it. Hence the order.

ORDER

7. The appeal is allowed with consequential relief of acceptance of remission claimed and the order passed by the Commissioner of Central Excise, Mumbai-III vide Order-in-Original No. 19-20/ANS/09-10 dated 26.11.2009 is hereby set aside.

(Order pronounced in the court on 25.04.2019)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad