

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Excise Appeal No. 86944 of 2017

(Arising out of Order-in-Original No. KLH-EXCUS-000-COM-0001-17-18 dated 19.05.2017 passed by the Commissioner of Central Excise, Kolhapur)

M/s. Cipy Polyurethanes Pvt. Ltd.

Appellant

Plot No. 1-D, Global Indl. Estate,
At Post Shirwal, Tal. Khandala,
Dist. Satara 412 801.

Vs.

Commissioner of Central Excise, Kolhapur

Respondent

Vasant Plaza, 4th & 5th floor,
C.S. No.1079/2, KH Rajaram Road,
Bagal Chowk, Kolhapur 416 001.

Appearance:

Shri Bharat Raichandani, Advocate, for the Appellant

Shri S.H. Hattangadi, Assistant Commissioner, Authorised
Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. **A/86470/2021**

Date of Hearing: 07.07.2021

Date of Decision: 07.07.2021

PER: SANJIV SRIVASTAVA

This appeal has been filed by the appellant against order in original No KLH-EXCUS-000-COM-0001-17-18 dated 19.05.2017 of the Commissioner Central Excise Kolhapur. By the impugned order Learned Commissioner has held as follows:

"i) I order remission of duty of Rs. 28,06,385/- under the provisions of Rule 21 of Central Excise Rules, 2002, on, the finished goods valued at Rs. 2,24,51,0871 destroyed in the fire accident of the night of 02.04.2015, subject to reversal of CENVAT credit on inputs contained in the said finished goods.

ii) *I confirm the demand of Rs. 1,32,43,525 /- for reversal of CENVAT credit availed by the assessee on the inputs destroyed in the fire accident of the night of 02.04.2015, under Rule 14 of the CCR, 2004 read with Section 11A(10) of the CEA, 1944.*

iii) *I confirm the demand of Rs. 28,93,666/- for reversal of CENVAT credit availed by the assessee on the inputs contained in the semi-finished goods destroyed in the fire accident of the night of 02.04.2015 as per provisions of Rule 14 of the CCR, 2004 read with Section 11A(10) of the CEA, 1944..*

iv) *I confirm demand of interest at appropriate rate on the above confirmed demands under the provisions of Section 11AA of Central Excise Act, 1944.*

v) *I impose penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on M/s Cipy Polyurethanes Pvt. Ltd., Shirwal under provisions of Section 11 AC(1)(a) of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002. No penalty is imposed under the provisions of Rule 15(1) of the CCR, 2004."*

2.0 Facts of the case stated in brief as recorded in the impugned order are as follows:

- Appellant is engaged in the manufacture of excisable goods viz. Paints & Varnishes of Tariff Item 32089019, Epoxy Resin/Polyurethane paint of Tariff Item 39073010, Thinner of Tariff Item 38140010, Glazier Puttee of Tariff Item 32141000 of the Central Excise Tariff Act, 1985. They are also availing CENVAT credit on the inputs / input services / capital goods used in or in relation to manufacture of these Final Products.
- A fire accident occurred at their manufacturing unit in the night of 02-04-2015. On their intimation, the Superintendent of Central Excise Shirwal Range visited the spot and drew a Panchnama of the facts on 03.04.2015. The Police Panchanama was also drawn on 05.04.2015 recording the damages occurred due to fire accident.
- Appellant claimed remission of Central Excise duty under Rule 21 of Central Excise Rules, 2002, vide their letter

dated 28.03.2016. In the said letter they stated that they had not claimed Central Excise duty amount in their insurance claim filed with United India Insurance Company Ltd. They enclosed a copy of the Audit Report and Insurance Surveyor's Report and sought remission of duty of Rs. 1,99,56,337/-.

- Central Excise duty is leviable on manufacturing of the goods in a factory of production. Thus, when the manufacturer has produced the goods, duty is recoverable under the provisions of Central Excise Act, 1944 and Rules made thereunder. The duty involvement in the Finished goods destroyed in fire accident was calculated at Rs. 28,06,385/-.
- Inputs / packing materials which were destroyed in fire accident had not been used in the manufacture of the final products and therefore, not covered under the definition of "input" provided in Rule 2(k) of CENVAT Credit Rules, 2004 (hereinafter referred to as CCR, 2004) and therefore the CENVAT credit on such inputs which are not otherwise available for production of finished goods is not admissible to the assessee. By not reversing the credit on in respect of the inputs and packing materials destroyed in fire they contravened the provisions of Rule 2(k), Rule 3 and Rule 4 of the CCR, 2004. The amount of CENVAT credit involved in the said inputs / raw materials destroyed in fire accident was calculated as Rs.1,61,37,191/-.
- Alleging that it is obligatory on part of Appellants to ensure that all precautions are taken to avoid any accident, which could cause loss to them as also to the revenue of the Government and the duty involved in goods destroyed in the fire accident has not been remitted by the Commissioner a Show Cause Notice dated 03.05.2016 asking them to show cause as to why-
 - i. duty amount of Rs.28,06,385/- on the excisable goods destroyed in fire accident of . the night of 02-04-2015 should not be recovered from them under

the provisions of Section 11A (1) of the Central Excise Act, 1944;

- ii. CENVAT credit of Rs.1,61,37,1917- (Rs. One Crore Sixty One lakhs Thirty Seven thousand One hundred Ninety One only) involved in inputs / raw materials lost / destroyed in fire accident of the night of 02-04-2015 should not be recovered from them under the provisions Section 11A(1) of CEA, 1944 read with Rule 14 of the CCR, 2004.
- iii. Proposals for recovery of interest under Section 11AA of the Central Excise Act, 1944 read with Rule 14 of CCR, 2004 and for imposition of penalty under the provisions of Section 11AC (1)(a) of Central Excise Act, 1944 read with Rules 25 of the CER, 2002 and Rule 15(1) of CCR, 2004, were also made in the Show Cause Notice.

- After following the principles of natural justice, Commissioner adjudicated the Show Cause Notice and also disposed of the application for remission filed under rule 21 of Central Excise Rule, 2002.

3.0 We have heard Shri Bharat Raichandani, Advocate for the Appellant and Shri S.H. Hattangadi, Assistant Commissioner, Authorized Representative for the revenue.

3.1 Arguing for the appellant learned counsel submits-

- Referring to para 19 of the order in original, that Commissioner has categorical held that the fire in the factory premises was not due to their negligence and has stated *"I am therefore satisfied that the goods were lost due to an unavoidable accident and therefore I reject the charge of negligence/ mistake on the part of the assessee."* This finding of the Commissioner has not been challenged by way of any cross appeal or cross objections filed.
- Having held so he has allowed remission of duty in respect finished goods in terms of Rule 21 of Central Excise Rules,

2002, subject to Appellant reversing the CENVAT Credit on inputs contained said finished goods as per Rule 3 (5C) of the CENVAT Credit Rules, 2002. He is not challenging this part of the order, and agrees that in case were the remission has been allowed under Rule 21, CENVAT Credit of the inputs contained in those finished goods needs to be reversed.

- However he is in challenge to that part of the order of Commissioner, whereby he confirms the demand made in respect of the inputs/ packing materials destroyed in the same fire accident. Commissioner has also rejected their claim for remission of duty in respect of these goods.
- He submits that while the show cause notice was issued alleging that these inputs and packing material which were destroyed in the fire accident, and not used in or in relation to the manufacture of the finished goods, do not qualify to be inputs as per Rule 2 (k) of the CENVAT Credit Rules, 2002 and hence CENVAT Credit is not admissible, Commissioner has invoked the provisions of Rule 3 (5B), to demand the input credit taken by him in respect of these goods.
- Rule 3 (5B) of the CENVAT Credit Rules, 2004, is applicable only in case where the inputs on which the credit has been taken are written off in the books of account and not in case where the inputs/ packing materials were destroyed in fire.
- When the matter was earlier heard on 20.12.2018, he had submitted complete compilation of the decisions on the issue and he would place his reliance on those decisions, as listed below:
 - o Indchem Electronics [(2003) 151 ELT 393 (T)]
 - o SMG International [2016 (534) ELT 1031 (T)]
 - o Spectra Specialities [2008 (231) ELT 346 (T)]
 - o Dalmia Dadri Cement Ltd. [JT 1988 (3) 1]
 - o BPL Display Devices Ltd. [2004 (174) ELT 5 (SC)]
 - o Asmaco Plastics Industries [1998 (100) ELT 129 (T)]

o Grasim Industries [2007 (208) ELT 336 (T)]

- Apart from confirming demand, Commissioner has also demanded interest and imposed penalty on them. In the circumstances of the case demand for interest and penalty imposed is not justifiable.
- The appeal be allowed

3.2 Arguing for the revenue, learned Authorized Representative, reiterated the findings in the order and submitted that-

- The order of Commissioner is fully in accordance with the decision of Tribunal in the case of Kosi Plast Pvt Ltd. [2016 (326) ELT (T)], wherein it has been held that in terms of Rule 3 (5B) of CENVAT Credit Rules, 2004, the CENVAT Credit taken on inputs destroyed in the fire needs to be reversed.
- In case of India Containers Ltd [2017 (355) ELT 326 (Bom)] and ITC Ltd [2014 (36) STR 481 (Del)] it has been held by the Hon'ble High Court of Bombay and Delhi respectively, that non-mention of a particular sub-rule in the show cause notice will not cause any prejudice to the noticee for making his defence submissions if the show cause notice is otherwise precise and not vague. Thus confirmation of demand made against the appellants by invoking the provisions of Rule 3 (5B), which was not in the show cause notice would not have caused any prejudice to the appellants while making their defence submissions.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of hearing of the appeal.

4.2 Commissioner has in his order in para 17 observed as follows:

“17. The Assesseees were granted a combined personal hearing in respect of the Show Cause Notice dated 03.05.2016 as well as their remission application dated 28.03.2016. As both the issues

involved are interlinked, both are being decided vide this common order."

4.2 In respect of the demand made for duty in respect of the finished goods destroyed in fire, there is no dispute between the appellants and revenue, on the findings recorded by the Commissioner in para 19 of his order. Commissioner has recorded categorically that fire on the 02.04.2015 in the premises of the appellant was accidental and there was no negligence on the part of appellants. Since revenue has not challenged this finding of the Commissioner, by way of cross objections or cross appeal, this finding of Commissioner has become final. Also at the time of hearing, learned counsel appearing for the Appellant agreed that Commissioner was correct in his findings to the effect that for the finished goods on which remission of duty as per Rule 21 of Central Excise Rules, 2002 is allowed, the CENVAT Credit taken on the inputs contained in these finished goods need to be reversed as per Rule 3 (5C) of the CENVAT Credit Rules, 2004.

4.3 So the issue before us is in respect of the inputs and packing materials destroyed in fire. Commissioner has in para 20 to 25 dealt with the issue by recording as follows:

"20. Now I shall discuss the request of the assessee for remission of Central Excise duty on the raw materials and packing materials lying in stock on 02.04.2015. I find that in Annexure - 'D' and Annexure - 'F' of their application for remission of Central Excise duty under Rule 21 of CER, 2002, made vide their letter dated 28.03.2016, the assessee has indicated the value of each item of raw materials and packing materials. Further the assessee has mentioned the rate of Central Excise duty and the amount of Central Excise duty involved in each such item of raw materials and packing materials and sought remission thereof. Firstly I find that this description in the Annexure - 'D' and Annexure - 'F' itself is incorrect & misleading, if not mischievous. Since duty paid raw materials and packing materials had been received by the

assessee, and CENVAT credit of the said duty amounts in respect of raw materials and packing materials had already been availed by the assessee. Thus there was no need for the assessee to make any calculations of 'Amount of Excise Duty involved in Annexure - 'D' and Annexure - 'F' after mentioning value and rate of duty in respect of each item of raw materials and packing materials. The assessee should have simply mentioned the actual CENVAT credit taken by them in respect of each item of raw materials and packing materials even if they were of the view that they can claim retention of such CENVAT credit despite destruction of those items of raw materials and packing materials in fire. In other words, the assessee have already enjoyed the benefit of CENVAT credit on such items of raw materials and packing materials and by referring to Rule 21 of CER, 2002, they are trying to seek its retention in the name of remission of duty, which is clearly outside the scope of Rule 21 of the CER, 2002. Thus I conclude that the request of the assessee in respect of the CENVAT credit taken on raw materials and packing materials is liable to be rejected.

21. My conclusion in para 20 above is supported by the provisions of Rule 21 of CER, 2002, which provide for remission of duty 'payable' on the goods destroyed. The raw materials and packing materials of the assessee were duty paid goods. Further, for these goods, the assessee is not the manufacturer. Under Rule 21 of CER, 2002 only a manufacturer can claim remission of the duty which is payable on the goods manufactured by him but which is not yet paid, that is, the duty which is 'payable'. Duty on the raw materials and packing materials is already paid. Further, the assessee is not the manufacturer for the same. Therefore there is no question of remission of duty on raw materials and packing materials under Rule 21 of CER, 2002. To look at it from another angle, remission of duty on duty paid raw materials and packing materials would amount to remission of duty paid by the manufacturers of such raw materials and packing materials, who are in fact suppliers of the assessee and not the assessee himself. Thus in effect, the assessee is seeking

remission of duty paid by other manufacturer, which is clearly beyond the scope of Rule 21 of the CER, 2002.

22. The raw materials and packing products which were lying in stock as on 02.04.2016, and were destroyed in fire, were not used in or in relation to manufacture of final products. As per the provisions of Rule 3(5B) of Central Excise Rules, 2002, which is reproduced here-in-under, the assessee is required to reverse the CENVAT credit on the inputs which have been written off in their books of accounts on any account:

Rule 3(5B), If the value of any,

(i) input, or

(ii) Capital goods before being put to use,

on which CENVAT Credit has been taken is written off fully or where any provision to write off fully has been made in the books of account, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods :

Provided that if the said input or capital goods is subsequently used in the manufacture of final products, the manufacturer shall be entitled to take the credit of the amount equivalent to the CENVAT Credit paid earlier subject to the other provisions of these rules.

Thus, it is clear that the intent of the legislature as per the provisions of CCR, 2004, is that CENVAT credit should be retained only in respect of those inputs which are actually used in or in relation to the manufacture of finished goods. In the present case the raw materials and packing materials had not been used in or in relation to the manufacture of finished goods by the assessee and therefore CENVAT credit taken on the said raw materials and packing materials is required to be reversed by the assessee.

23. Another contention of the assessee is that the majority of the goods were first received in their Unit at Palshi and there the goods were subjected to some processing and therefore what

were received in assessee's Shirwal Unit were actually intermediate goods on which duty had been paid by their Palshi Unit under Rule 8 of the Valuation Rules read with Section 4(1)(b) of the CEA, 1944. However, I find that this contention of the assessee is devoid of merits as the assessee have admitted in their reply to the Show Cause Notice that the process at both their Units - Palshi & Shirwal amounted to manufacture. Thus, what the assessee had received in their Shirwal Unit were inputs only and it is not disputed that the assessee had taken CENVAT Credit of the duty paid by their Palshi Unit on the said goods. Thus, the claim of the assessee is baseless and is rejected. Further, the semi-finished goods are not chargeable to duty as they are neither finished goods nor they are marketable. Thus it clearly emerges that the inputs contained in semi-finished goods destroyed in fire were not utilised for the manufacture of excisable goods on which duty of Central Excise is discharged. Therefore the CENVAT credit taken on inputs contained in the semi-finished goods is not admissible under the provisions of the CCR, 2004, and the same is recoverable under the provisions of Rule 14 of the CCR, 2004.

24. The above conclusion is supported by the decision of Hon'ble CESTAT in case of M/s Kosi Plast Pvt. Ltd. Versus Commissioner Of Central Excise, Pune as reported in [2015 (326) E.L.T. 328 (Tri. - Mumbai)]. In the said decision, the Hon'ble Tribunal has held that as per Rule 3(5B) of CCR, 2004, the appellant is required to reverse the CENVAT credit on the inputs which have been written off in their books of accounts on account of fire or any other accidents. The operative part of the judgment is reproduced

"7. As per Rule 3(5B) of C.C.E which is reproduced here-in-under, the appellant is required to reverse the CENVAT credit on the inputs which have been written off in their books of accounts on account of fire or any other accidents. Rule 3(5B), If the value of any, input, or Capital goods before being put to use, on which CENVAT Credit has been taken is written off fully or where

any provision to write off fully has been made in the books of account, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods :

Provided that if the said input or capital goods is subsequently used in the manufacture of final products, the manufacturer shall be entitled to take the credit of the amount equivalent to the CENVAT Credit paid earlier subject to the other provisions of these rules."

Therefore, I hold that the appellant is required to reverse CENVAT credit on inputs which have been lost in fire "as such". "

25. Now I shall discuss the request of the assessee for remission of duty on semi-finished goods. In this regard I find that the provisions of Rule 21 of the Central Excise Rules, 2002, are as under:

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.

Thus, from a plain reading of the said rule, it is evident that the Commissioner is empowered to remit the duty which is 'payable' on such goods which are claimed by the manufacturer as having been destroyed. I find that there is no mention of semi-finished goods (work in progress - WIP) under Rule 21, as no duty is payable on the semi-finished goods. The manufacturer has to pay duty only on its finished goods. Accordingly, the provisions of Rule 21 of CER, 2002 for remission of duty can be applied for remission of that duty which is otherwise payable. When no duty is payable on the semi-finished goods, where is the question of its remission! Hence I conclude that the request of the assessee for remission of duty on semi-finished goods under Rule 21 of the CER, 2002 is liable for rejection."

4.4 In para 25 of the impugned order, Commissioner has reproduced the Rule 21 of Central Excise Rules, 2002. In para 20 and 21 has rejected the requested the request for remission made in respect of the inputs/ packing material and in para 25 he has rejected the request made in respect of the semi finished goods. A closer analysis of the wordings of Rule 21 show that the said rule do not mention finished goods or the goods manufactured by him as has been observed by the Commissioner, in para 21. Thus the observation made by the Commissioner in para 21, to effect, **"Further, for these goods, the assessee is not the manufacturer. Under Rule 21 of CER, 2002 only a manufacturer can claim remission of the duty which is payable on the goods manufactured by him but which is not yet paid, that is, the duty which is 'payable'. Duty on the raw materials and packing materials is already paid. Further, the assessee is not the manufacturer for the same. Therefore there is no question of remission of duty on raw materials and packing**

materials under Rule 21 of CER, 2002.”, is not supported by the wordings of Rule 21. Rule 21 do not limit its application only to the finished goods manufactured by the manufacturer, but would include within its ambit all those goods which *“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.”* Clearly the word goods is wide enough to include all the goods, whether finished good, raw material, packing material, semi-finished goods or the capital goods within its ambit.

4.5 Further Commissioner observation in para 21, to effect *“To look at it from another angle, remission of duty on duty paid raw materials and packing materials would amount to remission of duty paid by the manufacturers of such raw materials and packing materials, who are in fact suppliers of the assessee and not the assessee himself. Thus in effect, the assessee is seeking remission of duty paid by other manufacturer, which is clearly beyond the scope of Rule 21 of the CER, 2002.”*do not find support from provision of rule.

4.6 We reproduce the Rule 3 (5), (5B), (5C) and Rule 3 (6) of the CENVAT Credit Rules, 2004 for analyzing them.

Rule 3 CENVAT Credit

(5) *When inputs or capital goods on which CENVAT credit has been taken are removed as such from the factory, or premises of the provider of output service the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9.*

(5B) *If the value of any,*

(i) *input, or*

(ii) *capital goods before being put to use,*

on which CENVAT credit has been taken is written off fully or partly or where any provision to write off fully or partially has

been made in the books of account then the manufacturer or service provider as the case may be shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods.

Provided that if the said inputs or capital goods is subsequently used in the manufacture of final products or the provision of output services, the manufacturer or the output service provider, as the case may be shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to other provisions of these rules.

(5C) Where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed.

Explanation 1.- The amount payable under sub-rules (5), (5A), (5B) and (5C), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, where such payment shall be made on or before the 31st day of the month of March.

Explanation 2.- If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), (5B) and (5C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken and utilised.

(6) The amount paid under sub rule (5) and sub-rule (5A) shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under sub rule (5) and sub-rule (5A).

In case the inputs are not used in the manufacture of the finished goods, by the manufacturer who has taken the CENVAT credit in respect of such inputs but removes them as such from

his manufactory or premises, then Rule 3 (5) mandates that such manufacturer is required to pay/ debit an amount equivalent to the CENVAT Credit taken by him and after preparing an invoice as provided by the Rule 9 of the Central Excise Rules, 2002. Further Rule 3 (6), states that for the purpose of allowing, CENVAT credit to the person who procures these inputs from the manufacturer who has removed them in the manner as provided by Rule 3 (5), the amount paid/ debited by the manufacturer, shall be deemed to be the duty paid by the person who has so removed these inputs. Thus the amount paid/ debited under in terms of Rule 3 (5) is deemed to be the duty paid by the manufacturer removing these goods. If Observation of the Commissioner, to effect that these inputs, raw material are duty paid as they have in the first instance suffered duty at the hand of the manufacturer who has cleared these inputs do not find support from these rules. As these rules are worded a deeming fiction has been created, and the manufacturer removing such inputs as such in term of Rule 3 (5) is required to pay/ debit an amount equivalent to the CENVAT Credit taken and this removal of inputs is deemed to be the removal of these goods on payment of duty in the manner as provided by the Rule 9 of the Central Excise Rules, 2002. When the removal of these inputs as such is deemed to be the removal on payment of the duty by the manufacturer removing the inputs as such, all the provisions of CENVAT Credit Rules, 2004 and Central Excise Rules, 2002 shall apply in all manners to these goods. The Rule 21 of Central Excise Rules, 2002 as it is worded do not use the phrases like "finished goods" or the "goods manufactured by the manufacturer" etc. The Rule 21 is applicable in respect of all the goods which 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. It is settle principle of interpretation, that interpretation should be made without adding or deleting the words used in the Rules. What is to be remitted is the duty required to be paid by the manufacturer on the goods he intends to remove from his

premises. When the amount required to be paid in terms of Rule 3 (5) has been deemed to be the duty paid by the manufacturer removing the inputs as such, then claim made by such manufacturer in terms of Rule 21 for remission of these amounts cannot be brushed aside if the Commissioner is satisfied that *these 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.*

4.7 Similar view has been expressed by the Delhi bench in the case of *Techtextil* [2017 (355) ELT 442 (T-Del)]. Delhi bench relying on the decisions of Hon'ble High Court of Karnataka and Hon'ble High Court of Madras held as follows:

"8. We have perused the records of the case. We find that the District Fire Officer, Pithampur, has certified, vide his certificate dated 13-3-2010 that adequate fire fighting 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. v. Commissioner of C. Ex., Kanpur - 2016 (337) E.L.T. 299 (Tri.-All.).

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

In the case of M/s. Joy Foam Pvt. Ltd. [2015 (322) E.L.T. 209 (Mad.)], the Hon'ble High Court 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 goods 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 Creators (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 Customs

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.”

4.8 Commissioner has in the impugned order, invoked the provisions of Rule 3 (5B) to confirm the demand against the Appellant. He also relies on the decision of the tribunal in case of M/s Kosi Plast Pvt Ltd [2015 (326) ELT 328 (T-Mum)] to support his case. The operative part of the decision as reproduced in para 24 of the impugned order is as follows:

“7. As per Rule 3(5B) of C.C.E which is reproduced here-in-under, the appellant is required to reverse the CENVAT credit on the inputs which have been written off in their books of accounts on account of fire or any other accidents.

Rule 3(5B),

If the value of any,

(i) input, or

(ii) Capital goods before being put to use,

on which CENVAT Credit has been taken is written off fully or where any provision to write off fully has been made in the books of account, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods :

Provided that if the said input or capital goods is subsequently used in the manufacture of final products, the manufacturer shall be entitled to take the credit of the amount equivalent to the CENVAT Credit paid earlier subject to the other provisions of these rules.

Therefore, I hold that the appellant is required to reverse CENVAT credit on inputs which have been lost in fire “as such”. Further, I find in the claim of the appellant that certain inputs were not purchased by them against Central Excise invoices and they are not claiming CENVAT credit on them. This aspect has to

be examined by the adjudicating authority hence, the matter; needs examination at the end of the adjudicating authority. The adjudicating authority will examine the claim of the appellant with supporting evidence which will be produced by the appellant. The matter is remanded to the adjudicating authority to the extent only. The issue of levy of interest is kept open.”

4.8 The decision of Kosi Plast Pvt Ltd., is decision rendered by a Single Member. The same member who has rendered this decision has subsequently in the case of Park Nonwoven Pvt Ltd. [2015 (323) ELT 634 (T-Del)] explaining the provisions of Rule 3 (5B) held as follows:

“9. Therefore, the issue before me in this case is that whether the provisions of Rule 3(5B) of CCR, 2004 are applicable to the facts of this case or not. On plain reading of the Rule 3(5B) it is clear that if the assesses writes off the Cenvat credit fully or partially in the books of account, in that case, the manufacturer shall pay an amount equivalent to the Cenvat credit taken in respect of the said input or capital goods, which means that if the assessee on being obsolete of capital goods or inputs writes off and a certain value and pay duty thereon on the said value, for that Rule 3(5B) was introduced to the Rules to say that in such a situation when inputs become obsolete as such, the assessee is required to reverse the Cenvat credit which was availed on this inputs/capital goods. In this case, fire has broken in the factory of the premises of the respondent wherein the inputs which were used in manufacture were destroyed. It is admitted fact that inputs were in the process of manufacture of final goods. Therefore, the provisions of Rule 3(5B) of the CCR, 2004 are not applicable to the facts of this case.

10. Now I deal with the situation wherein the inputs were issued for manufacture and same has been work-in-progress, semi-finished goods destroyed in fire.

11. Further, I find that C.B.E. & C. Circular No. 907/27/2009-C.E., dated 7-12-2009 is contrary to the judicial pronouncement of this Tribunal wherein in the case of Nector Lifescience (supra), this Tribunal has examined the Rule as well as the C.B.E. & C. Circular and thereafter held as under :

“13. We further note that the legal issue as regards reversal of credit is well settled. If the inputs, on which the credit stand availed were issued for further manufacture of the goods and goods are destroyed during the course of manufacture of the goods, no reversal of Cenvat credit is called for. For the above proposition, reference can be made to the Tribunal's decision in the case of Commissioner of Central Excise and Customs, Pune v. Spectra Speciality [2008 (231) E.L.T. 346 (Tri.-Mum.)] as upheld by the Hon'ble Supreme Court as reported in [2009 (240) E.L.T. A77]. To the same effect is another decision of the Tribunal in the case of Commissioner of Central Excise, Chennai v. Indchem Electronics [2003 (151) E.L.T. 393 (Tri.-Chennai)] wherein it stand held that where inputs were actually issued and thereafter destroyed in fire accident, there is no requirement of reversal of Cenvat credit. The said decision also stands upheld by the Hon'ble Supreme Court, when the appeal filed by the Revenue was dismissed, as reported in 2003 (157) E.L.T. A206 (S.C.)]. The list is unending and we do not feel any need to refer to all such decisions as the issue is almost settled.

14. As such, in the light of the said decision as detailed above, the factual position, as disputed by the Revenue, is required to be ascertained. Whereas the Revenue is contending that it was actually the inputs which were destroyed, the appellants stand is that it was the work-in-progress, which was destroyed in the fire. We note that the appellant, right from their first letter onwards, in all their communications addressed to the Revenue, have repeatedly submitted that the fire broke out in the bulk drug unit of the appellant, which unit is located in the manufacturing section. Inasmuch as the bulk drug manufacturing section of the plant is away from the stores,

where the inputs were stored, the said fact itself establishes that the inputs had been issued for manufacturing and were work in progress. It is seen that the Commissioner has referred to the appellants claim made before the insurance company, wherein description of the goods stand given by them and has concluded that inasmuch as the goods described by the name of the inputs, on which credit was availed, it has to be held as if the inputs were destroyed. However, this stand explained by the learned advocate appearing for the appellant, that during the process of manufacture, there are various recoveries of the same inputs, which are again used at the manufacturing floor. We find that without referring to the technical details, we note that there is no dispute about the fact that input store is situated at a place different than the bulk drug manufacturing section of the plant. Learned advocate has produced before us the approved ground plant which reveals that the manufacturing unit, where drugs are being manufactured is separate from the stores, formulation unit, solvent storage etc. There is a dividing road between the bulk drug manufacturing section and the store meant for storing inputs which is around 20 feet wide road. If that be so, it has to be concluded that goods which are destroyed in the fire in the bulk drug manufacturing section were the goods which have already left the inputs store and as such, same cannot be considered to be inputs destroyed as such, so as to call for reversal of Cenvat credit. The bulk drugs are manufactured and marketed in the batches and the inputs are issued for production on the basis of issue slips corresponding to batches that are to be manufactured. Mostly the inputs are various chemicals which are consumed. The said goods were admittedly work-in-progress, in which case, no reversal of credit is justified. There is clearly no evidence on record to substantiate Revenue's allegations and findings that the destroyed goods were actually inputs, which were not issued for further manufacturing."

12. Therefore, I hold that respondents are not required to reverse the Cenvat credit. As such, I do not find any infirmity in

the impugned order. Same is upheld. Appeal filed by the Revenue is dismissed.”

4.9 In case of SMG International [2016 (344) ELT 1031 (T-Chand)] tribunal has held as follows:

“7. In this case the appellant has filed the claim refund on duty paid by them on account of reversal of Cenvat credit availed on inputs which were used in work in progress/semi-finished goods. Admittedly, the inputs on which Cenvat credit was availed by the appellant were used in manufacture of final goods. Therefore, the Cenvat credit cannot be denied to the appellant, moreover, the work in progress lost in fire. Therefore, appellant is not entitled for claim of remission of duty but the appellant cannot be asked to reverse Cenvat credit. It is a fact on record that the appellant has not written off the value of semi-finished goods/work in progress. In that circumstance, Rule 3(5B) of the CCR, 2004 is not applicable in this case. Further, I have gone through to the provisional Rule 3(5C) of the Cenvat Credit Rules, 2004 which are not applicable to the facts of this case as appellant has not filed any claim of remission of duty under Rule 21 of the Central Excise Rules, 2002. Therefore, the impugned order is not sustainable in the eyes of law. Consequently, the same is set aside and the appeal is allowed with consequential relief, if any.”

4.10 From the above decision it is quite evident that Rule 3 (5B) is applicable only in the situation where the inputs or capital goods have become obsolete and written off. It is not applicable in the situations where the inputs and semi finished goods are destroyed in fire accident. In the present case in para 2.3, show cause notice the details of the demand being made against the appellants have been stated. Said para is reproduced as follows:

“2.3 AND WHEREAS, it appears from the Balance sheet of 2014-15 of M/s Cipy Polyurethane P Ltd that they were having the stock of Raw materials, work in process & finished goods total valued at Rs. 4,98,24,275/- , as on 31.3.2015. Also, from the copies of insurance claims, it appears that two parties have filed

the insurance claims of the goods /materials destroyed in the fire accident. (i) M/s PPG Asian Paints P Ltd have filed the Fire Insurance Claim with The New India Assurance Company Ltd for total Rs. 22,77,30,000/ which includes the amount of Rs. 12,43,00,000/- pertains to raw /packing materials, finished goods stock (ii) M/s Cipy Polyurethane P Ltd have filed the fire accident claim for total Rs.19,17,29,141/ - which includes the amount of Rs. 4,85,14,179/- pertaining to stock of goods/ materials destroyed on 2.4.2015. Thus, from the details of claim papers, it appears that out of total claim amount, the value of Rs. 17,28,14,179/-(Rs. 12,43,00,000/- + Rs 4,85,14,179/-) was pertaining to the of stock of all finished /semi-finished goods/ inputs 24.2015. However, as per details furnished vide assessee's letter dtd. 28.3.2016 the value of the excisable goods destroyed due to the fire accident was Rs. 14,63,34,243/- in which the total duty /CENVAT Cr involved was shown as Rs 1,99,56,337/-. In a subsequent letter dtd. 28.4.2016, the assessee have intimated that value & CENVAT Cr. involvement in the inputs used in "semi-finished goods" destroyed on 2.4.2015 was Rs. 1,50,47,245/- & Rs. 18,80,905/- respectively. From all these information, it appeared that duty involvement in finished goods destroyed was Rs. 28,06,385/- and CENVAT Credit involvement in the inputs/ raw materials/ packing materials was Rs. 1,61,37,191/- = Total Rs. 1,89,43,576/-."

4.11 Further Hon'ble Supreme Court has in the case of BPL Display Devices Ltd [2004 (174) ELT 5 (SC)] has held as follows:

"2. It is not in dispute that the appellant had imported parts of picture tubes for manufacture of colour picture tubes. Both the input and the manufactured items are covered by the Notifications. It is also not in dispute that a small percentage of the imported parts were damaged in Transit and could not be used to manufacture picture tubes during the year 2000-2001. The appellant claimed the benefit of the aforesaid Notifications in respect of the entire lot of the parts imported relying, inter alia, upon the earlier decision of the Tribunal in National Organic

Chemical Indus. Ltd. v. Collector of Customs (Import), Mumbai, 2000 (126) E.L.T. 1072 which had held that the benefit of the Notifications could not be denied in respect of goods which were intended for use for manufacture of the final product but could not be so used due shortage or leakage. The Notifications relied upon in the decision in *National Organic Chemical Indus. Ltd. (supra)* are substantially similar to the present Notification. The appeal preferred by the Department from the decision of the Tribunal was dismissed by this Court on 20th February, 2002 - *Commissioner of Customs v. M/s. National Organic Chemical Indus. Ltd. [C.A. No. 6764/99]*. The Tribunal, however, relied upon its earlier decision in the case of *Commissioner of Central Excise, Meerut v. M/s. BPL Display Devices Ltd.* reported in 2002 (147) E.L.T. 912 to hold against the appellant. This Court following the affirmation of the Tribunal's reasoning in *National Organic Chemicals Indus. Ltd. (supra)* on 20-2-2002, allowed the appellant's appeal. This appeal must therefore be necessarily allowed. We are of the view that no material distinction can be drawn between the **loss on account of leakage and loss on account of damage. The words 'for use' used in similar exemption Notifications have also been construed by this Court earlier in the State of Haryana v. Dalmia Dadri Cement Ltd., 1987 (Suppl) SCC 679 to mean 'intended for use'**. According to this decision the object of grant of exemption was only to debar those importer/manufacturers from the benefit of the Notifications who had diverted the products imported for other purposes and had no intention to use the same for manufacture of the specified items at any stage."

4.12 The decision of Hon'ble Apex Court clearly lays down that once the goods are procured for an intended use, then the benefit available and availed by them should not be denied just because for some reason they were not used so. We have seen certain decisions of Tribunal which lay distinction between inputs as such destroyed and those destroyed after being issued for production etc. Clearly these decisions cannot be said to be in line with the decision of Hon'ble Apex Court or the scheme of

CENVAT credit. CENVAT credit is allowed to the manufacturer or the provider of output service on inputs received by him against the duty paying document prescribed immediately on the receipt of goods. Definitely no prudent businessman sets up the business just for taking the CENVAT credit and thereafter destroying those inputs by setting them on fire. He intends to use the goods to manufacture the finished goods. The process of production as envisaged in CENVAT Credit Scheme thus commences the moment the goods are received by the manufacturer in his manufactory, and CENVAT Credit Scheme acknowledges this fact as it allows the taking of credit and even utilization of the same instantaneously on receipt of inputs. All the inputs, packing materials whether in process of manufacture or intended to be used in the process of manufacture of the finished goods which were destroyed in fire accident and could not be used so are covered by the decision of the Hon'ble Supreme Court, we are not in position to agree with the findings recorded by the Commissioner demanding the reversal of CENVAT Credit by invoking the provisions of Rule 3 (5B) of the CENVAT Credit Rules, 2004.

4.13 Since we are not in position to sustain the demand of CENVAT Credit as per the impugned order, we set aside the demand of interest and penalties imposed by the Commissioner.

5.1 In view of the discussions as above we do not find any merits in the impugned order to the extent appealed. The appeal is allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)