CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 86624 OF 2019

[Arising out of Order-in-Original No: NSK/CGST-CX/002/COM/34/2018-19 dated 24th January 2019 passed by the Commissioner of Central GST & Central Excise, Nashik.]

Mula Sahakari Sakhar Karkhana Ltd
Sonai, Tal: Newasa, Dist: Ahmednagar - 414105 … ***Appellant***

versus

Commissioner of CGST & Central Excise
Nashik
Plot No.155, Section P-34, NH, Jaistha & Vaishak
CIDCO, Nashik - 422008 ***…Respondent***

<u>*APPEARANCE*</u>*:*

Shri S B Awate, Consultant and Shri Vishal S Awate, Advocate for the appellant

Shri Xavier Mascarenhas, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

<u>FINAL ORDER NO: 86200/2024</u>

DATE OF HEARING: 11/10/2024
DATE OF DECISION: 11/10/2024

Sugar is both curse and blessing as events in history has unfolded. In the present case, it appears that Principal Commissioner of CGST & Central Excise, Nashik took the adverse aspects to heart in deciding upon a claim for remission of ₹ 9,55,995/- pertaining to destruction of 9770 quintals of sugar on the night of 23rd March 2010. The application for remission was filed in due form with all the necessary documents including the panchanama, police complaint as well as surveyor report for claiming insurance from United Insurance Company Ltd. In the first proceedings, the claim was rejected without granting an opportunity to the appellant and on appeal before the Tribunal, the matter was restored for compliance with principles of natural justice.

2. The Commissioner of Central Excise did follow the direction of the Tribunal but reiterated the view of central excise authorities that the claim was inadmissible on the ground that

> *'14. In view of the above, as the assessee has failed to produce any evidence to establish that the sugar, as mentioned above, was lost or destroyed by any natural cause or by an unavoidable accident, I hold that the claim for remission of Central Excise duty is not maintainable under Rule 21 of Central Excise Rules, 2002.'*

3. According to Learned Consultant appearing for the appellant, rule 21 of Central Excise Rules, 2002 permits remission of duty on goods destroyed, by causes not attributable to the assessee, subject to satisfaction of the proper officer. He contended that the impugned order bears no reason for rejection of the claim and cited the decision

of the Hon'ble High Court of Allahabad in *Commissioner of Central Excise, Allahabad v. Balrampur Chini Mills Ltd [2008 (223) ELT 34 (All.)]* that ‘auto combustion’ is a phenomenon and that remission could not be denied on the ground that preventive measures had not been taken. He also relied on the decision of the Hon’ble High Court of Allahabad in *Oudh Sugar Mills Ltd v. Collector of Central Excise, [2019 (369) ELT 302 (All.)]*on similar lines.

4. Learned Authorised Representative submitted that the rules are abundantly clear and that the evidence of destruction, as well as occurrence due to cause beyond the control of the assessee, should have been demonstrated for favourable disposal of the claim. He relied on the decision of Hon'ble High Court of Allahabad in *Commissioner of Central Excise v. Gangeshwar Ltd [2015 (322) ELT 444 (All.)]*.

5. There is no evidence on record that the assessee had started the fire. On the contrary, the insurance company has paid out the claim. There is also documentary evidence of the fire having been reported to police authorities and central excise authorities in time. It is inconceivable that any other evidence, other than the impossible one of producing the fire itself before the proper officer, could be made available to enable satisfaction in accordance with law. Documentary evidence submitted, demonstrating that damage and destruction had

occurred and it was not be attributed to the assessee, is sufficient and adequate. Hence, there was no reason to deny remission of duty.

6. Accordingly, the impugned order is set aside to allow the appeal.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*