आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलेफैक्स07926305136

DIN:20230764SW0000999AF9

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/48/2023-APPEAL 1394 – 98

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-55/2023-24**
दिनाँक Date : **21-07-2023** जारी करने की तारीख Date of Issue 25.07.2023

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **15/AC/Dem/NA/2022-23** दिनाँक: **31.10.2022**, issued by Deputy/Assistant Commissioner, CGST, Division-V, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Shakti Polyweave Pvt. Ltd. Unit-III,
Survey No. 769 & 770, Simej Rupagadh Road,
Opposite 66 KVA Su-station, Simej,
Dholka, Ahmedabad-382220

2. Respondent
The Deputy/ Assistant Commissioner, CGST, Division-V, Ahmedabad North ,2nd Floor, Sahajanand Arcade, Memnagar, Ahmedabad - 380052

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील), नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फ़ी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:–

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गत:–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हों तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER IN APPEAL

M/s. Shakti Polyweave Pvt Ltd. –Unit-III (100% EOU), Survey No. 769 & 770, Simej Rupgadh Road, Opposite 66 KVA Su-Station, Simej, Dholka, Ahmedabad-382220 (hereinafter referred to as '*the Appellant*') have filed the present appeal against the Order-in-Original No. 15/AC/Dem/NA/2022-23, dated 31.10.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-V, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*').

2. The facts of the case in brief are that the Appellant are engaged in the manufacture of PP/HDPE Woven Fabrics and Sacks (Laminated & Un-laminated) falling under Chapter 39 of CETA, 1985 and were availing the benefit of Cenvat facility. They locally procured inputs like HDPE granules against CT-3 Certificate and PP Granules against Procurement Certificate. These duty free inputs were converted into un-laminated fabrics at their factory and then they were delivered to the DTA factory M/s. Shakti Polyweave Pvt Ltd. (SPL in short), Plot No. 401/4 & 5, GIDC, Dholka, Ahmedabad-382220 for re-winding process on job-work basis. The fully finished goods produced at SPL were then returned to the appellant for being cleared and delivered to their customer.

2.1 On 10.05.2016, a fire broke out at M/s. SPL a DTA factory of the appellant. The raw material /semi-finished goods sent for job-work got destroyed in the fire. The Appellant informed the jurisdictional Range Superintendent and Assistant Commissioner of Central Excise, Division-III about the fire accident in the factory and also informed the loss of finished goods, semi finished goods and raw materials destroyed in the said fire.

2.2 The Appellant also filed an application dated 21.04.2017 to the Principal Commissioner of Central Excise, Ahmedabad-II, seeking remission of Central Excise duty forgone on the inputs imported under CT-3 and Procurement Certificate and also the duty in respect of the goods (i.e. Un-laminated Fabrics) produced out of such inputs procured under CT-3 and Procurement Certificate for Rs.36,16,049/-. The details submitted for remission of duty in respect of the goods sent for job-work were as under;

Table-2

Description	**Duty Amount (Rs.)**
Duty Forgone: Excise Duty (CT-3)	77,396/-
Duty Forgone: Custom Duty (Procurement Certificate)	22,72,245/-
Total Duty Foregone	**28,49,641/-**
Duty on Value Addition@ 12.5%	7,66,408/-
Total Duty amount for which remission application submitted	**36,16,049/-**

2.3 The grant of remission of duty under Rule 21 of CER, 2002 are subject to guidelines contained in Trade Notice No.36/2005 (Basic No.25/2005) issued by the Commissioner of Central Excise, Ahmedabad-III. The Range officer therefore requested for various details

from all the three appellants. Based on the reply submitted by the Appellants, following discrepancies were observed:-

a. Appellant has not reversed the Cenvat credit of duty amounting to Rs. 36,16,049/- involved in the raw materials used in the manufacture of semi-finished goods so destroyed. As no duty reversal was made, interest on wrongly availed and utilized Cenvat credit was required to be recovered.

3. Accordingly, SCN was issued to the Appellant proposing recovery of Cenvat Credit of duty under Section 11A of the CEA, 1944 for non-reversal of credit of duty involved in the raw materials/ semi finished goods destroyed during the fire. Interest and Penalty under Section 11A and Section 11AC respectively was also proposed.

4. The SCN was adjudicated wherein the recovery of wrongly availed Cenvat credit was confirmed alongwith interest and penalty proposed in the SCN.

5. Being aggrieved by the impugned order, passed by the adjudicating authority, the appellant have preferred the present appeal contesting the demand, primarily on the grounds that:-

- Appellant have contended that out of the total demand of Rs.36,16,049/- , the duty liability confirmed for the goods procured under CT-3 certification is Rs. 1,05,775/- whereas the duty liability confirmed for goods procured under procurement certificate is Rs. 35,10,274/-. Since the goods destroyed in fire were semi-finished products, were not excisable goods ready for removal from the factory. It is a settled legal position that no excise duty was leviable on semi-finished products; and even if Rule 21 of the Rules was not applicable in case of destruction of semi-finished products in fire or flood, no duty of excise could be levied and demanded in case of destruction of semi-finished products. Reliance placed on Hon'ble Tribunal decision in cases like J.J. Foams Pvt. Ltd- 2015 (327) ELT 349, Park Nonwoven Pvt. Ltd- 2014 (308) ELT 431 and Urmi Chemicals- 2014 (301) ELT 356 has held that excise duty was payable on excisable goods at the time of clearance only, and since semi-finished products could not be cleared, no duty was payable thereon. It is also held that the question of reversal of credit arises only when the final products were destroyed in fire, and not when the goods destroyed before removal were in semi-finished condition.

- Section 5 of the Central Excise Act read with Rule 21 of the Rules makes it clear that remission of duty is allowed for duty of excise leviable on any excisable goods which were lost or destroyed at any time before removal; and thus duty of excise is leviable on any excisable goods, fully manufactured finished goods which were ready for removal from the factory of manufacture. In the present case, products destroyed in fire were semi-finished, at intermediate stage of manufacture of the final products, and therefore there is no duty liability for such semi-finished products, hence the Adjudicating Authority could not have confirmed the demand of central excise duty on the semi finished goods.

- The goods were procured by the appellant against the CT-3 certificates and procurement certificates. Therefore, no excise duty or customs duty was paid by the appellant at the time of receiving such goods. The goods were not brought on payment of duty, and therefore, no cenvat credit of the duty was availed by the appellant in the present case. When no cenvat credit was availed the Adjudicating Authority could not have held that the appellant ought to have reversed/paid back the amount of cenvat credit availed on the inputs which were used in the semi finished goods destroyed in fire. Since no Cenvat credit is availed or utilized by the appellant, recovery of such amount along with interest under Rules 14 and 15 of Cenvat Credit Rules is ex-facie incorrect and erroneous.

- The Adjudicating Authority has committed a grave error in relying upon the Order passed by the Commissioner dated 20.04.2021 on the remission application filed by the appellant because the said order passed by the Commissioner is challenged by the appellant before the Hon'ble Tribunal by filing an appeal against the said order. The appeal filed by the appellant is pending and therefore, no conclusion can be arrived at by referring to the order passed by the Commissioner in the present case. In fact, the Adjudicating Authority in the present case was bound to examine whether duty can be demanded in the present case especially when no cenvat credit was availed by the appellant in respect of the inputs received on procurement certificates and CT-3 certificates and when no finished goods were destroyed in fire that took place on 10.05.2016.The Adjudicating Authority by relying upon the order of the Commissioner held that the present one was a case of negligence in taking precaution to avoid fire in the factory, and that the appellant had not taken due precaution to avoid any possible loss or damage to the goods due to any natural calamities such as rain, fire etc. The appellant submits that these findings and conclusions are not based on any evidence, but they are only inferences not supported by any evidence or material on record. The Adjudicating Authority relied upon the findings of the Commissioner which referred to FSL report and the Adjudicating Authority held that according to FSL report, fire happened due to the negligence of the DTA unit of the appellant. The FSL report nowhere shows that the Scientific Officer of FSL has held the appellant's DTA factory guilty of negligence, or for failure in taking proper precautions to avoid fire. The FSL Officer has recorded his observations about possible and probable reasons for fire and the spread of the fire in the factory; but it is not recorded anywhere in this report that proper precaution was not taken by the DTA unit of the appellant or that the fire occurred because of negligence of the DTA in maintaining safety norms in the factory. The adjudicating authority ought to have given findings on the basis of the documents available on record and should not have merely followed the order passed by the Commissioner in the remission case.

- The appellant's DTA factory is registered and licensed under the Factories Act, 1948 and under the Gujarat Factories Rules, 1963. All the provisions and requirements of these statutes regarding maintenance of safety standards in a factory are applicable to the appellant, and all the measures, precautions and requirements laid down under these provisions are duly complied with by appellant's DTA factory. The standards laid down under the Factories Act and the Factories Rules for cleanliness and hygiene in the factory, safety standards and

measures for the employees as well as the equipment, machinery etc. and also the materials- goods lying in the factory under these statutory provisions for running and maintaining a factory have been complied with and fulfilled by the appellant. It is therefore an undisputable position of fact that there was no malafide or any ill-intention on the appellant's part, nor any negligence in maintaining safety norms in the factory that resulted in fire in the factory on 10.5.2016.

- In **Kisan Sahkari Chini Mills Ltd. 2008 (222) ELT 540 (Tri.-Del)**, the Appellate Tribunal has held that fire in a factory was in the nature of unavoidable circumstances, and even if fire accident could be avoided, that would not mean that remission of duty on goods damaged and destroyed in the fire could be refused. In Commissioner V/s. **Next Fashion Creators Pvt. Ltd. 2012 (280) ELT 374 (Kar.)**, the Hon'ble Karnataka High Court has considered similar provision of Section 23 of the Customs Act and held that an EOU was entitled to remission of duty payable on goods destroyed in fire and that remission of duty could not be refused on the grounds like importer had not taken proper care of the goods, or that EOU was not entitled to remission. A fire in the factory is considered to be in the nature of unavoidable accident calling for remission in this judgment. Similar view was taken in **U.P. State Sugar Corporation Ltd.- 2014 (302) ELT 249 (Tri.-Del).** Relying on a judgment of the Hon'ble Rajasthan High Court in case of UOI V/s. **Hindustan Zinc Ltd. 2009 (233) ELT 61 (Raj.)**, the Appellate Tribunal has held that remission of excise duty ought to be allowed by the Commissioner where there was no evidence to show any malafide intention to evade excise duty. In **Bidar Sahakara Sakkare Karkhane Ltd. 2015 (327) ELT 218**, the Appellate Tribunal has interpreted Rule 21 of the Central Excise Rules to mean that the Rule does not give powers to Commissioner to deny remission since the Rule does not require him to satisfy himself that goods have become unfit for consumption or marketing because of no fault on part of the manufacturer. It is held that even in case of goods having become unfit for consumption or marketing for any reason before removal from the factory, the duty has to be remitted. In another case the same assessee **M/s. Bidar Sahakari Sakkare Karkhane Ltd. 2016 (332) ELT 833 (Tii.-Bang)** also, the Appellate Tribunal has allowed remission of duty on loss in quantity of molasses due to puncture in drain pipe while holding that remission was permissible so long as the accident was not deliberate and there was no malafide on part of the assessee to make the accident occur resulting in loss of the goods. In Commissioner V/s. **J.K. Sugar Ltd. 2017 (346) ELT 559 (All.)**, the Hon'ble Allahabad High Court has held that granting remission of duty under Rule 21 of the Rules for burnt molasses which was no longer fit for consumption, was proper when such loss had occurred due to unavoidable accident that usually take place when the ambient temperature was high. Thus, it is a settled legal position that a fire in a factory of manufacturer was an accident and also a circumstance not under the control of the manufacturer, and therefore remission of duty for all excisable goods destroyed in such fire in the factory of manufacturer was required to be allowed. By virtue of such case law, it is also a settled legal position that granting remission was not discretion of the concerned authority, but remission of duty was required to be allowed if the excisable good manufactured in a factory were destroyed in an accident like a fire, and the assessee also established that

there was no malafide nor any ill-design in respect of such fire. In the present case, the fire that broke out in the appellant's DTA factory on 10.5.2016 was an accident; and there is no dispute raised by the Revenue that such accidental fire just occurred, and that there was no ill intention or ill design by the appellant in respect of such fire. There is also no dispute in these proceedings that un-laminated fabrics received in the appellant's unit under procurement certificates and CT-3 certificates have been destroyed in this fire. Therefore, no excise duty was recoverable on un-laminated fabrics which were semi-finished goods because the duty ought to have been remitted under Rule 21 of the above Rules. The Adjudicating Authority has not considered these relevant facts and held that the appellant is liable for excise duty of Rs. 36,16,049/- which is an action without authority of law.

- When there was no duty liability in the present case. It was not a mandatory condition that an adjudicating authority has to impose penalty equal to duty involved in a case as an authority certainly possesses discretion to impose a lesser penalty or a token penalty considering the facts and circumstances of each case. The action of imposing penalty equal to the amount of duty alleged to have been evaded by the appellant company is therefore, unreasonable and hence, liable to be set aside. In the facts of the present case where no suggestion or allegation of any malafide intention to evade payment of duty is even made out against the appellants, there is no justification in the imposition of penalty in law as well as in facts. They placed reliance on the principles as laid down by the Hon' ble Supreme Court in the land mark case of **Messrs Hindustan Steel Limited reported in 1978 ELT (J159)** wherein the Hon'ble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so. The Apex Court has further held that only in cases where it was proved that assesses was guilty to conduct contumacious or dishonest and the error committed by the assesses was not bonafide but was with a knowledge that the assesses was required to act otherwise, penalty might be imposed. It is held by the Hon' ble Supreme Court that in other cases where there were only irregularities or contravention flowing from a bonafide belief, even a token penalty would not be justified.

- The action of ordering recovery of interest Section 11AA of the Act is also without any authority as it provides for interest in addition to duty where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded with an intent to evade payment duty. In the instant case, there is no short levy or short payment or non-levy or non-payment of any excise duty. The action of the Assistant Commissioner ordering recovery of interest under Section 11AA of the Act is also bad and illegal and liable to be set aside.

- The reply and the written submissions on the record of this case are a part and parcel of the present case. However, the Assistant Commissioner has failed to appreciate these submissions and explanations while passing the impugned order and therefore the impugned order is against the weight of evidence is perverse in nature, and hence the same is liable to be set aside.

6. Personal hearing in all the above matters was held on 30.06.2023. Shri Sudhanshu Bissa, Advocate, appeared for personal hearing. He reiterated the submissions made in the appeal memorandums. He submitted that M/s. Shakti Polyweave Pvt. Ltd. was manufacturing goods on their own account as well as on job-work basis for M/s. Shakti Polyweave Pvt. Ltd (100% EOU) and Shri Jagdamba Polymers Pvt. Ltd. Due to fire accident, the goods of all the three units kept in the premises of M/s. Shakti Polyweave Pvt. Ltd got destroyed. The Appellant have lodged the FIR for the incident and had applied for remission of duty with the Commissioner but their claim was subsequently rejected. The Appellant thereafter have filed the appeal before the Tribunal against the order of the Commissioner. However, the lower authority has confirmed the demand of duty on the lost and destroyed goods also, even during the pendency of the appeal before the Tribunal merely because Commissioner had rejected their remission application. They submitted that the facts of filing appeal in the Tribunal with applicable pre-deposit amounts to stay of operation of the order of the Commissioner. Therefore, the impugned order passed by the lower authority is bad in law. He requested to set-aside the impugned orders or to remand the matter back to the lower authority with the direction to decide the same only after the matter is decided by the Tribunal.

7. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandums as well as those made during personal hearing. The issue to be decided in the present case is as to whether the central excise duty demand of Rs. 36,16,049/- alongwith interest and penalties, confirmed in the respective impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise.

7.1 The above demand was raised on the argument that the appellant have not given the proof of reversal of CENVAT credit of duty alongwith interest, involved in the raw material / semi finished goods destroyed in fire, as was required under Rule 3(5C) of the CENVAT Credit Rules (CCR), 2004. It therefore was alleged that the appellant have availed and utilized the disputed CENVAT credit of duty involved in such destroyed goods.

7.2 Appellant have claimed that they procured inputs like plastic granules against the CT-3 Certificates and Procurement Certificates on which no excise duty or customs duty were actually paid and therefore no Cenvat credit was availed on such inputs. These inputs were used in the production of un-laminated fabrics which were later sent to the factory of their DTA unit for re-winding process to be undertaken on job work basis by the DTA unit. However, these un-laminated fabrics got destroyed in fire and therefore remission of duty involved in such goods was sought under Rule 21 of the CER, 2002. Therefore, the reversal of duty amounting to Rs. 36,16,049/- in respect of un-laminated fabrics which got destroyed in fire is not required. The adjudicating authority however held that the appellant has executed Bond B-17 for procurement and movement of imported goods/excisable goods with or without payment of duty. The benefit of exemption under the said Bond was available if all the conditions laid down therein are fulfilled. It was held that as the duty free materials were not used for specified /intended purpose the appellant is not entitled to such exemption. Further it was also held that as the remission application filed by the appellant was rejected by the Commissioner vide

OIO No.AHM-EXCUS-002-COMMR-02-2021-2022 dated 20.4.2021 on the grounds that (i) the fire was avoidable as corroborated by the FSL report dated 18.05.2016; (ii) the Range Superintendent was not intimated about the fire accident within 24 hrs of the fire accident; (iii) department is not aware of the outcome of the Insurance claims placed by the appellant and (iv) the appellant has sent the goods to job-worker without following the procedures laid down in the notification. Hence, the adjudicating authority held that the duty foregone on the goods destroyed in fire is recovered.

7.3 Appellant against the duty demand of Rs. 36,16,049/- have contested that the procured plastic granules against CT-3 Certificates and Procurement Certificate on which no excise or customs duty was paid hence no Cenvat credit was availed on such inputs. These inputs were used by their DTA unit for production of un-laminated fabrics. The un-laminated fabrics were sent to DTA unit for carrying out re-winding process under job work. As these semi-finished goods got destroyed in fire, they sought remission which was rejected. From above facts, it is clear that the demand against the Appellant pertains to non-reversal of Cenvat credit of duty involved in semi-finished goods/raw materials which got destroyed in fire.

7.4 The Cenvat credit reversal in respect of the goods damaged in fire was demanded in terms of Rule 3(5C) of the CCR, 2004. The duties were subsequently confirmed by the adjudicating authority solely on the grounds that the remission claims filed by the appellants under Rule 21 of the CER, 2002 were rejected by the Commissioner. Hence, it was held that the Cenvat credit of duty involved in such goods which got destroyed in fire needs to be reversed.

7.5 To examine the issue, Relevant Rule 21 is reproduced below:-

> ***RULE 21. Remission of duty.*** *— [(1)] Where it is shown to the satisfaction of the [Principal Commissioner or Commissioner, as the case may be] 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 "[Principal Commissioner or Commissioner, as the case may be]", 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 "[Principal Commissioner or Commissioner, as the case may be]", 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 "[Principal Commissioner or Commissioner, as the case may be]", the expression "Joint Commissioner of Central Excise or Additional Commissioner of Central Excise, as the case may be," has been substituted.*
>
> *The authority referred to in sub-rule (1) shall, within a [(2)] period of three months from the date of receipt of an application, decide the remission of duty.*

Provided that the period specified in this sub-rule may, on sufficient cause being shown and reasons to be recorded in writing, be extended by an authority next higher than the authority before whom the application for remission of duty is pending, for a further period not exceeding six months.]

Rule 21 of CER, 2002 above, provides for remission of duty payable of the goods destroyed. The raw materials were duty paid goods and a manufacturer can claim remission of duty which is payable on the goods manufactured by him but which is not yet paid.

7.6 Further, Rule 3 (5C) of the CCR, 2004, provides that where the duty on any goods manufactured or produced by an assessee is ordered to be remitted under Rule 21 of the CER, 2002, then the Cenvat credit taken on inputs used in the manufacture or production of said goods shall be reverse. Relevant text of Rule 3 (5C) is reproduced below:

Rule 3(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 [and the CENVAT credit taken on input services used in or in relation to the manufacture or production of said goods] shall be reversed.*

On plain reading of said provision, I do not find any stipulation therein, requiring the appellants to reverse the amount of Cenvat credit availed on the inputs/raw materials that were used in manufacture of semi finished/finished goods which got destroyed in fire especially when in the instant case the remission of duty was rejected by the Commissioner. The above provision is applicable only when duty has been ordered to be remitted under Rule 21. In fact, in the present case, the duty has not been remitted therefore the application of above provision is misplaced.

7.7 Further, the demand notices also refers Board's Circular No. 800/33/2004-CX., dated 1-10-2004, which clarifies the admissibility of Cenvat Credit on inputs used in the manufacture of the finished goods on which duty has been remitted. The Board at Para-3 has clarified that;

"In view of the decision of the Tribunal in the case of Mafatlal Industries, Board has reconsidered the issue of admissibility of Modvat/Cenvat credit on inputs used in the manufacture of finished goods on which duty has been remitted. Accordingly, Board's Circular No. 650/41/2002-CX., dated 7-8-2002 is hereby withdrawn. It is clarified that the credit of the excise duty paid on inputs used in the manufacture of the finished goods on which the duty has been remitted due to damage or destruction etc. is not permissible and the dues with interest should be recovered."

The above circular also deals with the scenario where duty and interest is to be recovered when remission of duty is order, which is not the case on hand hence, the above circular is not relevant in the present appeals.

7.8 I place reliance on the decision passed by Hon'ble Tribunal of CESTAT, Principal Bench, New Delhi passed in the case of **Arhant Studes Ltd. - 2016 (332) E.L.T. 827 (Tri. - Del.)** wherein it was held that;

"Though the excise liability arises at the time of manufacture the payment of duty is at the time of clearance. There could be no clearance of destroyed products. As the destruction has been an admitted fact there could be no duty liability on the goods which are not cleared. Considering the above factual and legal position, we are not able to agree with the reasoning given by the Original Authority and we find the order unsustainable. Accordingly, we set aside the impugned order and allow the appeal with consequential relief, if any."

7.9 Hon'ble CESTAT, PRINCIPAL BENCH, NEW DELHI in the case of **J.J. FOAMS PVT. LTD - 2015 (327) E.L.T. 349 (Tri. - Del.)** held that;

"As regards the destruction of the goods in the job workers factory admittedly the receipted goods were work-in-progress and were not the finished goods. Though I am of the view that such semi finished goods are also entitled to the remission of duty but even if the Commissioners' stand is accepted, no duty liability would arise in respect of semi-finished goods inasmuch as the same had not attained final stage so as to be liable to duty of Excise.."

7.10 Hon'ble High Court of Madras in the case of CCE, Chennai-IV **Vs Fenner India Ltd.-2014 (307) E.L.T. 516 (Mad.)** rejected department's appeal and held that;

"12. In view of the items referred to in clause (5C) to Rule 3 of the Cenvat Credit Rules, 2004 as above, the question of reversal would occur only when the payment of duty is ordered to be remitted under Rule 21 of the Central Excise Rules, 2002. The said Rule deals with remission of duty. Admittedly, the assessee has not claimed any remission and no final product has been removed. Hence, for that reason also, reliance was placed on clause (5C) to Rule 3 of the Cenvat Credit Rules, 2004."

The above decision was also relied in the case of **VFC Industries Pvt. Ltd. Vs CCE C.Ex.& S.T., Vadodara-II - 2017 (352) E.L.T. 507 (Tri. - Ahmd.)**

7.11 Hon'ble Principal Bench, New Delhi, in the case of **Nectar Lifesciences Ltd. Vs Commissioner Of C. Ex., Chandigarh-Ii- 2013 (293) E.L.T. 247 (Tri. - Del.)** held that;

"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."

7.12 Hon'ble High Court while deciding the issue whether reversal of credit on inputs used in intermediate goods destroyed in fire accident not required, **dismissed** the Central Excise Appeal No. 2 of 2009 filed by Commissioner of Central Excise, Pune against the CESTAT Final Order Nos. A/464-465/2008-WZB/C-II/SMB, dated 23-5-2008 as reported in **2008 (231) E.L.T. 346 (Tri-Mum.)** (*Commissioner* v. *Spectra Specialities*). While dismissing the appeal, the High Court passed the following order:

"In this case, the Customs Excise and Service Tax Appellate Tribunal (for short, "the Tribunal") has, in the impugned order, observed that it is not disputed that the fire and consequent destroying of the inputs used in the intermediate products and the capital goods were accidental. After recording this finding of fact, the Tribunal rejected the appeal filed by the Revenue. There is no question of law involved. Besides, the liability is to the extent of Rs. 70,000/-. Hence, the appeal is dismissed."

The Appellate Tribunal in its impugned order had followed the decision of Tribunal's Larger Bench in case of Grasim Industries [2007 (208) E.L.T. 336 (Tribunal-LB)] held that reversal of Cenvat credit on inputs gone into intermediate products which were destroyed into fire accident was not required."

[Commissioner v. Spectra Specialities - 2009 (240) E.L.T. A77 (Bom.)]

8. Applying the ratio of above judgments and considering the legal framework, I find that the appellant are not required to reverse the cenvat credit of duty involved in the semi-finished goods which got destroyed in fire at the premises / factory of SPL as these semi-finished goods were to undergo further manufacturing process. These goods got destroyed before they were cleared. Duty of excise is leviable on any excisable goods, manufactured and ready for removal from the factory. In the present case, products destroyed in fire were semi-finished, at intermediate stage of manufacturing of the final products, and therefore there is no duty liability for such semi-finished products.

9. Since the semi-finished goods have been destroyed in fire and the same have not been removed from the factory, I am of the view that reversal of Central Excise credit cannot be fastened on such destroyed goods. The penalty imposed under Section 11AC of the Central Excise Act, 1944, is also not justified in view of the fact that goods have not been removed from the factory as they got destroyed in fire. However, since the appellant had informed the Central Excise Authorities regarding the fire incidence took place in their DTA factory, there is no suppression of facts and violation of the statutory provisions, for which imposition of penalty under Section 78 of the said Act is justified.

10. In view of the foregoing, the impugned order confirming the Central Excise duty demand along with interest and imposition of penalty is concerned, the same is set aside.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant is allowed in above terms.

(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Date: 21.12.2023

Attested
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,

M/s. Shakti Polyweave Pvt. Ltd.-Unit-III (100% EOU) - **Appellant**
Survey No. 769 & 770, Simej Rupgadh Road,
Opposite, 66 KVA Sub-Station, Simej, Dholka,
Ahmedabad-382220

The Assistant Commissi oner, - **Respondent**
CGST, Division-V, Ahmedabad North
Ahmedabad

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
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