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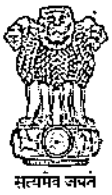

GOVERNMENT OF INDIA
MINISTRY OF FINANACE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F NO. 195/108/WZ/2018-RA /134 Date of Issue: 12.01.2023

ORDER NO. 06/2023-CX (WZ) /ASRA/MUMBAI DATED 10.01.2023 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Perfect Colourants & Plastic Pvt. Ltd.

Respondent : Commissioner CGST Daman.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CCESA/SRT(Appeals)PS-638/17-18 dated 19.02.2018 passed by the Commissioner of CGST & Central Tax, (Appeals) Surat.

ORDER

This Revision Application is filed by the M/s Perfect Colourants & Plastic Pvt. Ltd. (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CCESA/SRT(Appeals)PS-638/17-18 dated 19.02.2018 passed by the Commissioner of CGST & Central Tax, (Appeals) Surat.

2. Briefly stated, applicant is engaged in manufacturing of excisable goods i.e. Colour Concentrates-Master Batches falling under Chapter heading no. 32 of Central Excise Tariff Act, 1985. The applicant filed an application dated 17.06.2013 under Rule 21 of CER, 2002 for remission of Central Excise Duty of Rs. 1,77,990/- involved in finished goods destroyed in fire accident that took place in their factory premises on 19.05.2013. The adjudicating authority vide order-in-original No. C.Ex./04/REM/ADJ/BPS-ADC/DMN/2016-17 dated 20.09.2016 rejected the remission on the ground that Applicant had failed to comply the provisions of Rule 21 of Central Excise Rules, 2002 in as much as not able to prove that the accident was avoidable. Being aggrieved by the aforesaid order-in-original the applicant filed appeal before Commissioner of CGST & Central Tax, (Appeals) Surat, who vide order- in-appeal No. CCESA/SRT(Appeals)PS-638/17-18 dated 19.02.2018 rejected their claim.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application under Section 35EE of the Central Excise Act, 1944 before the Government on the following grounds: -

i) the impugned order is ex-facie bad in law and contrary to the provisions of law. That the impugned order is also silent on various detailed contentions taken and catena of orders and decisions relied upon by the Applicant, which apply to the facts and circumstances on all fours. That on this single ground, the impugned order deserves to be quashed and set aside.

ii) the short issue involved in the present appeal is whether the Applicant is eligible to claim remission of duty involved on excisable goods destroyed in fire. The factum of fire, loss of goods and reversal of Cenvat Credit in terms of Rule 3(5C) of the CCR, is not in dispute in the present proceedings at all.

iii) it appears that the lower authorities are under the mistaken belief that remission is applicable only if fire takes place due to short circuit and in absence of "conclusive" proof that though there was fire accident, however it is debatable if it was due to short circuit or any other reason, remission is ineligible. That there is no legal basis to have such rigid understanding on part of lower authorities at all.

iv) the factum of fire is not in dispute. The limited dispute is that as per Revenue Authorities, it is not conclusively proven that fire was due to short circuit only. At the same time, there is neither an allegation nor a finding that fire was intentional or with ulterior motive to defraud the Government Exchequer. The very fact that insurance company also settled the claim itself is sufficient proof that fire occurred and was genuine otherwise such claim would never be settled in the first place.

v) in terms of Rule 21 of the Central Excise Rules, 2002, even if the exact cause is not known, the remission has to be allowed so long as the fire has taken place and the loss has occurred, both the facts which are not in dispute in the present case at all. As such, the impugned order is in grave error inasmuch as it proceeds to deny remission claimed on the ground that the exact cause of fire is unknown and hence remission is inadmissible, which is contrary to the specific provisions of law.

vi) As regards the specific aspect as to whether sufficient precautions were taken by the Applicant or otherwise, which could have prevented the fire, it is submitted with utmost respect that the Deputy Director, RFSL, Surat has already given the opinion that the possible cause of fire was short-circuit. However, the electricity department has on the contrary suggested that the exact cause of fire cannot be determined. That this remains an inconclusive evidence as to the cause of fire and under the circumstances, unless the Revenue Authorities bring out any specific evidence to substantiate the cause of fire being of a nature which would disentitle the claim of remission to the Applicant, the appeal must be allowed and remission claim must be granted since it is legally impermissible to reject the same on basis of mere conjecture and

surmises. That even on this ground, the impugned order deserves to be quashed and set aside.

vii) the benefit of doubt must go to the Applicant unless there are specific reasons brought on record to show that the fire was not unavoidable or due to reasons other than natural cause, which the Revenue Authorities have not shown at all. That the Applicant has to first discharge the burden of proving that fire has taken place and which was due to natural causes which stands discharge in the present in the given facts and circumstances of the case including in the form of opinion of Deputy Director, RFSL, Surat and all other evidences admittedly are merely inconclusive as to the exact cause of fire. Once this is done, the onus then shifts to the Revenue Authorities who have to prove by way of cogent evidences before proceeding to reject the remission claim filed by the applicant. Having failed to discharge such shifted onus, the Revenue Authorities cannot therefore reject the remission claim filed by the Applicant.

viii) Be that as it may, it is a consistent judicial view by various High Courts across the country that the scope of the term natural causes and unavoidable accident include 21 of the Central Excise Rule have to be interpreted in their ordinary and natural connation in reasonable manner to subserve the object of legislature and introducing remission of duty. It has been held that unavoidable accident is an event which is beyond control of the assesee and has taken place despite exercise of due reasonable care/protection. It is on record that the Applicant had been accident free for all these years and has exercise due precaution. Even the factory inspectors have never found anything objectionable in the manner in which the operations were undertaken which itself is a sufficient proof that the Applicant is deemed to have taken necessary precautions from time-to-time. Further that the fact that the insurance claim was also settled by the insurance company would also indicate that there was no negligence and/or design on part of the Applicant in the course of fire accident having taken place since the insurance

company would never settle a claim unless proper precautions were already taken by the Applicant in this regard.

ix) This being the case, in light of the following decisions, the impugned order is in grave error inasmuch the remission application has been rejected on basis of mere conjectures and surmises and the presumption that is reasonable on the presumption that the accident was not unavoidable/exact cause of the fire accident is not known, since the same is not germane to the granting or rejecting of rebate claim at all:

a Lord Chloro Alkali Ltd. 2013(293) ELT 68 (T-Del)
b. M. Kumar (Udyog) P. Ltd. 2014(306) ELT 19(All)
c. CCE V/s. Hindustan Zinc Ltd. 2009(233) ELT 61 (Raj)
d. Raltronics India P. Ltd. 2017 (354) ELT 324(All)

x) Notwithstanding and without prejudice to the above, while the Chartered Accountant has already certified to the effect that there was actual loss occurred due to fire and also that the insurance company has not granted any claim covering the Excise Duty element, nonetheless the Hon'ble Karnataka High Court in the case of Tata Advance Materials Ltd 2011 (271) EL.T. 62 (Kar) has clearly held that payment by insurance company inclusive of Central Excise Duty would not render credit claimed by the assesse as regularly assesse had paid insurance premium and got compensated. It is not a case of double payment or irregular availment of credit. The same was held in the context of certain destruction of goods in the course of fire. The principles would hold equally true in the present facts and circumstances of the case inasmuch as even if the insurance company had compensated the Applicant towards excise component, the same is not double benefit at all and remission as granted under the Excise laws can very well be allowed even if the insurance company had in fact compensated the Applicant towards excise duty component since the same is a commercial transaction on account of the premiums paid by

the Applicant for years altogether. Nonetheless, this is merely an academic issue since the insurance company has also certified that they have not reimbursed any Excise duty component to the Applicant and the impugned order also does not dispute this aspect,

xi) That the issue is no longer res integra inasmuch as the Hon'ble tribunal has repeatedly held that in cases where inputs are destroyed in fire, without being put to use, the Credit thereon cannot be denied to the assessee.

xii) While above averments allow credit of inputs destroyed in fire as such as well, however in the present case, undisputedly the goods were inputs/semi-finished goods on shop floor and as such, there is no question of denial of credit thereon for the above reasons. Reference can be made to the decision of the Hon'ble CESTAT in the following case: Park Nonwoven P. Ltd. 2015-TIOL-1735-CESTAT-DEL Steelbird Hi-tech India Ltd. 2015-TIOL-694-CESTAT-DEL Urmi Chemicals 2013-TIOL-1947-CESTAT-MUM

xiii) As such, the credit reversed in case of inputs used in factory and destroyed in used/semi-finished state, must be allowed to the Applicant and having reversed the same, it should be paid back to them as consequential relief. As regards Rule 21 of the CER, 2002, the credit to be reversed should be limited to inputs contained in Finished Goods in respect of which the remission is being claimed as per Rule 3(5C) of the CCR, 04 only.

xiv) The Applicant requested to set aside the impugned Order-in-Appeal.

4. Personal hearing was fixed for 14.10.2022, Mr. Saurav Dixit, Advocate appeared online on behalf of the Applicant. He submitted that there is no doubt about fire, no allegation of mischief or malafide, fire occurred even after sufficient precautions. He requested to allow the application.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions/counter objections and perused the impugned Order-in-Original and Order-in-Appeal.

6. On perusal of the Revisions Application, the issue to be decided is whether the remission application of the applicant is to be allowed or otherwise.

7. The Government observes that Remission of Central Excise Duty means duty which is required to be paid as per statutory provisions, but waived from payment in specified circumstances by the competent authority.

7.1 The Government finds that Section 5 of Central Excise Act 1944 provides enabling provisions for remission of Central Excise duty on Excisable goods which are found deficient in quantity or destroyed due to natural / unavoidable causes by making rules in this behalf. In exercise of powers conferred under Section 5 of the Central Excise Act, 1944, the Government has framed Rule 21 of the Central Excise Rules, 2002. Rule 21 of the Central Excise Rules, 2002 provides as follows: -

"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."

7.2 In view of above, Government observes that under Rule 21, a remission of duty is contemplated where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by (i) natural causes; or (ii) unavoidable accident; or are claimed by the manufacturer as being unfit for consumption or for marketing. The remission is to be granted subject to such conditions as may be imposed. The expressions "natural causes" or "unavoidable accident" have to be interpreted in their ordinary and natural connotation. An unavoidable accident is an event which lies beyond the control of the assessee and which has taken place despite the exercise of due and reasonable care and protection. Both the expressions have to be construed in a reasonable manner to sub-serve the object of the legislature in introducing the provision for remission of duty in Rule 21.

8. Hon'ble High court, Allahabad in case of Raltronics India Pvt. Ltd., reported at 2017(354)E.L.T. 324(All.), held that loss and destruction of goods because of accidental fire falls within the meaning of the phrase "goods have been lost or destroyed for natural causes or by unavoidable accident for the purposes of remission duty under Rule 21 of Central Excise Rules, 2002".

9. In present case, Government finds that non establishment of the fact that goods were lost due to unavoidable accident as required under Rule 21 of Central Excise Rules, 2002 in absence of conclusive evidence led Appellate Authority to disallow the remission to the Applicant. Government notes that occurrence of fire and the goods lost in fire are not in dispute in the instant case. Therefore, in order to grant remission as per rule 21 of Central Excise rules,2002, the only thing to be seen in present case is that whether the fire broke out was an unavoidable accident or merely due to the negligence of the Applicant. Government finds that there is neither an allegation nor a finding against the Applicant that fire was intentional or with ulterior motive to defraud the Government Exchequer. More so, the insurance claim has also been granted to the Applicant. Therefore, Government notes that when there is a doubt in absence of conclusive evidence that no preventive measures were

taken by the Applicant, then it can safely be assumed on the basis of evidence brought on record by the applicant which included FIR, reports of RFSL and grant of insurance claim that fire broke out accidently.

10. In view of the above discussions and findings, Government holds that since the occurrence of fire in the instant case was an unavoidable accident, remission to the Applicant cannot be denied. Therefore, Government set aside the Order-in-Appeal No. CCESA/SRT(Appeals)PS-638/17-18 dated 19.02.2018 passed by the Commissioner of CGST & Central Tax, (Appeals) Surat and allows the application.

Shrawan 10/1/23

(SHRAWAN KUMAR)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 06/2023-CX (WZ) /ASRA/Mumbai Dated 10.01.2023

To,
M/s Perfect Colourants & Plastics Pvt. Ltd.,4, Daman Industrial Estate, Somnath, Daman.

Copy to:

1. The Pr. Commissioner of CGST & CX, Daman, GST Bhavan, RCP Compound, Vapi-396191.
2. The Commissioner of CGST & Central Excise Appeals Commissionerate, 3rd Floor, Magnnus Mall, Althan Bhimrad Canal Road, Near Atlantas Shopping Mall, Althan,Surat- 395017.
3. Sr. P.S. to AS(RA), Mumbai.
4. Guard File.