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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

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

F. No. 195/150/2018-RA/2783

Date of Issue: 26.12.2022

ORDER NO. 1213/2022-CX (WZ) /ASRA/Mumbai DATED 20.12.2022 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. D.R. Coats Ink & Resins Pvt. Limited,

Respondent : Commissioner of CGST, Palghar.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. NA/GST A-III/MUM/564/17-18 dated 27.03.18 passed by the Commissioner of GST & CX (Appeals-III), Mumbai.

ORDER

The subject Revision Application has been filed by M/s. D.R. Coats Ink & Resins Pvt. Limited, Plot No. E-123, MIDC Tarapur, Boisar, Dist. Thane (here-in-after referred to as 'the applicant') against the Order-in-Appeal No. NA/GST A-III/MUM/564/17-18 dated 27.03.18 passed by Commissioner of GST & CX (Appeals-III), Mumbai.

2.1 Brief facts of the case are that the applicant is engaged in the manufacture of excisable goods falling under Chapter 39 of the Central Excise Tariff Act, 1985. They had vide their letter dated 28.10.2012 addressed to the jurisdictional Division as well as Range office, reported a fire incident that occurred in their factory on 27.10.2012 destroying raw materials, semi-finished goods, packing material, finished goods as well as office records. Subsequently, vide their letter dated 15.10.2013, in terms of Rule 21 of the Central Excise Rules, 2002, the applicant filed an application seeking remission of duty on finished goods as well as semi-finished goods totally amounting to Rs. 19,64,798/- with the jurisdictional Commissioner of Central Excise.

2.2 The applicant was issued a Show Cause cum Demand Notice dated 08.11.2013 on the following grounds:

- i. In the absence of any remission of duty by the competent authority on the excisable goods supposedly destroyed in the fire incident and also considering that the applicant had already lodged an insurance claim to recover the said loss from the insurance company, non-payment of due central excise duty amounting to Rs. 19,49,852/- on the said manufactured goods amounted to contravention of the provisions of section 3(1)(a) of the Central Excise Act, 1944 read with rule 6 of the Central Excise Rules, 2002.
- ii. The applicant had not paid duty on Semi-finished goods amounting to Rs. 14,945/-.

- iii. The applicant had not reversed the amount of Rs.3,65,694/- towards Cenvat credit availed on the Capital Goods supposedly destroyed in fire, not used in or in relation to manufacture of final product in the factory of production, as such the said Cenvat credit was recoverable from them under the provisions of rule 14 of the CENVAT Credit Rules, 2004 read with section 11A(1) of the Central Excise Act, 1944 (CEA).

The adjudicating authority confirmed the demands raised and ordered recovery of interest at appropriate rate under Section 11AA of CEA and also imposed penalty of Rs.23,30,491/- under Section 11AC of CEA vide Order-in-Original No. (OIO) 41/DVS/BSR-II/Th-II/16-17 dated 08.05.2017.

2.3 Aggrieved, the applicant filed an appeal which was partially allowed by the Appellate authority modifying the OIO as detailed hereunder:

- i. The demand of Central Excise duty of Rs. 19,49,852/- on the finished goods destroyed in the fire along with interest at appropriate rates stood as it is.
- ii. The demand of Central Excise duty of Rs. 14,945/- on the Semi-finished goods/WIP destroyed in the fire was set aside.
- iii. The Cenvat credit on inputs contained in finished products and in Semi-finished goods or work-in-progress as well as on Capital goods lost in the fire accident was allowed. Consequently, the confirmation of demand amounting to Rs.3,65,694/- was set aside.
- iv. The whole of penalty imposed was set aside.

3. Consequently, the applicant has filed the subject Revision Application against the impugned Order-in-Appeal on the following grounds:-

- (a) The Applicant submits that 25 fire extinguishers were installed in the factory to safeguard raw materials, goods in process, finished goods, capital goods, electrical wiring, furniture, testing laboratory,

all the records and other property but inflammable chemicals caught fire and spread all over the factory and within 30 minutes entire factory was burnt. The labour, technical staff and also security guards were forced to leave the factory premises within five minutes from the moment of catching fire. Therefore, there was no opportunity to use fire extinguishers and instead such extinguishers were also burnt in fire. The Fire Brigade Department after visiting the fire affected place could not bring fire under control till 1 and ½ hour. In short, even after taking necessary precaution raw materials, goods in process, finished goods, capital goods, electrical wiring, furniture, testing laboratory all the records and other property burnt in fire on 27-10-2012;

- (b) The Applicant submits that no material available on record that fire occurred due to deliberate act on part of them. It is to be submitted that accident is act of God and it is not correct to demand the duty on destroyed goods. The Applicant submits that the learned Commissioner is not required to ascertain cause of fire in absence of proof to show that fire caused by negligence. The Applicant eligible to remission of duty in respect of finished goods destroyed in fire. This cannot be justified inasmuch as no accident can be attributed to anybody's carelessness. The Applicant would like to rely on the decisions, wherein it has been held that remission of duty allowed when no material on record to establish that fire occurred due to deliberate act on part of Applicant, which are as follows:

ERGO AUTO LTD - 2008 (232) E.L.T. 154 (T)

HINDUSTAN CABLES LTD - 2006 (198) E.L.T. 527 (T)

SAMI LABS LTD - 2007 (216) E.L.T. 59 (T)

SHIVA ESSENTIAL OILS & CHEM.- 2004 (168) E.L.T. 121 (T)

U.P. STATE SUGAR CORP. LTD - 2004 (168) E.L.T. 280 (T)

In the light of above, the applicant prayed that order confirming the demand of Central Excise duty of Rs.19,49,852/- on the finished goods destroyed may be set aside.

4. Personal hearing in the matter was held on 10.11.2022. Shri Durgesh Nadkarni, Advocate appeared online and submitted that fire incident happened inspite of best measures by the applicant.

He informed that the main issue of rejection of remission by Commissioner is pending before CESTAT, therefore this being consequential action, be kept in abeyance till CESTAT decides the issue.

5. Government has carefully gone through the relevant case records available in case file, the oral and written submissions and also perused the impugned Order-in-Original and Order-in-Appeal.

6.1 Government notes that the applicant had, consequent to the fire incident in their factory on 27.10.2012, filed an application for remission of duty with the jurisdictional Commissioner of Central Excise. However, the Commissioner concluded that the applicant had not been able to substantiate and prove that the fire was unavoidable; that they had not shown sufficient precautions and safeguards were taken to avert the fire; that they had not furnished details of calculation for raising their claim for remission of duty amount; that they had failed to show that insurance amount claimed by them did not include central excise duty involved on the burnt goods; that they had not discharged their liabilities toward reversal of Cenvat credit availed on capital goods destroyed in the fire and on interest payable on inputs, and inputs contained in semi-finished, finished and capital goods. Therefore, the applicant's remission application was rejected by the Commissioner of Central Excise vide Order No. 48/PS/COMMR/Th-II/2016 dated 29.03.2017. Government observes that the applicant has filed an appeal against this Order under sub-section (1) of Section 35B of Central Excise Act, 1944 before CESTAT, Mumbai, which is pending as on date.

6.2 Government observes that the remission of duty is permissible under Rule 21 of the Central excise Rules, 2002 in some specific cases as provided therein. The Rule reads as under:

*“Rule 21 : Remission of Duty : Where it is shown to the satisfaction of the Commissioner, that the goods have been lost or destroyed by natural causes or by unavoidable account 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.”*

Government notes that the evidence adduced by the applicant in support of their remission application was not upto the satisfaction of the jurisdictional Commissioner resulting in rejection of the application for the reasons elaborated at para 6.1. The applicant has contended that as their appeal against rejection of remission of duty is pending in CESTAT, the instant application may be kept in abeyance. However, Government observes that the applicant has not mentioned about grant of any stay in this regard. Thus, there is no bar in deciding the matter.

6.3 Government observes that in the instant matter the demand for Central Excise duty has been raised in terms of Section 3 of the Central Excise Act, 1944, which reads as under:

*Section 3. Duties specified in First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 to be levied. -*

*(1) There shall be levied and collected in such manner as may be prescribed a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the Fourth Schedule.*

Thus, excise duty at applicable rate is leviable on the said excisable goods manufactured by the applicant. Government observes that the Appellate authority has rightly concluded that in the absence of permission for remission of duty, Central Excise duty involved in the excisable goods

destroyed in fire become recoverable from the applicant. The concerned para 8(a) is reproduced hereunder:

*In the absence of grant of remission of duty by the Commissioner, a demand has been raised on goods manufactured and lost in fire under Section 3(1)(a) of CEA, 1944. It is consequential in nature that once the remission application is rejected by Commissioner, Central Excise duty which is leviable on the goods removed, albeit due to fire, is recoverable from the appellants. The demand has been confirmed vide the impugned order, therefore, due process of law has to follow and Central Excise duty of Rs.19,49,852/- is recoverable from the appellants.*

6.4 Government observes that the case laws relied upon by the applicant are not applicable in the instant case as in those cases the goods were destroyed due to unavoidable circumstances. In the present case, the Competent Authority has decided that the applicant had not been able to substantiate their case. Applicant has to abide by the same.

7. In view of the above discussions and findings Government finds no infirmity in the Order-in-Appeal No. NA/GST A-III/MUM/564/17-18 dated 27.03.18 passed by the Commissioner of GST & CX (Appeals-III), Mumbai and upholds the same and rejects the impugned Revision Application.

  
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. 1213/2022-CX (WZ) /ASRA/Mumbai dated 20.12.2022

To,

M/s. D.R. Coats Ink & Resins Pvt. Limited, .  
Plot No. E-123, MIDC Tarapur,  
Boisar, Dist. Thane - 401 506

Copy to:

1. The Commissioner of CGST,  
Palghar Commissionerate,  
4<sup>th</sup> Floor, Navprabhat Chambers,  
Ranade Road, Dadar(W),  
Mumbai - 401 506.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.