

<p>आयुक्तकाकार्यालय केंद्रीयवस्तु एवंसेवाकर एवंउत्पादशुल्क , अहमदाबादउत्तर, कस्टमहॉउस(प्रथमतल) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods &amp; Services Tax &amp; Central Excise, Ahmedabad North, Custom House(1<sup>st</sup> Floor) Navrangpura, Ahmedabad-380009</p>
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निबन्धित पावती डाक द्वारा /By REGISTERED POST AD

फा .सं/.IV/19-03/MP/17-18

आदेश की तारीख / Date of Order : 05.04.2021  
जारी करने की तारीख / Date of Issue : 05.04.2021

द्वारा पारित/Passed by -

अमरजीत सिंह / AMARJEET SINGH  
आयुक्त / COMMISSIONER

मूल आदेश संख्या /

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-001-2021-22**

जिस व्यक्ति(यों)को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क , उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार , सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , O-20, मेघानीनगर , न्यु मेन्टल हॉस्पिटल कम्पाउन्ड ,अहमदाबाद -380016को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, O-20, Meghani Nagar, Mental Hospital Compound, Ahmedabad-380 016.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है I

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

3. उक्त अपील प्रारूप सं .ड.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील)नियमावली 2001 ,के नियम 3के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ )उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए।(1 अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं की दाखिल में प्रतियों चार , प्रतियाँ ही उतनी भी उसकी , हो गई की अपील विरुद्ध के आदेश जिस साथ उसके तथा जाएगी क से कम से उनमें) जाएंगी की संलग्न एक प्रमाणित प्रति होगी। (

The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 , की अनुसूची , 1-मद 6के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice bearing No. IV./16-03/MP/17-18 dated- 22.10.2020 issued to M/s Jagdamba Polymers Ltd., Plot No.101, GIDC, Dholka, Ahmedabad.

**Brief facts of the case:**

M/s Jagdamba Polymers Ltd., Plot No.101, GIDC, Dholka, Dist.: Ahmedabad (*hereinafter referred to as "the said assessee"*) having Central Excise Registration No. AACCS1262KXM001 were engaged in the manufacture of PP/HDPE Woven fabrics and Sacks (Laminated and Un-laminated) falling under Chapter 39 of Central Excise Tariff Act, 1985 and were availing the facility of CENVAT.

2. The said assessee locally procures duty paid inputs like PP/HDPE granules, tapes un-laminated and laminated fabrics, etc., and were converting these inputs into unlaminated fabrics at the factory i.e. *M/s Shakti Polyweave Pvt. Ltd. ("SPL" in short) located at Plot no.401/4,5&7, GIDC, Dholka, Dist.: Ahmedabad*, on job work basis. On 10.5.2016, a huge fire broke out at the factory i.e. *SPL*, and goods which was sent by *the said assessee* for job-work were destroyed in fire. *The said assessee* informed the jurisdictional Range Superintendent and Assistant Commissioner of Central Excise, Division III vide their letter dated 11.5.2016 about the fire accident occurred on 10.5.2016 in the factory of *SPL* and informed that their materials had also burnt in the said fire. The Range officer visited the factory premises and took stock of the situation under a proper panchnama dated 19.5.2016.

3. *The said assessee* filed an application dated 21.4.2017 for remission of duty of Rs.11,58,929/- in respect of the semi-finished/ finished goods and its conversion cost. The said assessee submitted the remission of duty application of Rs.11,58,929/-, for the goods sent by them for job-work to *M/s SPL*. the details of which are as under:

Goods destroyed under fire	Qty (in kgs)	Value (inRs.) @ Rs.99.15 rate per Kg	Conversion cost per Kg	Conversion Value (Rs.)	Total Value	Duty involved (inRs.)
Semi finished goods i.e. <i>PP/HDPE Tape</i>	25.30	2508	15.20	385	2893	362
Finished goods i.e. <i>PP/HDPE unlaminated fabric</i>	31979.46	3170763	27.63	883592	4054356	506794
Finished goods: i.e. <i>PP/HDPE laminated fabric</i>	41127.80	4077821	27.63	1136361	5214182	651773
<b>TOTAL</b>	<b>73132.56</b>			<b>2020338</b>	<b>9271431</b>	<b>1158929</b>

4. The remission of duty under Rule 21 of the Central Excise Rules, 2002 can be granted subject to guidelines contained in Trade Notice No.36/2005 (Basic No.25/2005) issued by the Commissioner of Central Excise, Ahmedabad III. As per the said trade notice, the remission application should be filed along with following documents:-

1. *The copy of First Information Report filed within 24 hours of accident with range office along with panchnama drawn by excise authorities.*
2. *Copy of F.I.R. filed with the police along with the police panchnama, police investigation report, F.S.L. report or other agency report.*
3. *Details of precaution taken by the owner to safeguard goods and his contentions.*
4. *Worksheet giving details of particulars of loss, quantity of goods, variety, tariff clause, value and duty involved.*
5. *Particulars of goods saved or salvaged and how disposed off.*

6. *If the goods were insured against the accidental damage etc. then the copy of relevant portion of surveyor report which gives the details of Cenvat Credit on the input & Central Excise duty on final product whether considered in insurance claim or otherwise.*
7. *Proof of reversal of Cenvat Credit involved on inputs used in manufacture of finished goods destroyed in fire (along with interest, if any) as required under para 2.4, Chapter 18 of CBEC Excise Manual and CBEC Circular No.800/33/2004-CX dated 01/10/2004.*
8. *Declaration that the duty amount sought to be remitted has not been claimed from the insurance company.*

The Range officer had sought for details from the assessee vide letter F.No.AR-IV/Jagdamba/Remission/17-18 dated 28.4.2017, and the said assessee submitted their reply vide letter dated 3.5.2017 as under:

- i. The FIR was filed by SPL on 13.5.2016, i.e. *after 3 days of the accident*. Copies of FIR, police panchnama and FSL report were submitted.
- ii. All precautionary measures to safeguard the goods normally taken in a manufacturing unit was taken by the said assessee and at various places in the factory, equipment like Fire extinguishers were installed.
- iii. Submitted worksheet giving details of particulars of loss, quantity of goods, variety, tariff, value and duty involved.
- iv. Their goods could not be saved or salvaged.
- v. The goods were insured against the accidental damage, however, the Surveyor report is still not received. They have filed an insurance claim of Rs.4,18,59,976/-, but not received any amount against the claim from the insurance company.
- vi. They reversed the CENVAT credit amounting to Rs.2.81.099/- vide RG 23A Pt.II E.No.222/30.6.2016. However, the assessee failed to reverse the CENVAT availed on the raw materials consumed in the semi-finished/ finished goods.
- vii. The insurance claim will be settled by the insurance company as per the rules.

5. The said assessee before filing remission application has not reversed the Cenvat credit of duty involved in the raw materials used in the manufacture of semi-finished/finished goods so destroyed. As per the Circular No.800/33/2004-CX dated 1.10.2004 it has been clarified at Para 3 that *—the credit of the excise duty paid on inputs used for manufacture of the finished goods on which duty has been remitted due to damage or destruction etc., is not permissible and the dues with interest should be recovered*. In the instant case the said assessee failed to reverse the CENVAT credit of duty taken on inputs used in manufacture of the destroyed finished / semi-finished goods, and the said assessee has also failed to pay the interest on the CENVAT credit of duty. Further, the amount of assessable value, duty etc., as mentioned in the remission application did not match the annexure submitted under their reply letter dated 3.5.2017. The said assessee also did not submit the surveyor's report till date.

6. The range office vide numerous letters dated 28.4.2017, 5.6.2017, 12.6.2017, and 19.6.2017 had requested the said assessee to submit the details of raw materials used, finished goods quantity, value of the goods and duty involved on the goods sent to job work and eventually destroyed in fire. They were also requested to submit the proof of payment/reversal of Cenvat credit involved on raw material which were eventually destroyed in fire as required under Rule 3(5C) of the CENVAT Credit Rules, 2004. The

said assessee vide their letter dated 8.8.2017 submitted reply to the department and claimed that 22997.10 kgs of raw material, bought on duty payment, valued at Rs.22,55,286/- involving duty of Rs.2,81,099/-; 73132.56 kgs of semi finished goods alongwith conversion cost valued at Rs.92,71,431/- involving duty of Rs.11,58,929/- ; total duty involved Rs.14,40,028/-, were destroyed in fire , out of which Rs.2,81,099/- of duty was reversed by the said assessee and for the remaining Rs.11,58,929/- remission application is filed. The said assessee did not pay/reverse the duty on the credit of duty amount taken on the inputs used in the manufacture of the finished/semi-finished goods involving duty of Rs.11,58,929/- alongwith interest which is liable to be recovered under Section 11A and Section 11AA of the Central Excise Act, 1944.

7. It appears that the said assessee claimed the duty element from the insurance company as the said assessee has not submitted any documents to prove that they have not claimed the duty amount from the insurance company. Therefore, giving remission of the duty portion will amount to double benefit given to the assessee and that too in a scenario when the Cenvat credit on the raw material consumed in manufacture of the finished goods, has been availed by the said assessee. Further, the application for remission of duty under Rule 21 of CER, 2002 suffers from major infirmities, in view of guidelines contained in Trade Notice No.36/2005 (Basic No.25/2005) issued by the Commissioner of Central Excise, Ahmedabad-III. even after sufficient opportunities and time having been given to the assessee and it also appears that M/s SPL had not taken due precaution to avoid such accidents which could have been avoided.

8. Therefore, it is obligatory that manufacturer of any excisable goods should take precautions to avoid possible loss/damage and Range Office/Division Office should be invariably informed as soon as possible after loss/damage in order to determine actual destruction and salvage of goods. From scrutiny of the documents submitted by M/s SPL, it appears that fire accident arose as a result of their negligence and failure to take adequate precaution, which can be corroborated with the Forensic Science Laboratory Report dated 12.8.2016 wherein the Scientific Officer had opined that the fire occurred due to short circuit on account of increased voltage of electricity, but it cannot be ascertained that the short circuit occurred before the fire accident or due to the fire. Further the Scientific officer of FSL in his incident report dated 18.5.2016 has observed that due to high temperature the Ink and Carbonic Solvent stored in the factory vaporised and the fire ignited on to the Roll rewinding machine and fire caught on to the PP granules and later on spread to various parts of the factory. It thus clearly shows that no proper care or sufficient precautions were taken by them to avoid possible damage/loss. It is obligatory on the part of manufacturer that they should take adequate precautions with utmost care to avoid damage or loss of goods. If they had maintained the temperature in the factory and taken utmost care the damage/loss could have been definitely avoided by them. It thus shows that due to negligence of M/s SPL there was fire accident which engulfed the stock of semi-finished /finished goods.

8.1. It is well established that if an accident can be avoided it is not an accident. In the present case, it can be clearly seen that fire accident arose as result of negligence which cannot be considered as natural cause or unavoidable accident in order to grant remission of duty of excise. In the case of *Dharampal Satyapal V CCE [2004 (167) ELT 291 (CESTAT) SMB*, the remission of duty was denied on the ground that the loss could have been avoided with proper care and the applicant got compensation

from insurance company. The ratio of above decision is applicable to the present case for demanding remission of duty on goods destroyed in fire accident.

A show cause notice No.IV./16-03/MP/17-18 dated 22.10.2020 was issued by Principal Commissioner, Central GST and Excise, Ahmedabad North, to the said assessee showing cause as to why the application for remission of duty of excise amounting to Rs.11,58,929/- should not be rejected under Rule 21 of the Central Excise Rules, 2002.

**Defence Reply:**

8. The said assessee vide their letter dated 10.11.2020 inter-alia made their submissions and contended that:

- i. the remission application filed by them was remission of semi-finished goods sent on job work to M/s Shakti Polyweave Pvt. Ltd (M/s SPL); no remission is required to be sought on the destruction of semi-finished goods as such semi-finished goods are not excisable goods and are not exigible to tax as per the settled legal position;
- ii. the revenue could not prove that there was ill intent on the part of the M/s SPL and they being a principal manufacturer could have avoided such accident; the rejection of the remission application on this ground is ex facie illegal;
- iii. that the duty element was claimed from the insurance company is also false as the notice is on the basis of assumptions and presumptions;
- iv. in order to levy duty of excise, goods are first required to be manufactured, semi-finished goods are not manufactured goods therefore no requirement of remission application; however, they filed an application to avoid any duty demand on goods which are admittedly destroyed in fire;
- v. Relied on case of *JJ Foams Pvt. Ltd - 2015(327)ELT349(Tri.Del)*; *Park Nonwoven P Ltd 2014(308)ELT431(Tri.Del)*; *Urmi Chemicals - 2014(301)ELT356(Tri.Mumbai)*; *M Kumar Udyog P Ltd- 2014(302)ELT385(Tri.Del)*;
- vi. it's a settled legal position that fire in factory of a manufacturer is a situation covered under Rule 21, because fire is in the nature of accident which is not under control of the assessee; it is settled legal position that fire was an accident and not under the control of the manufacturer and therefore remission of duty is required to be allowed;
- vii. Relied on case laws - *Kisansahkari Chini Mills Ltd-2008(222)ELT540(Tri.Del)*; *Next Fashion Creators Pvt. Ltd-2012(280)ELT374(Kar.)*; *Hindustan Zinc Ltd - 2009(233)ELT61Raj.*;
- viii. Remission is required to be allowed if the excisable goods manufactured in factory were destroyed in an accident like fire and the assessee established that there was no malafide or no ill intention by them;
- ix. There is no provision under law to authorise the concerned officer to reject our application for remission of duty beyond the period specified under sub-rule (2) of Rule 21 of Central Excise Rules, 2002, as there is inordinate delay in issue of the notice denying the remission and therefore the notice deserves to be withdrawn;
- x. There is no infirmities in the application of the remission of duty as they have applied as per the guidelines contained in the trade notice no.36/2005; they have submitted details of raw materials, semi-finished goods and details of goods sent to job work which were destroyed in fire, so there is no delay in submission of details and so the remission application cannot be rejected;

- xi. The FSL or the insurance company has not stated anywhere that they have not taken adequate precaution, so the allegation that the high temperature could have been avoided by us is illogical; further short circuit was before or after the fire is totally immaterial as they did not have any control over the short circuit, so it is wrong to suggest that we could have avoided such accident;
- xii. Relied on case laws – *Tej Shoe factory – 2018(363)ELT863(Tri.All): M Kumar Udhyog P Ltd-2014(306)ELT19(All.)*;
- xiii. There is no material on record to suggest that we have not followed safety norms or that we have failed to take proper precaution to avoid fire and the case law of DharampalSatyapal - 2004(167)ELT291(CESTAT) relied is irrelevant as it is not related to accident caused by fire but it was regarding loss to rain;
- xiv. It is also not proved how they could have avoided the accident of fire at the premises of the job worker; the rejection solely on the basis that the job worker has not taken proper precaution is not acceptable in the facts of the present case;
- xv. Relied on case laws- *Shreem Capacitors P Ltd – 2004(166)ELT262(Tri.Mum)*
- xvi. they have not claimed any duty element from the insurance company; the surveyors report is otherwise not required to be considered while granting remission in terms of the procedure laid down in Rule 21 of C.Ex. Rules;

#### Personal Hearing

9. Personal hearings in the matter was fixed on 12.1.2021, 2.2.2020 which was not attended by the said assessee citing that their advocate was pre-occupied with a case before Hon'ble High Court of Gujarat. So later on another date of hearing was fixed on 26.2.2021 and the hearing was represented by Shri Amal P Dave, Advocate, Shri Sudhanshu Bissra, Advocate, and reiterated the submissions made in their defence reply dated 10.11.2020 and relied on case laws - *Sanskriti Packaging P Ltd.: Rini Life Sciences P Ltd.*

#### Discussion and Findings:

10. I have carefully gone through the facts of the case, evidences on record, written as well as the oral submissions made during the personal hearings held. I have also carefully gone through the claim papers submitted by M/s Jagdamba Polymers Ltd..

11. I find that the assessee was locally procuring duty paid inputs like PP/HDPE granules, tapes, un-laminated and laminated fabrics etc., which they sent to M/s SPL for converting these inputs into un-laminated fabrics on job work. These goods were destroyed in the fire incident on 10.5.2016 occurred at the factory of M/s SPL. The said assessee filed an application dated 21.4.2017 for remission of duty of Rs.11,58,929/- under Rule 21 of the Central Excise Rules, 2002, claiming that their goods were destroyed in the fire accident at the factory premises of M/s SPL on 10.5.2016.

12. At the outset, I find that the subject claim is to be decided under Rule 21 of the Central Excise Rules, 2002 for 'remission of duty of excise' involved in the goods which were destroyed in the fire accident amounting to Rs.11,58,929/- . In order to appreciate the issue, it would be relevant to reproduce Section 5 of the Central Excise Act, 1944, and Rule 21 of the Central Excise Rules, 2002 which is as below:

**SECTION 5. Remission of duty on goods found deficient in quantity.** — (1) The Central Government may, by rules made under this section, provide for remission of duty of excise leviable on any excisable goods which due to any natural cause are found to be deficient in quantity.

(2) Any rules made under sub-section (1) may, having regard to the nature of the excisable goods or of processing or of curing thereof, the period of their storage or transit and other relevant considerations, fix the limit or limits of percentage beyond which no such remission shall be allowed :

Provided that different limit or limits of percentage may be fixed for different varieties of the same excisable goods or for different areas or for different seasons.

**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 or writing.

Provided that where such duty does not exceed <sup>1</sup>[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 <sup>1</sup>[ten thousand rupees] but does not exceed <sup>2</sup>[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 <sup>2</sup>[one lakh rupees] but does not exceed <sup>3</sup>[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.

12.1. I find that the jurisdictional Range Superintendent was intimated by the assessee about the fire accident within 24 hours of the fire accident that occurred on 10.5.2016 at the factory of M/s SPL and informed that their goods were also destroyed in the fire. The assessee vide letter dated 8.8.2017 provided the information regarding stock of raw materials, semi-finished goods destroyed in the fire, copies of FIR, Forensic Lab report. The assessee also submitted that 22997.10 kgs of raw material, brought on duty payment, valued at Rs.22,55,286/- involving duty of Rs.2,81,099/-; 73132.56 kgs of semi finished goods alongwith conversion cost valued at Rs.92,71,431/- involving duty of Rs.11,58,929/- total duty involved Rs.14,40,028/- were destroyed in fire , out of which Rs.2,81,099/- of duty was reversed by the said assessee and for the remaining Rs.11,58,929/- remission application is filed.

12.2. I find that the jurisdictional Range Superintendent visited the factory premises for verification on 19.5.2016 and under a proper panchnama dated 19.5.2016 took stock of the situation to ascertain the extent of the damage as claimed by the assessee. The assessee vide letter dated 8.5.2017 provided the information regarding stock of raw materials, semi-finished goods destroyed in the fire, claim filed by them with insurance company, copies of FIR, Forensic Lab report. The assessee also submitted that they have reversed the cenvat credit of Rs.281099/- vide E.No.222/30.6.2016 in RG23A Pt.II involved in the inputs. However, I find that the assessee did not reverse the CENVAT availed on the raw materials consumed in the semi-finished/finished goods destroyed in the fire.

13. The said assessee has contended that remission application filed by them for semi-finished goods was sent on job-work to M/s SPL and no remission is required to be sought on the destruction of semi-finished goods as they are not excisable goods and not exigible to tax; in order to levy duty of excise.



goods are first required to be manufactured. semi-finished goods are not manufactured goods therefore no requirement of remission application. however, they filed an application to avoid any duty demand on goods which are admittedly destroyed in fire. They relied on the case law of *JJ Foams Pvt. Ltd - 2015(327)ELT349(Tri.Del)*; *Park Nonwoven P Ltd - 2014(308)ELT431(Tri.Del)*; *UrmiChemicals - 2014(301)ELT356(Tri.Mumbai)*; *M Kumar Udyog P Ltd- 2014(302)ELT385(Tri.Del)*. The said assessee, during the personal hearing relied on the case laws of *Sanskriti Packaging P Ltd.*; *Rini Life Sciences P Ltd.* In this regard, I find that in para 2 & 3 of the Circular No.800/33/2004-CX dated 1.10.2004, clarifies that - "in the decision of the Tribunal in case of *M/s Mafatlal Industries Ltd. Vs CCE, Ahmedabad {2003 (154) ELT 543 (Tribunal-Mumbai)}* in which the Tribunal while differing from its earlier decision in *Inalsa Case* held that the credit of the duty taken on inputs used in finished goods burnt/ damaged in fire is demandable if the remission of duty on such finished goods is allowed. The Tribunal while coming to said decision has observed,-

"The manufacturer has already been compensated by the insurers for the value of the finished goods which is inclusive of the value of the inputs. The intention of the Modvat scheme is that the duty paid on inputs can be taken credit for paying duty on the finished goods to give relief against the cascading effect of excise duty. When the duty on the finished goods is being remitted, allowing credit of the duty paid on inputs would confer a totally unintended benefit. Allowing such credit when the finished goods suffer no duty would amount to allowing a cash refund as it can be utilized for paying duty on other goods. There is no provision in the Central Excise Rules to either allow refund of duty paid on inputs or to grant remission of such input duty when the finished goods made from such inputs get burnt /destroyed in fire. The Modvat scheme cannot be interpreted in a way to allow such a refund /remission of duty on the inputs which is not provided for in the rules."

3. 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."

13.1 In view of the above, I am bound to follow the above circular issued by the board and the amended rules which clearly stipulates that the credit of excise duty paid on inputs used in manufacture of 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 Departmental circulars are binding on the departmental officers over the case laws cited by the said assessee and hence, the contention by the said assessee does not hold water.

14. They have further contended that it's a settled legal position that fire in factory of a manufacturer is a situation covered under Rule 21, because fire is in the nature of accident which is not under control of the assessee, therefore remission of duty is required to be allowed; that FSI. or insurance company had not stated anywhere that they have not taken adequate precaution and they did not have any control over the fire so it is wrong to suggest that we could have avoided such accident. They relied on *Tej Shoe factory - 2018(363)ELT863(Tri.All)*; *M Kumar Udhog P Ltd- 2014(306)ELT19(All.)*:

*KisansahkariChini Mills Ltd-2008(222)ELT540(Tri.Del); Next Fashion Creators Pvt. Ltd-2012(280)ELT374(Kar)*: that remission is required to be allowed if the excisable goods manufactured in factory were destroyed in an accident like fire and the assessee established that there was no malafide or no ill intention by them: that there is no provision under law to reject the application of remission of duty beyond the period specified under sub-rule(2) of Rule 21 of Central Excise Rules, 2002 and that there is no infirmities in the application as they have applied as per guidelines in TN 36/2005 and have submitted details of goods destroyed in fire accident.

14.1. I find that the case laws of Tej shoe factory-2018(363)ELT863(Tri.All) and M Kumar Udhyog P Ltd – 2014(306), *KisansahkariChini Mills Ltd-2008(222)ELT540(Tri.Del); Next Fashion Creators Pvt. Ltd-2012(280)ELT374(Kar)* are distinguishable on facts for the reason that in those cases there was no finding that the fire was caused due to circumstances beyond the control of the assessee and therefore remission was permissible as the goods were destroyed due to unavoidable circumstances. In the present case, the department's stand is that the fire was avoidable which is corroborated by the report dated 18.5.2016 of the Scientific officer, FSL who observed that due to high temperature of the raw materials like Ink and carbonic solvent was vapourised and fire ignited on to the roll re-winding machine which eventually spread to the PP granules and engulfed the whole factory, which happened due to the negligence of the said assessee. In these cases the authority had upheld the impugned orders of rejection of claim for remission and the consequent duty demand and rejecting the appeals. I also find that the said assessee did not follow the procedure laid down under Rule 4(5)(a) of CENVAT Credit Rules, 2004, as the goods didnot come back from the job workers premises, M/s SPL, within 180 days. Further, they also failed to reverse the CENVAT credit under Rule 3(5c) of the CENVAT Credit Rules, 2004, hence, they are not eligible for remission of duty under Rule 21 of Central Excise Rules, 2002.

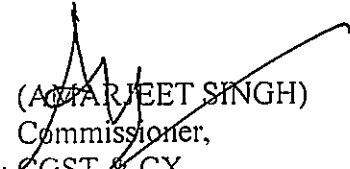
15. The said assessee further contended that – there is no material on record to suggest that they have not followed safety norms and have failed to take proper precaution to avoid fire and the case of *DharampalSatyapal – 2004(167)ELT291(CESTAT)* is irrelevant as it is not related to accident caused by fire, but is loss due to rain; they have not claimed any duty element from the insurance company and the surveyors report is otherwise not required to be considered while granting remission in terms of the procedure laid down in Rule 21 of C.Ex. Rules. I find that the said assessee had not taken due precaution to avoid any possible loss/damage to the goods due to any natural calamities such as rain, fire etc.. In the case of *DharampalSatyapal* I find that the cause alleged by the appellants is that, the rain water due to heavy rain entered in the factory which caused damage to the goods. But this cause could be avoided by taking proper care and precautions. It was their duty to store the goods at a safe place. They cannot be permitted to take advantage of their own negligence of having failed to remove the goods at the time of rain to a safer place. Here only the circumstance under which the damage to the goods have changed as in both the cases the appellants did not take proper care and precautions to store their goods in safe place and were negligent in their actions. Had the said assessee made a regular check of their premises especially their electricity wirings, the fire could have been avoided, because the FSL in their report had opined that the cause of fire was due to increased voltage of electricity culminating into short circuit and eventually fire. Further, raw materials such as Ink and carbonic solvent stored in the factory turned the fire into a massive proportion. Thus due to the negligence of the said assessee the fire accident engulfed the goods. Therefore, the remission application is liable for rejection. Further, I find that the argument of the said assessee that the surveyors report is otherwise not required to be considered while

granting remission in terms of the procedure laid down in Rule 21 of C.Ex. Rules is misplaced in as much as it is well settled law that a Surveyor's report has significant and evidentiary value unless it is proved otherwise, which the said assessee has failed to do in the instant case. This view finds support from the judgment in the case of *D.N.Badoni Vs. Oriental Insurance Co.Ltd, 1 (2012) CPJ 272 (NC)* and in *United India Insurance Co. Ltd., &Ors. Vs. RoshanLal Oil Mills Ltd. &Ors., (2000) 10 SCC 19*. Therefore, the contention of the said assessee is baseless with regard that the Surveyors report is not required to be considered while granting remission of duty under the Rule 21 of C.Ex. Rules.

16. In view of the facts discussed above, I pass the following order:

**ORDER**

In accordance with the powers vested in me under Rule 21 of the Central Excise Rule, 2002 read with Section 5 of the Central Excise Act, 1944, I reject the request of the said assessee for remission of duty of Rs.11,58,929/- (Rupees eleven lacs fifty eight thousand nine hundred and twenty nine only).

  
(ANURAJ SINGH)  
Commissioner,  
CGST & CX,  
Ahmedabad North.

By RPAD/ Hand delivery

M/s Jagdamba Polymers Ltd.,  
Plot No.101, GIDC, Dholka,  
Dist.: Ahmedabad

F.No.IV/19-03/MP/17-18

Date: 05.04.2021

Copy to:

1. The Principal Chief Commissioner, CGST & CX, Ahmedabad Zone.
2. The Superintendent, O&A, CGST & CX, Ahmedabad North.
3. The Deputy Commissioner, CGST & CX, Division V, Ahmedabad North.
4. The Range Superintendent, AR-II, Division V, Ahmedabad North.
5. Guard File.

