


<p>आयुक्तकाकार्यालय केंद्रीयवस्तुएवंसेवाकरएवंउत्पादशुल्क , 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>
<p>फोननंबर./ PHONE No.: 079-2754 4599 फैक्स/ FAX : 079-2754 4463 E-mail:-<a href="mailto:gaalimeg3bad2@gmail.com">gaalimeg3bad2@gmail.com</a></p>		

निबन्धित पावती डाक द्वारा /By REGISTERED POST AD

फा .सं/.IV/16-86/MP/17-18

आदेश की तारीख / Date of Order : 20.4.2021

जारी करने की तारीख / Date of Issue : 20.4.2021

द्वारा पारित/Passed by -

अमरजीत सिंह / AMARJEET SINGH  
आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-092-2021-22

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

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2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क , उत्पाद शुल्क एवं सेवाकर अपीलिय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलिय 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 या न्याय की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

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 .इ.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 की 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) जाएगी की संलग्न एक प्रमाणित प्रति हो। (

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 I, 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./16-86/MP/17 dated 7.10.2020 issued to M/s Shakti Polyweave Pvt. Ltd., (SPL 100% EOU), Unit III, 100% EOU, Survey No.767&770 Simej Ruppadh Road, Opp. 66KVA Sub-station, Dholka, Ahmedabad.

**Brief facts of the case:**

M/s Shakti Polyweave Pvt. Ltd. Unit II. (SPL. 100% EOU) located at Survey No.769 & 770. Simej Ruggadh Road, Opp. 66KVA Sub-station, Simej. Dholka, Dist.: Ahmedabad (*hereinafter referred to as "the said assessee"*) having Central Excise Registration No.AACCS1107/MEM003 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, procured inputs like HDPE granules against CT-3 certificate and also certain PP Granules against a Procurement Certificate and were converting these inputs procured duty free into unlaminated fabrics at their factory and then were delivering it to the DTA factory i.e. M/s Shakti Polyweave Pvt. Ltd. ("SPL" *in short*) located at Plot no.401/4,5&7, GIDC, Dholka, Dist.: Ahmedabad, for rewinding process on job work basis. On 10.5.2016, a huge fire broke out at the DTA factory i.e. SPL, and unlaminated fabrics which was sent by *the said assessee* for job-work was 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 that occurred on 10.5.2016 in the factory of SPL and informed that their materials had also burnt in the said fire.

3. The *said assessee* filed an application dated 18.4.2017 for remission of duty which was foregone on the inputs imported under CT-3 and Procurement Certificate and also the duty in respect to the goods i.e. *Unlaminated fabrics*, produced out of such inputs procured under CT-3 and Procurement Certificate for Rs.36,16,049/-. The said assessee submitted the remission of duty application for the goods sent by them for job-work to SPL, the details of which are as under:

Goods destroyed under fire		Qty (in kgs)	Value (in Rs.)	Duty involved (in Rs.)
Semi-finished goods	Customs duty- under procurement certificate	19676.600	12854938.80	2772245
	Excise duty – Procured under CT-3	7562.800	619166.44	77396
	Value addition- Conversion cost		6131267.00	766408
	TOTAL	27239.400	19605372.24	3616049

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. The Range officer had sought for details from the assessee vide letter F.No.AR-IV/Shakti(EOU)/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. No goods could 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.2,28,43,103/-, but not received any amount against the claim from the insurance company.
- vi. They submitted that the destroyed material was procured under CT-3 and procurement certificate and hence CENVAT was not taken, therefore not reversed. The assessee has not reversed the CENVAT duty payable on the raw-material consumed in semi-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 goods so destroyed. 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, 19.6.2017 and 10.8.2017 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 196676.600 kgs of semi-finished goods procured under Procurement certificate valued at Rs.1,28,54,938/- involving duty of Rs.27,72,245/- and 7562.800 kgs semi-finished goods procured under CT-3 alongwith conversion cost of Rs.67,50,443/- involving duty of Rs.8,43,804/-, total duty involved Rs.36.16,049/- were destroyed in fire for which remission application is filed. The said assessee did not pay/reverse the duty, alongwith interest which is liable to be recovered under Section 11A and Section 11AA of the Central Excise Act, 1944.

7. It seems that the duty element is being claimed by the said assessee from the insurance company, as the said assessee has not submitted any documents showing 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, or the raw material consumed in the finished goods, has been availed by the said assessee.

8. A show cause notice No.IV./16-23/MP/17-18 dated 7.10.2020 was issued by Principal Commissioner, Central GST and Excise, Ahmedabad North, to the said assessee asking them to show cause as to why the application for remission of duty of excise amounting to Rs.36,16,049/- should not be rejected under Rule 21 of the Central Excise Rules, 2002.

**Defence Reply:**

9. The said assessee vide their letter dated 2.11.2020 inter-alia made their submissions and contended that:

- i. the remission application was filed as an abundant caution in view of the litigation initiated by the department; no remission is required to be sought on the destruction of semi-finished goods as such goods are not excisable goods and not exigible to tax, so the remission application needs to be allowed;
- ii. the claim that they have not reversed the cenvat credit of duty involved in the raw material used in the semi-finished goods is untenable because the raw materials were imported without payment of duty against CT-3 certificates and procurement certificates and no excise duty or customs duty was paid;
- iii. no cenvat credit of duty availed on the raw materials used in the manufacture of semi-finished goods destroyed in the fire as the raw materials were procured under CT3 and procurement certificate; so wrongly availed and utilised credit is to be recovered with interest under Rule 14 and 15 of Cenvat credit Rules, is ex-facie incorrect and erroneous;
- iv. the raw materials were imported without payment of duty and the duty element was claimed from the insurance company is false;
- v. remission application cannot be rejected on the ground that cenvat credit availed on raw materials was not reversed when there were no cenvatable inputs in question; the semi-finished goods were destroyed by natural cause by fire and unavoidable accident;
- vi. the unlaminated fabrics sent for job work by our EOU unit have been admittedly destroyed in fire in the DTA unit, then the duty leviable on such goods destroyed in fire is required to be remitted under Rule 21 of Central Excise Rules, 2002;
- vii. no law to reject the remission application beyond the period specified under sub-rule(2) of Rule 21 of Central Excise Rule. 2002. As the notice issued on 7.10.2020 for the remission application filed on 21.4.2017 and sub-rule 2 of Rule 21 laid down that application of remission duty cannot be left undecided for more than 3 months, so notice deserves to be withdrawn;
- viii. all necessary documents, copy of FIR, police panchnama, worksheet of particular of loss of goods, value duty submitted; not disputed with regards to the documents so remission to be allowed;
- ix. semi-finished goods destroyed, settled legal position that fire in factory covered under Rule 21 as it is nature of accident not under control of the assessee;
- x. Relied on case laws: *Kisan Sahkari Chini mills Ltd-2008(222)ELT540(Tri.Del)*; *UP State sugar corporation Ltd-2014(302)ELT249(Tri.Del)*; *Hindustan Zinc Ltd-2009(233)ELT61(Raj.)*;
- xi. Settled law that granting remission is not discretion of the authority, but remission to be allowed if excisable goods destroyed in an accident of fire and nothing established to prove malafide or ill-design in respect of the fire; there is no dispute raised by revenue that accidental fire occurred and no ill intention or ill design by them;

- xii. Semi-finished goods are not manufactured goods so no requirement to file remission application but filed the remission application to avoid duty demand on the goods which was admittedly destroyed in fire;
- xiii. Relied on case laws : *JJ Foams P Ltd-2015(327)ELT349(Tri.Del)*; *Park Nonwoven P Ltd-2014(308)ELT431(Tri.Del)*; *Urmi Chemicals - 2014(301)ELT356(Tri.Mum)*;
- xiv. The annexure supplied by us under letter dated 3.5.2017 provided a table showing the value of the semi-finished goods brought against CT-3 certificates value shown as Rs.846202 for 7562.800 kgs and the duty as Rs.105775/-; similarly value of goods brought against procurement certificate shown as Rs.18759170/- for 196676.600 kgs and duty as Rs.3510274/-, thus total duty on goods lost in fire accident was shown as Rs.3616049/- and remission application filed for Rs.3616049/- so no mismatch in both amounts;
- xv. No amount claimed from insurance company nor any amount received from insurance company; insurance surveyor has no bearing on the issues raised in the present case because revenue has not raised any dispute about quantities of semi-finished goods destroyed in fire on 10.5.2016 nor its value, so surveyor's report is immaterial for considering whether remission under Rule 21 is admissible or not; Surveyor's report not required to be considered while granting remission in terms of provisions laid down under Rule 21 of Central Excise Rules;

#### Personal Hearing

10. Personal hearings in the matter was fixed on 12.1.2021 and 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 Shri Jatan Surana, Director. They reiterated the submissions made in their defence reply dated 2.11.2020.

#### Discussion and Findings:

11. 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 Shakti Polyweave Pvt. Ltd. (unit III 100% EOU).

12. I find that the said assessee was procuring inputs like HDPE granules using CT-3 certificate; PP granules using Procurement Certificate and were manufacturing unlaminated fabrics at their factory premises. They further sent these goods to their DTA factory i.e. *M/s Shakti Polyweave Pvt. Ltd.* ("SPL" in short) located at Plot no.401/4,5&7. GIDC. Dholka. Dist.: Ahmedabad, for rewinding process on job work basis. The said assessee filed a remission application dated 18.4.2017 for remission of duty of Rs.3616049/-, as on 10.5.2016 fire broke out at their DTA factory, M/s SPL and the goods unlaminated fabrics sent for job work was destroyed in fire.

13. 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.3616049/-. In order to appreciate the issue, it would be relevant to reproduce

the relevant 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.*

14. I find that the jurisdictional Range Superintendent was not 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. The assessee vide letter dated 8.8.2017 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 196676.600 kgs of semi-finished goods procured under Procurement certificate valued at Rs.1,28,54,938/- involving duty of Rs.27,72,245/- and 7562.800 kgs semi-finished goods procured under CT-3 alongwith conversion cost of Rs.67,50,443/- involving duty of Rs.8,43,804/-, total duty involved Rs.36,16,049/- were destroyed in fire for which remission application is filed. The said assessee did not pay/reverse the duty, alongwith interest.

15. The said assessee had contended that no remission is required to be sought on destruction of semi-finished goods as the goods are not excisable goods and not exigible to tax. Further they contended that goods destroyed in the fire were semi-finished goods hence, no duty liability on semi-finished goods as they are not manufactured goods and so no requirement of filing remission of duty application. Further they contended that it is a settled law that granting remission is not discretion of the authority but remission is to be allowed if excisable goods destroyed in accident of fire and if nothing established to prove malafide or ill-design in respect of fire. In support of their contention they relied on various case laws - *JJ Foams Pvt. Ltd -2015(327)ELT349(Tri.Del)*; *Park Nonwoven P Ltd- 2014(308)ELT431(Tri.Del)*; *Urmi Chemicals- 2014(301)ELT356(Tri-Mum)*. 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 Mafatal 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 *Mafatal 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.”

15.1 In view of the above, I am bound to follow the above circular issued by the board 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.

16. The assessee further contended that they have not reversed cenvat credit of raw materials used in semi-finished goods and no cenvat credit of duty availed on raw materials used in manufacture of semi-finished goods destroyed in fire because the raw materials were imported without payment of duty against CT3 certificates and procurement certificates and no duty has been paid; the duty element was claimed from the insurance company is also false. They 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. They relied on *Kisan sahkari Chini 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: 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; no amount claimed from the insurance company nor any amount received from the insurance company; insurance surveyor has no bearing on the issues of this case because revenue has not raised any dispute about quantities of semi-finished goods destroyed in fire nor its value, so surveyor's report is immaterial and Rule 21 does not mandate it.

16.1. I find that the said assessee had sent the goods to their job worker, M/s Shakti Polyweave Pvt. Ltd., (M/s SPL, DTA factory) without following the procedures laid down for goods sent for job work. Furthermore, M/s SPL did not inform the concerned range office as soon as possible in order to determine the actual destruction and salvage of the goods. The fire incident was a result of the negligence of their job worker who failed to take adequate precaution which is corroborated with the Forensic Science Laboratory's report dated 12.8.2016, wherein they had opined that the fire occurred due to short circuit on account of increased voltage of electricity, for which the manufacture did not have in place any device to stop such occurrence, but it cannot be ascertained that the short circuit occurred before the fire accident or due to the fire. In view of the above, the contention of the said assessee that fire accident was not under their control is totally baseless as the FSL had categorically concluded that the fire was due to short circuit on account of increased voltage of electricity and the DTA factory had not taken any steps to counter it by installing any circuit breakers to cut the electricity on such eventuality. Further I find that Scientific officer of FSI, in his report dated 18.5.2016 has observed that due to high temperature of the raw materials like Ink and carbonic solvent vapourised and fire ignited on to the roll re-winding machine which eventually spread to the PP granules and engulfed the whole factory. This shows that they failed to take proper care or sufficient precautions to avoid any accident and due to negligence of the said assessee the fire took place in the factory and hence, the remission application filed by the said assessee needs to be rejected.


17. 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 have failed to do so 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. Roshan Lal 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. The said assessee relied on the case law of *Kisan sahkari Chini Mills Ltd-2008(222)ELT540(Tri.Del)*; *Next Fashion Creators Pvt. Ltd-2012(280)ELT374(Kar)*. I find that the cases 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 and as detailed above the fire occurred 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.

18. 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.. But this cause could have been 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 secure the goods from the fire which was avoidable and as detailed above, the fire occurred due to the negligence of the said assessee. Had it been that, the said assessee had made a regularly check of the 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 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.

19. 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.36,16,049/- (Rupees thirty six lacs sixteen thousand forty nine only).

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

By RPAD/ Hand delivery

M/s Shakti Polyweave Pvt. Ltd., (SPL 100% EOU), Unit III, 100% EOU,  
Survey No.767&770 Simej Rupgadh Road.  
Opp. 66KVA Sub-station, Dholka, Ahmedabad.

F.No. IV/16-86/MP/17-18

Date:20.4.2021

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.