आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009

फ़ोन नंबर./ PHONE No.: 079-2754 4599 फैक्स/ FAX : 079-2754 4463 E-mail:- *oaahmedabad2@gmail.com*

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. V.38/15-01/Tech-Rem/OA/2020

आदेश की तारीख़ / Date of Order : 20.1.2021

जारी करने की तारीख़ / Date of Issue : 20.1.2021

द्वारा पारित/Passed by -

अमरजीत सिंह / AMARJEET SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-029-2020-21

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, मेघाणीनगर ,न्यु मेन्टल हॉस्पीटल कम्पाउन्ड ,अहमदाबाद -380016 को 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 ।

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 3 के 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(। 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 हैंचार प्रतियों में दाखिल की , उसकी भी उतनी ही प्रतियाँ ,जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से क) संलगन की जाएंगीम 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 6 के 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.

विषयः -कारण बताओ सूचनाः

Subject- Proceedings initiated vide Show Cause Notices bearing No. **V. 38/15-1/Tech-Rem/O&A/2020** dated **13.1.2020** issued to M/s Adi Finechem Ltd., (now known as M/s FairChem Speciality Ltd.) 253/P, Chekhla, Sanand-Kadi Road, Taluka Sanand, Dist.:Ahmedabad-382110 .

Brief facts of the case:

M/s Adi Finechem Ltd., (now known as M/s FairChem Speciality Ltd.) 253/P, Chekhla, Sanand-Kadi Road, Taluka Sanand, Dist.:Ahmedabad-382110 (for the sake of brevity hereinafter referred to as "*the said assessee*") holding Central Excise registration No.AAACH5113QXM002 was engaged in processing of fatty acid falling under Chapter heading No.3823 of the First Schedule to the CETA, 1985 and availing Cenvat Credit facility under Cenvat Credit Rules, 2004.

2. The said assessee had initially filed application for remission of duty of the excisable goods lost due to fire and water on 25.10.2013 under Rule 21 of the Central Excise Rules, 2002, for the incident occurred on 27.11.2012. *The said assessee*, however, withdrew the application vide letter dated 3.8.2015 on the account of their understanding that "Goods" as per Rule 21 did not include the semi-finished goods. Thereafter, *the said assessee* filed a revised remission application vide their letter dated 12.12.2016 in view of Circular No.907/27/2009-CX dated 7.12.2009 as per table below.

Sr. No	Stock/goods for which remission claimed	Qty.(Kgs)	Remission amount (Rs.)
1.	In process stock(In prod. Equipments)	57732	2,54,127
2.1	Raw material in barrels	481	56,202
2.2	Semi-finished goods in barrels	98663	5,12,724
3.	Semi-finished goods in tanks	18573	89,493
4.	HDPE barrels, MS barrels and plastic	695	73,603
		Total	9,86,149

3. The jurisdictional Excise authorities were not informed about the incident within 24 hours, by the assesse so they were requested to comply all the points as laid down in the Trade notice No.36/2005. However, it was noticed that the said assesse had not complied with the conditions in as much as they did not submit the details of :

i. Details of precaution taken by the owner to safeguard goods and his contentions.

ii. Particulars of goods saved or salvaged and how disposed of.

iii. Declaration not provided to the effect that duty amount to be remitted has not been claimed from the insurance company.

The said assesse failed to specify the amount of remission claimed and also failed to submit detailed worksheet of duty remission sought and the credit reversed. The assessee also did not submit the information as called for by the division office vide letter AR-1/Div-III/ADI-Remission/2017-18 dated 10.7.2018, 5.39.2018, 1.10.2018 and 28.3.2019.

4. As per Rule 21 of the CER, 2002, and Boards Circular No.907/27/2009-CX dated 7.12.2009, the remission is applicable on finished goods or on those semi-finished goods where goods are in work-in-

progress stage and can be considered as manufactured goods. Therefore, the remission for the items mentioned at sr.no.1, 2.1, 3 & 4 cannot be allowed. For the item at sr.no. 2.2 of the table the surveyor considered the average rate for the claimed goods and duties have also been claimed by the said assesse from the insurance company, hence, the remission is ineligible.

5. A show cause notice No.IV/15-01/Tech-Rem/O&A/2020 dated 13.1.2020 was issued by Commissioner, Central GST and Excise, Ahmedabad North, to the said assesse showing cause as to why the application for remission of duty of excise should not be rejected under Rule 21 of the Central Excise Rules, 2002.

Personal Hearing and Defence Reply:

6. The said assessee was accorded personal hearing on 16.3.2020/ 23.3.2020 which was not attended by them. Later on another date for personal hearing was granted on 20.7.2020, which was not attended by the said assessee due to COVID-19 but they vide their letter dated 20.7.2020 interalia submitted that:

i. the fire accident occurred on their premises on 27.11.2012, which was informed to the Range Superintendent vide their letter dated 29.11.2012;

ii. the place was visited by the Range officer and panchnama dated 3.12.202 drawn wherein loss of materials was valued at Rs.10519509/-; they applied for remission of duty u/r 21 of Central Excise Rules, 2002 on 25.10.2013 for remission of duty of Rs,986149/-;

iii. they had debited an amount of Rs.986149/- vide RG23A Pt-II on E.No.2037 towards CENVAT availed on raw material and semi-finished goods;

iv. show cause notice no.V.38/15-133/OA/2013 dated 25.11.2013 demanding C.Ex. duty payable on the finished goods lost in the fire under Section 11A(4) ; recovery of interest under Section 11AA ; recovery of Cenvat credit under Rule 14 of CENVAT credit Rules, 2004 alongwith interest under Rule 14 of CENVAT Credit Rules, 2004 and penalty under Section 11AC(1)(a) and Rule 15(2) of Cenvat Credit Rules, 2004 r/w Section 11AC was adjudicated vide OIO No.6/ADC/2015/DSN dated 13.8.2015;

v. vide OIA no.AHM-EXCUS-002-APP-098-16-17 dated 28.2.2017 the case was remanded back to the original adjudicating authority on the grounds that the case was premature to come to a conclusion till the application of remission of duty is finalised by the higher forum;

vi. they have applied on 21.12.2019 for relief under Amnesty Scheme called Sabka Vishwas (Legacy Dispute Resolution)Scheme, 2019 and had received discharge certificate in Form SVLDRS-4 on 29.1.2020, so the entire show cause notice gets closed due to receipt of Form SVLDRS-4;

vii. show cause notice no.V.38/15-1/Tech-Rem/OA/2020 dated 13.1.2020 was received in the same matter for which we have received discharge certificate in Form SVLDRS-4 ;

viii. as per Section 129 of Finance (no.2) Act, 2019 in relation to SVLDRS, 2019, once any subject matter covered has been declared under this scheme, then no matter covered under such application shall be reopened under any indirect tax enactment;

ix. the notice dated 13.1.2020 is asking why application of remission of duty under Rule 21 of Central Excise Rules, 2002, should be rejected, the subject matter covered is already

discharged under SVLDRS and therefore the said SCN is not having any valid existence by virtue of Section 129(1) of Finance Act, 2019;

x. the show cause notice may be dropped.

6.1 The said assessee vide their letter dated 18.8.2020 further submitted that as their case is squarely covered under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, there remains no room for discussion in personal hearing, therefore, they requested to pass the order based on their reply submitted on 20.7.2020, without providing them with a personal hearing.

Discussion and Findings:

7. I have carefully gone through the facts of the case, evidences on record, written as well as the oral submission submitted by them. I have also carefully gone through the claim papers submitted by M/s Adi Finechem Ltd., (now known as M/s Fair Chem Speciality Ltd.)

8. I find that the assesse was engaged in processing of the excisable goods viz. *fatty acid,* falling under Chapter 38 of the First Schedule of the Central Excise Tariff Act, 1985. The *assessee* was also availing the facility of CENVAT credit of duty paid on the inputs and capital goods under CENVAT Credit Rules, 2004. The assessee filed application of remission of Excise duty amounting of Rs.9,86,149/- under Rule 21 of the Central Excise Rules, 2002, on finished goods claiming that their finished goods were destroyed in the fire accident on 27.11.2012.

9. A hearing in the matter was given by the Commissioner on 16.3.2020/ 23.3.2020 which was not attended by them. Later on another date for personal hearing was granted on 20.7.2020, which was not attended by the said assessee due to lockdown on account of COVID-19 but they vide their letter dated 20.7.2020 submitted their submissions. Further the said assessee vide their letter dated 18.8.2020 submitted that as their case is squarely covered under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, there remains no room of discussion in personal hearing, therefore, requested to pass the order based on their reply submitted on 20.7.2020, and they waived off the personal hearing. The assessee in their submissions has contended that show cause notice no.V.38/15-133/OA/2013 dated 25.11.2013 adjudicated vide OIO No.6/ADC/2015/DSN dated 13.8.2015 was appealed by them and Commissioner (Appeals) vide OIA no.AHM-EXCUS-002-APP-098-16-17 dated 28.2.2017 had remanded the case to the original authority on the grounds that as it was premature to come to a conclusion till the application of remission of duty is finalised by the higher forum. Further the assessee applied on 21.12.2019 for relief under Amnesty Scheme called Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, against the Show cause notice dated 25.11.2013, before it could be re-adjudicated by the adjudicating authority being remanded by the Commissioner (A). The said assessee received the discharge certificate in Form SVLDRS-4 on 29.1.2020, so the entire show cause notice dated 25.11.2013 was closed due to receipt of Form SVLDRS-4. Now the decision of the remission of duty wherein a notice was given for rejecting the remission application filed by the assessee remains to the decided.

10. The relevant extract of Section 129 of Finance (No.2) Act, 2019 in relation to Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 is as under:

"129. (1) Every discharge certificate issued under section 126 with respect to the amount payable under this Scheme shall be conclusive as to the matter and time period stated therein, and—

(a) the declarant shall not be liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration;
(b) the declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration;
(c) no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment."

So as per Section 129 of Finance (No.2) Act, 2019 in relation to Sabka Vishwas (Legacy Dispute Resolution) Scheme (SVLDRS) 2019, if any assessee opts under this scheme and a discharge certificate is issued under Section 126 with respect to the amount payable under this scheme then the case is conclusive as to the matter and time period stated therein and as per Section 129(1)(c) no matter and time period covered by such declaration shall be re-opened in any other proceeding under the indirect tax enactment. I find that in the present case the assessee filed their application in Form SVLDRS 1 under SVLDR Scheme, 2019 under the category Litigation and sub-category SCN involving duty pendi against the Show cause notice No. V.38/15-133/OA/2013 dated 25.11.2013 after the Order-in-Original No.6/ADC/2015/DSN dated 13.8.2015 was remanded back by the Commissioner (Appeals), for fresh decision after the application of remission of duty is finalised by the higher forum. The assessee was issued with Discharge certificate dated 29.1.2020 for full and final settlement of tax dues under Section 127 of the Finance Act, 2019 r/w Rule 9 of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. In view of the above, I find that as the said assessee has accepted the liability of Central Excise duty demanded on the finished goods lost in fire and has paid the duties as full and final settlement of tax dues and so the show cause notice for demand on the finished goods is settled under SVLDRS,2019, but decision of rejection of remission application filed by the said assessee is pending and is to be decided. In view of the discussions made above, I am of the view that the decision in this matter should be taken on the basis of the merits of the case even when the tax payer has accepted his liability on the finished go destroyed in the fire.

11. 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 finished goods which were destroyed in the fire accident amounting to Rs.986149/- . In order to appreciate the issue, it would be relevant to reproduce the 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 [1][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 [1][ten thousand rupees] but does not exceed [2][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 [2][one lakh rupees] but does not exceed [3][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. I find that the jurisdictional Range Superintendent was not intimated by the said assesse about the incident within 24 hours and so they were requested to comply all the points as laid down in the Trade Notice No.36/2005 (Basic No.25/2005) dated 15.4.2005. I find that the said assesse has not complied with the condition no.3, 4 and 5 of the said Trade notice in a specific manner as mentioned below and therefore, the remission application remains incomplete.

i. Details of precaution taken by the owner to safeguard goods and his contentions. (condition no.3)

ii. Particulars of goods saved or salvaged and how disposed of. (condition no.4)

iii. Declaration not provided to the effect that duty amount to be remitted has not been claimed from the insurance company. (condition no.5)

I find that the remission application did not specify the amount of remission amount claimed and they failed to submit detailed worksheet of duty remission sought and the credit reversed. The said assessee failed to submit the information called for by division office vide letters No. AR-1/Div-III/ADI-Remission/2017-18 dated 10.7.2018, 5.9.2018, 1.10.2018, 13.11.2018 and 28.3.2019..

13. The jurisdictional Range Superintendent was intimated by the assesse vide their letter dated 28.11.2012 about the fire accident which happened on 27.11.2012. In pursuance to that the JRS visited the factory premises for verification on 3.12.2012 and panchnama dated 3.12.2012 was drawn to ascertain the extent of the damage as claimed by the assesse. The assesse vide letter dated 25.10.2013 provided the information regarding loss of stock of raw materials, semi-finished goods, barrels etc., destroyed in the fire, alongwith copy of panchnama dated 3.12.2012; police FIR dated 27.11.2012 of Sanand Police station; Fire report dated 10.12.2012 issued by Ahmedabad Municipal Corporation; Certificates dated 29.11.2012 issued by Kalol Nagarpalika, Dist.: Gandhinagar and Sanand Nagarpalika, Dist.: Ahmedabad. The assessee vide their letter dated 12.3.2013 informed the Superintendent that they have reversed the cenvat credit of Rs.986149/- vide E.No.2037/9.3.2013 in RG23A Pt.II involved in the inputs lying in stock.

14. Further, on going through the Surveyors report dated 30.9.2013 submitted by M/s A M Patel Insurance surveryors and loss assessors Pvt. Ltd., I find that the Surveyor in his report has nowhere mentioned whether the Central Excise duty on the finished goods was considered in assessment of loss. I also find that the surveyor has only submitted the Final survey report assessing the loss or damage of the goods lost due to the fire/water but failed to mention the amount of insurance settled by the company and

whether such settled amount of insurance included the Central Excise duty or otherwise. Therefore, I am of the view that the insurance claim was settled alongwith the Central Excise duty.

15. Regarding the Forensic Science Laboratory's report, I find that the Forensic officer in his report No.FSL/TPN/13/P/49 dated 15.5.2013 has given their findings in respect of five sealed bottle samples as under:

i. that Samples marked as "A, B and E" are vegetable based liquids with Flash Point of 204 Degree Celsius, 206 Degree Celsius and 204 Degree Celsius respectively.

ii. that Sample marked as "C" was Petroleum Hydro-carbon liquid with Flash Point of 180 Degree Celsius.

iii. that Sample marked as "D" was containing Monosaccharide's and Di-saccharide's (Sugar).

However, I find that the above report was silent about the cause of fire.

15.1. I find that Shri A. Vankateshwaran, Senior Manager, Commercial, M/s. Adi Finechem Ltd., in his statement dated 23.10.13 recorded under Section-14 of the Central Excise Act, 1944 has stated that the actual cause of fire was due to leakage of Thermic Fluid (it is highly inflammable) from the Thermic Fluid Pipeline. Further in his statement he has submitted that their company usually takes utmost care and possible precautionary measures to avoid any accident however, the fire accident was suddenly occurred which could not be prevented.

15.2. In view of the above, I find that the said assessee had not taken any due precautions to prevent any fire, as the fire was caused due to leakage of Thermic Fluid, which is highly inflammable, from the Thermic Fluid pipeline, and therefore it seems that the fire was not caused naturally, but was avoidable accident, but it is established that in the present case the incident of fire was on account of the negligence which could have been avoided and hence, cannot be termed as accident and therefore, the remission of duty cannot be granted as sought by them.

15.3. Further I find that Shri A. Vankateshwaran, Senior Manager, Commercial, M/s. Adi Finechem Ltd., in his statement dated 23.10.13 recorded under Section-14 of the Central Excise Act, 1944 has stated that though it is mentioned as finished goods but it was semi-finished goods which required some process like Dilution, Mixing in order to satisfy the customers requirement. However, I find that as per Rule 21 of CER, 2002 and board's Circular No.907/27/2009-CX dated 7.12.2009, the remission is applicable on finished goods or on those semi-finished goods where if the work in progress has reached the stage when it can be considered as manufactured goods. I find that in his statement dated 23.10.2013 recorded under Section 14 of CEA, 1944, Shri A Vankateshwaran, Senior Manager (Commercial) of the said assesse has categorically confirmed that though it is mentioned as 'finished goods' but it was semi-finished goods which required some process like dilution, Mixing, in order to satisfy the customer requirement. Further he confirmed that no finished goods was destroyed in the fire accident and on account of fire acceded there was no salvage of finished goods or raw materials or semi-finished goods.

15.4. I find that the said assesse has disclosed the cause of fire accident as leakage of Thermic Fluid from the Thermic Fluid Pipeline. The said assessee were fully aware that thermic fluid pipeline are required to be maintained from time to time, and they were also fully aware that thermic fluid easily

catches fire and is highly inflammable. Had the Thermic Fluid Pipeline been maintained properly the fire accident would not have occurred. It thus clearly shows that no proper care or sufficient precautions were taken by them to avoid possible damage/loss. It is obligatory on part of manufacturer that they should take adequate precautions with utmost care to avoid damage or loss of goods. If they had maintained thermic fluid pipeline properly with utmost care the damage/loss could have been definitely avoided by them. It thus shows that due to negligence of the said assessee there was fire accident which engulfed the stock of finished goods.

16. 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 arisen as result of negligence which cannot be considered as natural cause or unavoidable accident in order to grant remission of duty of excise. . In this regard, I rely on the case law of *Dharampal Satyapal V CCE [2004 (167) ELT 291 (CESTAT) SMB*, the remission of duty was denied on the ground that "*their claim for remission of duty involved on the damaged goods of Rs.3,78,400/- has been rightly disallowed under Rule 21 of Central Excise Rules, as under the rule remission can be allowed only if the goods had been lost destroyed by natural causes or by unavoidable accidents or are claimed by the manufacturer as unfit for human consumption or for marketing. Here 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. Moreover, no evidence has been adduced by them to prove that the goods had become unfit for human consumption. No certificate of any competent authority in this regard has been place on record by the appellants. If they themselves stored the goods at a place where the rain water could easily enter, they have to suffer. They cannot be absolved of payment of duty on those goods in respect of which they had even got compensation from the insurance company of over Rs.27 lakhs, amount much more than the duty involved thereon.*" I find that the ratio of this decision is squarely applicable in the present case for denying the remission of duty of excise as claimed by the assesse.

16.1. 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 the said assessee, I find that fire accident had arisen as a result of their negligence and failure to take adequate precaution.

17. I find that the meaning of the term of remission of duty in plain language means relieving the tax payer from the obligation to pay tax on goods when they are lost or destroyed due to any natural causes or due to reasons beyond the control of the assesse but remission of duty is subject to conditions stipulated under Rule 21 of the Central Excise Rules 2002 read with Section 5 of Central Excise Act, 1944 and Chapter 18 of CBEC's manual of supplementary instructions, 2005.

17.1. Chapter 18 of the CBEC manual of supplementary instructions, 2005 lays down the procedure for remission and destruction which states that the assesse shall have to justify with reasons alongwith proof that the goods have become unfit for consumption or for marketing.

17.2. Further, 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 <u>Circular No.650/41/2002-CX dated 7.8.2002</u> 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."

In view of the above, I find that the assesse has also failed to submit that the goods were lost or destroyed due to any natural causes or due to reasons beyond the control of the assesse and they also failed submit the insurance report showing that the insurance claimed doesnot include Central Excise duty.

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

<u>ORDER</u>

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 assesse for remission of duty of Rs.9,86,149/- (Rupees nine lacs eighty six thousand one hundred and forty nine only).

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

F.No.IV/15-01/Tech-Rem/O&A/2020 Date:20.01.2020

By RPAD/ Hand delivery

M/s Adi Finechem Ltd., (now known as M/s FairChem Speciality Ltd.)
253/P, Chekhla, Sanand-Kadi Road,
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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 III, Ahmedabad North.
4. The Range Superintendent, AR-I, Sanand Division III, Ahmedabad North.
5. Guard File.