

<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>
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निबन्धित पावती डाक द्वारा /By REGISTERED POST AD

फा .सं/.IV/19-23/MP/16-17

आदेश की तारीख / Date of Order : 31.3.2021  
जारी करने की तारीख / Date of Issue : 31.3.2021

द्वारा पारित/Passed by -

अमरजीत सिंह / AMARJEET SINGH  
आयुक्त / COMMISSIONER

मूल आदेश संख्या/

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-033-2020-21

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, 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 ।

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 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 योंप्रति 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.-39/19-23/MP/16-17 dated 16.10.2020 issued to M/s Shakti PolyweavePvt. Ltd., (SPL), Plot No.401/4 & 5,GIDC, Dholka, Ahmedabad.

**Brief facts of the case:**

M/s Shakti Polyweave Pvt. Ltd., ("SPL" for short) located at Plot No.401/4 & 5, GIDC, Dholka, Dist.: Ahmedabad (*hereinafter referred to as "the said assessee"*) having Central Excise Registration No.AACCS1107MXM001 and 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, were availing the facility of CENVAT.

2. A fire occurred on 10.5.2016 at the factory premises of the said assessee and damage and loss caused to their semi-finished goods and raw materials, but they failed to file First Information Report(FIR) within 24 hours of fire accident with Range office. Later on Range officer visited the factory premises and took stock of situation under a proper panchnama dated 19.5.2016. The said assessee filed an application dated 18.4.2017 for remission of duty of Rs.19,02,646/- in respect of the raw materials/ semi-finished goods alongwith its conversion cost. The said assessee later on filed a rectification remission application on 15.5.2017, wherein an addition to the remission of duty of Rs.5,91,853/- on raw material, *received for job work from M/s Supreme Petrochem Ltd., Mumbai* was submitted. The said assessee submitted the remission of duty application of Rs.24,94,499/-, the details of which are as under:

Goods destroyed under fire		Qty (in kgs)	Value (inRs.)	Duty involved (inRs.)
Raw material	Brought on payment of duty	32364.24	3107929	388494
Raw material	Received from M/s Supreme Petrochem Ltd, Mumbai	46392.80	3896995	487124
		56125 pcs	698195	104729
Semi-finished goods	Raw material	119224.33	11853044	1504478
	Conversion cost		3116543	398168
TOTAL			22672706	2882993

(Rs.388494/- duty reversed vide RG23A PT.II E.No.99 dated 30.6.2016. Total duty involved 2882993 minus Rs.388494 equals to Rs.2494499)

3. The Range officer had sought for details from the assessee vide letters F.No.AR-IV/Shakti/Remission/17-18 dated 28.4.2017, 5.6.2017 and 12.6.2017 as per the guidelines contained in Trade Notice No.36/2005 (Basic No.25/2005) issued by the Commissioner of Central Excise, Ahmedabad III and the said assessee submitted their reply vide letter dated 8.8.2017 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.8,02,73,630/-, but not received any amount against the claim from the insurance company.
- vi. They reversed the CENVAT credit amounting to Rs.3,88,494/- vide RG 23A Pt.II E.No.99/30.6.2016 as duty on inputs. However, the assessee failed to reverse the CENVAT availed on the raw materials consumed in the semi-finished goods.
- vii. The insurance claim will be settled by the insurance company as per the rules.

3.1. 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. 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.

4. The range office vide numerous letters dated 28.4.2017, 5.6.2017, 12.6.2017, 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 32364.240 kgs of raw material, brought on duty payment, valued at Rs.31,07,929/- involving duty of Rs.3,88,494/-, reversed vide RG23A Pt.II Entry No.99 dated 30.6.2016 ; 119224.330 kgs of semi finished goods alongwith conversion cost valued at Rs.1,49,69,587/- involving duty of Rs.19,02,646/-; and 46392.800 kgs of raw materials valued at Rs.3896995/- and 56125 pieces of raw materials valued at Rs.698195/- involving duty of Rs.5,91,853/- total duty involved Rs.24,94,499/- 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.

5. 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 on the raw material consumed in manufacture of the finished goods, has been availed by the said assessee. Further, it appears that 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 being given to the assessee and it appears that the said assessee, M/s SPL, has not taken due precaution to avoid such accidents which could have been avoided.

6. 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, it appears that fire accident arisen as a result of their negligence and failure to take adequate precaution which can be corroborated with the Forensic Science Laboratory Report dated 18.5.2016 who has 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 was 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 in case of an accident. It was obligatory on part of the manufacturer that they should have taken 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 finished goods, hence, the application for remission of duty is ineligible

7. A show cause notice No.IV.39/19-23/MP/16-17 dated 16.10.2020 was issued by Commissioner, Central GST and Excise, Ahmedabad North, to the said assessee 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.

**Defence Reply:**

8. The said assessee vide their letter dated 10.11.2020 inter-alia submitted 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. they have not reversed the cenvat credit of duty involved in the raw material used in the semi-finished goods is untenable because the goods were brought in for job work for their principal M/s Supreme Petrochem Ltd., Mumbai under job work challans so no question of availing any credit of duty paid on such materials by them as job worker;
- iii. no evidence is adduced to establish that they have actually availed and utilised credit of duty paid on raw materials received from the above principal, therefore there is no justification in proposing to reject remission application for the semi-finished goods produced on job work basis;
- iv. goods destroyed in the fire were semi-finished goods hence no duty liability on semi-finished goods. Semi-finished goods are not manufactured goods therefore there is no requirement of filing remission application;
- v. Relied on the case laws - *JJ Foams Pvt. Ltd vs Commr. Of C.Ex., Ghaziabad-2015(327)ELT349(Tri.Del)*; *Park Nonwoven P Ltd vs Commr. Of C.Ex. Rohtak -*

2014(308)ELT431(Tri.Del); *Urmi Chemicals vs Commr. Of C.Ex.Mumbai-III* -  
2014(301)ELT356(Tri-Mum);

- 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 in a factory of manufacturer was an accident and also a circumstances 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.)*;
- 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 *Dharampal Satyapal - 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. 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;
- xv. goods were semi-finished and they were not cleared, no cenvat credit was availed; so it is not understood which duty amount was claimed by them from insurance company; so the proposal to reject the remission application is unsustainable and unjustified.

### 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 Shri Jatan Surana, Director. They

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 submission made during the personal hearings held. I have also carefully gone through the claim papers submitted by M/s Shakti Polyweave Pvt. Ltd.,

11. I find that the assessee 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. The assessee was also availing the facility of CENVAT credit of duty paid on the inputs under CENVAT Credit Rules, 2004. The said assessee filed an application dated 18.4.2017 for remission of duty of Rs.19,02,646/- in respect of the raw materials/ semi-finished goods alongwith its conversion cost. The said assessee later on filed a rectification remission application on 15.5.2017, wherein an addition to the remission of duty of Rs.5,91,853/- on raw material, *received for job work from M/s Supreme Petrochem Ltd., Mumbai* was also submitted. Therefore the said assessee submitted a remission of duty application for Rs.24,94,499/- under Rule 21 of the Central Excise Rules, 2002, claiming that their goods were destroyed in the fire accident on 30.4.2012.

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. 24,94,499/- . 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.*

12.1 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. The JRS, however, 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 8.8.2017 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 they have reversed the cenvat credit of Rs.3.88.494/- vide E.No.99/30.6.2016 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 goods destroyed in the fire.

13. 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. 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 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 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. The assessee further contended that no evidence is adduced to establish that they have actually availed and utilised credit of duty paid on raw materials received from the principal M/s Supreme Petrochem Ltd., Mumbai, under job work challans, so no question of availing any credit of duty paid on such materials by them as job worker. therefore, no justification in rejecting the remission application. I donot find any strong argument by the said assessee in this point and I rely on the case of *Eternit Everest Ltd (2010(254)ELT507(Tri.Del)* wherein it was held that – it is a settled law that the duty liability, if any, would be on the job worker and not on principal manufacturer when the transaction between the principal manufacture and the job-worker are on principal to principal basis, in the instant case the said assessee worked as a job worker after receiving raw materials from M/s Supreme Petrochem Ltd., Mumbai, so the duty liability will be on the job worker and not on the principal manufacturers when the transactions between the principal manufacturer and job-worker are on principal to principal basis.

15. 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; that FSL 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 *KisansahkariChini Mills Ltd-2008(222)ELT540(Tri.Del)*; *Next Fashion CreatorsPvt. Ltd-2012(280)ELT374(Kar)*; *Tej shoe factory-2018(363)ELT863(Tri.All)* and *M Kumar Udhog P Ltd – 2014(306)*; 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 are 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 FSL 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.

16. I find that the said assessee relied on the case law of *Tej shoe factory-2018(363)ELT863(Tri.All)* and *M Kumar Udhog P Ltd – 2014(306)*, *KisansahkariChini 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 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

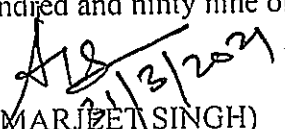
engulfed the whole factory, which happened due to the negligence of the said assessee. In these cases the authority had upheld the impugned orders of rejection of claim for remission and the consequent duty demand and rejecting the appeals.

17. 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(C'ESTAT)* 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 circumstances 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 it been that the said assessee had 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 have failed to do so in the instant case. This view finds support from the judgment *D.N.BadoniVs. 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.

18. 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. 24,94,499/- (Rupees twenty four lacs ninty four thousand four hundred and ninty nine only).

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

By RPAD/ Hand delivery

M/s Shakti PolyweavePvt. Ltd.,  
Plot No.401/4 & 5, GIDC, Dholka,  
Dist.: Ahmedabad

F.No.IV/19-23/MP/16-17

Date: 5/3.2021

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.

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