


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(प्रथम तल) 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>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- <a href="mailto:aaahmedabad2@gmail.com">aaahmedabad2@gmail.com</a></p>		

**निबन्धित पावती डाक द्वारा / By REGISTERED POST AD**

फा .सं./ IV/16-04/MP/2019-20

DIN- 20230271MN00008184E7

आदेश की तारीख / Date of Order : 07.02.2023  
जारी करने की तारीख / Date of Issue : 07.02.2023

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-38/2022-23**

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 , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 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, 2nd Floor, Bahumali Bhavan, Asarwa, Near Girdharnagar Bridge, Girdharnagar, Ahmedabad, Gujarat 380004.

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 हैं ।

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 हैं चार प्रतियों में दाखिल , की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम 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.

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice No. IV/16-04/MP/2019-20 dated 28.10.2022 issued to M/s. Dishman Pharmaceuticals & Chemicals Ltd. (100% EOU), Survey No. 47, Paiki - Sub-plot No. 1, Lodariyal, Taluka - Sanand, Dist. Ahmedabad - 382220 (Gujarat).

**Brief facts of the case:**

01. M/s. Dishman Pharmaceuticals & Chemicals Ltd (100% EOU), Survey No.47, Paiki Sub Plot No.1, Lodariyal, Tal. Sanand, Dist: Ahmedabad-382220 (hereinafter referred to as "the said assessee") holding Central Excise Registration No. AAACD4164DXM006 is engaged in the manufacture of and export of bulk drugs and fine chemicals, falling under Chapter 28 and 29 of the first schedule to the Central Excise Tariff Act, 1985. After the introduction of GST, they have obtained the registration No. 24AABFN2415K1ZK. The said assessee had also availed the facility of CENVAT Credit on Inputs, Input Services and Capital Goods, under the provisions of the CENVAT Credit Rules, 2004 ('CENVAT Rules' for short) under the erstwhile Central Excise & Service Tax regime.

02. A fire accident occurred at the manufacturing premises of the said assessee on 07.03.2017. To find out the genuineness of the said incident and to ascertain the loss, as well as the stock of raw-materials, semi-finished/finished goods and capital goods present in the factory premises of the said assessee, the Range Superintendent along with sector officer visited the factory and a Panchnama dated 10.03.2017 was drawn. The said assessee vide their letter dated 04.05.2017 (Annexure "A") submitted the data of goods lost/destroyed in fire containing the description, quantity, value, duty involved etc. (Annexure "B"). Such goods included inputs which were issued for manufacture and were lying at various stages of production process, including inputs contained in semi-finished/intermediate goods of value Rs. 6,26,72,679/-including duty of Rs.1,16,30,411/. It appeared from this data that the inputs lost in fire accident consisted of imported inputs and indigenous inputs procured without payment of duty under the provisions of Notification No. 53/2003-C.Ex. and No. 22/2003-Cus. respectively and duty paid indigenous inputs. It further appeared that the assessee had availed and utilized Cenvat credit towards the duty paid on the inputs lost in the fire accident. The duty foregone on the inputs procured duty free under the provisions of the said notifications which were lost in the fire accident and the Cenvat credit\* availed and utilized on the inputs lost in the fire accident are given below, which was submitted by the assessee vide letter dated 04.05.2017.

Sr. No.	Particulars	Value of Goods (as per Excise record)/Rs.	Duty involved/Rs.
(I)	Duty free imports against procurement certificate	2,94,28,264.00	76,09,344.00
(II)	Domestic purchase against CT-3 form	3,26,33,312.00	39,23,874.00
(III)	Duty paid domestic purchases	6,11,103.00	97,193.00*
Total		6,26,72,679.00	1,16,30,411.00

Based on the details of goods lost in fire submitted by the assessee vide letter dated 04.05.2017, two show cause notices i.e. (1) SCN No. V/27-08/DIV-IV/Dishman/2019-20 dated 01.05.2019, (for points mentioned at sr. no. (II) & (III) above) by the Deputy Commissioner, CGST & Central Excise, Division-IV, Ahmedabad North and (2) SCN having DIN No. 20200471MN00001YE893 dated 20.04.2020 (for point mentioned at sr. no. (I) above), by the Principal Commissioner of Customs, Ahmedabad, for protective

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demand for payment of duty of Rs. 1,16,30,411/- have been issued for Excise portion and Custom portion separately.

03. The said assessee vide a letter dated 04.05.2017 filed an application for remission of duty on inputs lost in fire accident under Rule 21 of Central Excise Rules, 2002. The said assessee vide letter dated 15.12.2021, further submitted that the insurance claim amount does not include the duty element of Rs.1,16,30,411/-, on any of the capital goods or the raw material/inputs. The assessee had submitted a CA certificate showing the breakup of the entire amount taken for sanctioning the insurance claim. The grant of remission of duty under Rule 21 of CER, 2002 is subject to guidelines contained in Trade Notice No.36/2005 (Basic No.25/2005) issued by the Commissioner of Central Excise, Ahmedabad-III. It appeared that the assessee had not complied with the condition No. 3, 5 & 7 of the said Trade Notice No.36/2005 (Basic No.25/2005) in a specific manner and therefore, the remission application remained incomplete. Even though sufficient opportunities had been provided over a long duration of time, they had not submitted the details related to condition no. 3,5 & 7 of the said trade notice.

04. Further, it appeared that-

4.1. There was a difference in the value of goods for which remission of duty had been claimed and the value of stock for which insurance amount had been claimed by assessee and the value of goods lost in process as mentioned in the CA Certificate submitted by assessee vide letter dated 15.12.2021. The assessee could not submit a satisfactory reply regarding the difference.

4.2. Vide letter dated 15.12.2021, the assessee had replied that the claim amount did not include the customs duty or excise duty or service tax. The surveyor vide their letter dated 04.01.2022, had also submitted that the purchase bills were verified and were against the CT-3 form, hence no excise was included in their assessment. Whereas in the details submitted by the assessee along with the remission application dated 04.05.2017, showed duty paid domestic purchases of goods having value of Rs. 6,11,103/- involving duty of Rs. 97,193/-. The assessee could not submit any satisfactory reply in this regard as well.

05. Further as per FSL report F. No. FSL/TPN/18/P/235 Dated 08.08.2018., it was opined that they could not find any evidence of short circuit in the factory. Therefore, it appeared that the fire in the factory occurred due to the negligence on the part of the said assessee. Further, it was not clear as to whether the factory premises was adequately equipped with fire safety equipment and whether these equipments were operational and fully functional during the fire accident. It appeared that the fire accident would not have occurred if proper care had been taken by the said assessee as it was clear that no proper care or sufficient precautions were taken by them to avoid possible damage/loss. It was obligatory on the part of manufacturer to take adequate precautions to avoid damage or loss of goods. Had they taken utmost care, damage/loss could have definitely been avoided by them. It thus shows that due to negligence of the said assessee, fire accident had occurred which had destroyed the goods. It is well established fact that if an accident can be avoided it is not an accident. In the present case, it

can be clearly seen that the fire accident happened as a result of negligence which cannot be considered a natural cause or unavoidable accident in order to grant remission of duty of excise. It was obligatory that manufacturer of any excisable goods should take precautions to avoid possible loss/damage. From the scrutiny of the documents submitted by M/s Dishman Pharmaceuticals & Chemicals Ltd, it appeared that fire accident had arisen as a result of the negligence and failure on their part to take adequate precautions.

06. Therefore, in the subject matter the show cause notice F.No. IV/16-04/MP/2019-20, dated 28.10.2022, had been issued to the assessee by the Commissioner, CGST & Central Excise, Ahmedabad North, as to why their application for Remission of Central Excise Duty of Rs.1,16,30,411/- under Rule 21 of Central Excise Rules, 2002 should not be rejected.

**Defence Reply:**

07. The said assessee vide their letter dated 21.12.2023 (soft copy sent through mail on 22.12.2023), made their submissions and inter alia contended that;

- I. They had already submitted the following documents immediately after the fire accident on 7-3-2017, alongwith Remission Application, in terms of the Rule 21 of CER, 2002 and guidelines contained in Trade Notice No.36/2005 (Basic No.25/2005) issued by the Commissioner of Central Excise, Ahmedabad-III:
  1. Intimation of fire accident dated 8-3-2017 (within 24 hrs of the fire accident to the DC, Div-IV, alongwith copy to Range Superintendent).
  2. Copy of First Information Report dated 7-3-2017
  3. The panchanama drawn by the Superintendent on 10-3-2017.
- II. Subsequently, they had submitted the following in compliance to various queries raised by the Range / Division office pertaining to the remission application, which is also recorded in the present SCN:
  1. FSL Report - letter dated 16-4-2019
  2. Details of goods lost in Fire - letter dated 25-4-2019
  3. Letter dated 15-12-2021 submitting CA Certificate, Fire Safety Certificate showing details of precaution taken by the noticee to safeguard goods.
  4. Letter dated 30-4-2022 submitted alongwith details of fire safety equipment installed in the factory.
  5. Letter dated 12-6-2021, alongwith Final Surveyors Report dated 1-22019, with all annexures.
  6. Letter dated 4-1-2022 of the Surveyors, clarifying that the excise component is not included in their assessment.

III. They had already submitted vide letter dated 15-12-2021 that the insurance claim amount does not include the duty element of Rs.1,16,30,411/- on any of the raw material/inputs, alongwith CA certificate showing the breakup of the entire amount taken for sanctioning the insurance claim. They had also submitted a letter dated 4-1-2022 issued by the insurance surveyors namely M/S. Bhatwadekar Insurance Surveyors & Loss Assessors Pvt Ltd, Mumbai, wherein the Surveyors have clearly mentioned at;

“Point No. (a) On the matter of inclusion of Central Excise & Customs duty component, kindly note that the insured's (Dishman) claim was net off excise. The purchase bills have been verified and are against the CT-3 Form, Hence, no excise is included in our assessment.”

Therefore, there remains no doubt that the insurance claim was free of any excise or customs duties, and the insurance claim was sanctioned.

IV. They had taken utmost care to safe-guard the raw materials, goods in work-in-process and the finished goods, from fire accidents, and have various equipments installed in the premises, with regular maintenance, and trained staff posted at the factory; being a pharmaceuticals company, they had to take all the necessary precautions, before they got the licence to manufacture.

V. They had taken sufficient safeguard against any such fire accidents, by installing various equipment, keeping trained staff, but even though the unfortunate incident of fire accident had occurred, which was beyond their control.

VI. As regards, the remission application of goods imported against procurement certificate and procured from DTA under CT-3, it is submitted that the same are procured without payment of customs or excise duties. For such materials the remission is claimed for the amount of duty foregone.

VII. As regards, the duty paid inputs, the amount of Cenvat credit taken was of Rs. 97,193/-. The same is reversed vide DRC-03 dated 22-12-2022 for Rs. 97,193/-, Debit Entry No. D12412220409815. The copy of the DRC03 is attached herewith. Hence, the requirement of reversal of Cenvat credit is also satisfied.

VIII. They have placed reliance on the following case laws, wherein the remission from duties due to destruction of goods due to fire accident or any other accidents beyond the control of the noticee, has been granted.

- 2009 (247) E.L.T. 751 (Tri. - Bang.) - VAMSADHARA PAPER MILLS LTD. Versus COMMR. OF CUS., VISAKHAPATNAM
- 2006 (206) E.L.T. 1015 (Tri. - Bang.) -NEXT FASHION CREATORS PVT. LTD. Versus COMMR. OF CUS., BANGALORE
- 2017 (357) E.L.T. 220 (Tri. - All.) - TEJ SHOE TECH Versus COMMISSIONER OF C. EX., KANPUR
- 2005 (188) E.L.T. 206 (Tri. - Mumbai) - MILTON PLASTIC INDUSTRIES Versus COMMISSIONER OF C. EX., VADODARA
- 2017 (350) E.L.T. 443 (Tri. - Hyd.) - LAXAI AVANTI LIFE SCIENCES PVT. LTD. Versus C.C., C. EX. & S.T., HYDERABAD-IV

IX. In view of the above submissions, they wished to submit that their remission application may be allowed with consequential relief.

**Personal Hearing:**

08. The Personal Hearing in the matter was fixed on 22.12.2022 and Shri R. Subramanya, Advocate appeared for personal hearing on behalf of the noticee M/s. Dishman Pharmaceuticals Limited. The hearing was held in virtual mode as requested by Shri R. Subramanya. Shri R. Subramanya briefly explained the facts and circumstances which led to the remission application made by his client. He requested to drop the SCN in the interest of justice. He also sought permission to submit additional written submission explaining his arguments/contentions, which was acceded to. Subsequently, he submitted a mail on 02.01.2023, wherein he again submitted the details of the oral submissions made during the virtual hearing held on 22-12-2022, as under.

"The noticee is an 100% EOU, and due to a fire accident, which had occurred on 7.3.2017, at the factory premises, the noticee had lost certain amount of inputs, and work in-process. Out of these raw materials, some were imported under procurement certificate without payment of customs duties, some were procured from DTA under CT-3, without payment of GST, and some inputs were duty paid which were destroyed in the fire accident.

As regards, the duty paid raw materials in the destroyed goods, the noticee has reversed the credit taken of Rs. 97,193/- vide DRC-03 dated 22.12.2022, and submitted a copy of the same.

As regards the safety measures taken, it is submitted that various safety measures were taken to prevent fire accidents, and 24 X 7 trained staff was engaged for the safety of the factory, and various fire safety equipment were also installed and maintained within the factory. A chartered engineer's certificate dated 15-3-2017 was also submitted alongwith a detailed written submission.

As regard, the insurance claim, it is submitted that the claim submitted with the insurance company does not include the excise or customs duty portion, as there is no duty amount paid while procuring the goods, under PC / CT3. The surveyors report dated 4-1-2022 and final survey report dated 12-6-2021, specifically certifies that no excise / customs duties is included in their assessment.

The noticee also places reliance on the following judgements:

1. 2009(247) ELT 751 (Tri-Bang)
2. 2006 (206) ELT 1015 (Tri-Bang)
3. 2012 (280) ELT 374 (Kar)
4. 2017 (357) ELT 220 (Tri-Ali)
5. 2005 (188) ELT 206 (Tri-Munn)
6. 2017 (350) ELT 443 (Tri-Hyd)

It is therefore, submitted that the noticee had taken full safety measures, as also the insurance claim did not include the excise or customs duty portions. Also, the duty paid on raw materials

had already been reversed. It is therefore prayed that the remission application may be allowed with consequential relief to the noticee."

**Discussion and Findings:**

09. 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 the said assessee M/s. Dishman Pharmaceuticals & Chemicals Ltd (100% EOU). I find that the assessee is engaged in the manufacture and export of bulk drugs and fine chemicals, falling under Chapter 28 and 29 of the first schedule to the Central Excise Tariff Act, 1985. After the introduction of GST, they have obtained the registration No. 24AABFN2415K1ZK. The said assessee had also availed the facility of CENVAT Credit on Inputs, Input Services and Capital Goods, under the provisions of the CENVAT Credit Rules, 2004 ('CENVAT Rules' for short) under the erstwhile Central Excise & Service Tax regime. A fire accident had occurred at the manufacturing premises of the said assessee on 07.03.2017. The said assessee had submitted the data of goods lost/destroyed in fire containing the description, quantity, value, duty involved etc. and vide a letter dated 04.05.2017, had filed an application for remission of duty on inputs lost in fire accident under Rule 21 of Central Excise Rules, 2002.

10. 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. 1,16,30,411/-. 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.*

11. I find that the departmental authorities were indeed intimated by the assessee about the fire accident which occurred in the factory premises of the assessee on 07.03.2017. In pursuance to that, the JRS had visited the factory premises for verification of the same on 10.03.2017. The said assessee vide their letter dated 04.05.2017 (Annexure "A") submitted the data of goods lost/destroyed in fire containing the description, quantity, value, duty involved etc. (Annexure "B"). As per data given by the assessee, such goods included inputs which were issued for manufacture and were lying at various stages of production process, including inputs contained in semi-finished/intermediate goods of value Rs. 6,26,72,679/-including duty of Rs.1,16,30,411/-. The said assessee vide a letter dated 04.05.2017, had filed an application for remission of duty on inputs lost in fire accident under Rule 21 of Central Excise Rules, 2002. The said assessee vide letter dated 15.12.2021, had also submitted that the insurance claim amount did not include the duty element of Rs.1,16,30,411/-, on any of the capital goods or the raw material/inputs. The assessee has submitted a CA certificate showing the breakup of the entire amount taken for sanctioning of the insurance claim.

12. As regards CA certificate, I find that there is a difference in the value of goods for which remission of duty has been claimed and the value of stock for which insurance amount has been claimed by assessee and the value of goods lost in process as mentioned in the CA Certificate submitted by assessee vide letter dated 15.12.2021. The certificate dated 30.05.2018 issued by V.D.Shukla & Co., Chartered Accountant, mentions that the assessee has suffered a loss of goods in process amounting to Rs. 844.27 Lakhs on account of fire, whereas the value of goods as per excise records of the assessee comes to Rs. 626.73 lakhs involving duty amount of Rs.116.30 lakhs, for which the assessee could not submit any satisfactory reply/explanation/clarification for reconciling the difference. The defense reply submitted by the assessee is also silent on this vital aspect.

13. I also find that the grant of remission of duty under Rule 21 of CER, 2002 is subject to guidelines contained in Trade Notice No.36/2005 (Basic No.25/2005) issued by the Commissioner of Central Excise, Ahmedabad-III. I observe that the assessee has not complied with the condition No. 3, 5 & 7 (mentioned below) of the said Trade Notice No.36/2005 (Basic No.25/2005) in a specific manner and therefore, the remission application remains incomplete. Even though sufficient opportunities have been provided over a long duration of time to the assessee, they have not submitted the details of: -

(3) Details of precaution taken by the owner to safeguard goods and his contentions - The assessee vide letter dated 15.12.2021 submitted that the factory was equipped with proper fire safety equipment and submitted the report dated 15.03.2017 (post-accident date) of the Gujarat Industrial Safety & Health

Services, Ahmedabad showing as on 07.03.2017, the day of fire accident, the firefighting systems and equipment available in the factory. In the said certificate, it is mentioned that the annual maintenance certificate was given to expert professional agencies and was renewed from time to time. However, the assessee vide letter dated 30.04.2022 has submitted that there was no comprehensive annual maintenance contract given to any outside agency. So, as can be discerned, the assessee himself has provided two contradictory reports. Therefore, there is no concrete/tangible way to ascertain, as to whether the fire safety equipments were indeed operational at the time of fire accident or not.

(5) The assessee has not submitted the particulars of goods saved or salvaged and how the same were disposed of.

(7) The assessee had not submitted the Proof of reversal of Cenvat Credit involved on inputs used in manufacture of finished goods destroyed in fire (along with interest, if any) as required under para 2.4, Chapter 18 of CBEC Excise Manual and CBEC Circular No.800/33/2004-CX dated 01/10/2004. However, it needs to be said and acknowledged that this proof of reversal of Cenvat credit has been provided by the assessee at the time of personal hearing.

14. Further, vide letter dated 15.12.2021, the assessee has replied that the claim amount does not include the customs duty or excise duty or service tax. The surveyor vide their letter dated 04.01.2022 has also submitted that the purchase bills were verified and were against the CT-3 form, hence no excise is included in their assessment, whereas the details submitted by the assessee in the remission application dated 04.05.2017, shows duty paid domestic purchases of goods having value of Rs. 6,11,103/- involving duty of Rs. 97,193/-. The assessee could not submit any satisfactory reply in this regard as well. Of course, it needs to be acknowledged that this duty amount of Rs. 97,193/- has been reversed vide DRC-03 dated 22-12-2022 (Debit Entry No. D12412220409815) i.e. on the date of personal hearing. But this at the same time clearly proves that the assessee had provided false information vide their earlier letter dated 15.12.2021.

15. Further, the Forensic Science Laboratory report F. No. FSL/TPN/18/P/235, dated 08.08.2018, clearly mentions that "the HBC fuse (sample no. A-3) was in working condition and there were no evidences of short circuit in the factory." From the observations of the forensic officer, I find that the fire was not caused naturally, but was avoidable accident, and hence, cannot be termed as an accident. Further, it is also not clear as to whether the factory premises was adequately equipped with fire safety equipment and whether these equipments were operational and fully functional during the fire accident. In this regard, I rely on the case law of DharampalSatyapal – 2004(167)ELT291(CESTAT)SMB, wherein 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 placed 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.27lakhs, amount much more than the duty involved thereon."

16. I also rely on the case of Sudhir Agarwal and Shashi Kant, JJ. Commissioner of Central Excise Versus Gangeshwar Ltd. (reported at 2015 (322) E.L.T. 444 (All.)), In the High Court of Judicature at Allahabad. The summary of the case is as under.

"Remission of duty - Goods lost due to fire in godown - Burden to prove - Onus on assessee to prove accident being unavoidable due to natural causes on which he had no control - Tribunal misdirected and erred in law in placing such onus on Department - In instant case opinion of Chief Fire Officer to the effect that fire accident could be due to careless smoking of biris and cigarettes, not disputed by assessee - No other evidence also lead to show as to what steps were taken by assessee to avoid fire accident - Tribunal's order set aside, being manifestly incorrect as onus not discharged by assessee - Question of law answered in Revenue's favour - Rule 49 of erstwhile Central Excise Rules, 1944. [paras 4, 6, 7, 8, 9]"

The relevant paras of the judgment are reproduced below.

"4. Tribunal in our view has wholly misdirected itself and erred in law in recording aforesaid reasons for allowing appeal of assessee and setting aside penalty.

5. --

6. Therefore, for the loss of excisable goods duty is payable by assessee. This is the general rule. However, there is an exception. If the assessee is able to prove that it was unavoidable accident due to natural causes on which he had no control. Obviously, in order to avoid duty payable under Rule 49 of Rules, 1944, onus is on assessee to prove that accident occurred due to reasons beyond his control and he could not have avoided it.

7. In the present case, Chief Fire Officer gave opinion that it may be due to mishandling of workforce of assessee i.e. due to careless smoking of biris and cigarettes. This opinion, as a matter of fact was not disputed by Sri D.K. Srivastava, Finance Controller appearing on behalf of assessee before Excise Commissioner and in his written submission he clearly stated as under:

"It is observed that Shri D.K. Srivastava, Finance Controller of the factory in his written submission also did not deny the report of the Chief Fire Officer and admitted that it may be the carelessness of any labourer working inside the store room."

8. Sri Piyush Agarwal, learned counsel appearing on behalf of assessee could not dispute that assessee failed to lead any evidence whatsoever before the authority concerned to show as to what steps it has taken to avoid accident, if any, caused by fire and that accident in question was for unavoidable reasons.

9. Tribunal in placing onus upon Revenue has committed manifest error in law and therefore reasons assigned by Tribunal in allowing assessee's appeal is clearly erroneous.

10. Questions referred to above are accordingly answered in favour of Excise Department i.e. the Revenue and against assessee."

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 assessee. It is obligatory on the part of the assessee claiming remission of duty on excisable goods, to take proper precautions to avoid possible loss/damage of the goods, which is not proven in this case. The fire accident would not have occurred if proper care had been taken by the said assessee. It is obligatory on the part of manufacturer to take adequate precautions to avoid damage or loss of goods. Had they taken utmost care, damage/loss could have definitely been avoided by them.

17. I have gone through the citations relied upon by the assessee. In most of the relied upon citations, the loss of goods 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, but there is not a single case of relied upon citations which shows the details of FSL report specifying that there was no short circuit, while in the subject matter the FSL report clearly speaks that they could not find any evidence of short circuit in the factory. Further in the subject case, *the assessee vide letter dated 30.04.2022 has submitted that there was no comprehensive annual maintenance contract given to any outside agency.* This clearly proves that there is no proof to ascertain as to whether the fire safety equipments were operational at the time of fire accident or not. Hence, the citations relied upon by the assessee are not identical and hence, the ratio of the said citations cannot be applied to the subject matter.

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. 1,16,30,411/- (Rupees One Crore sixteen lacs thirty thousand four hundred eleven only).



*(UPENDRA SINGH YADAV)*  
Commissioner,  
CGST & CX,  
Ahmedabad North.

By RPAD/ Hand delivery

M/s. Dishman Pharmaceuticals & Chemicals Ltd (100% EOU),  
Survey No.47, Paiki Sub Plot No.1, Lodariyal,  
Tal. Sanand, Dist: Ahmedabad-382220.

F.No. IV/16-04/MP/2019-20

Date:06/02/2023

Copy to:

1. The Principal Chief Commissioner, CGST & CX, Ahmedabad Zone.
2. The Superintendent, O&A, CGST & CX, Ahmedabad North.