


DIN- 20211164WT000000B606

आयुक्तकाकार्यालय केंद्रीयवस्तुएवंसेवाकरएवंउत्पादशुल्क , अहमदाबादउत्तर, कस्टमहॉउस(प्रथमतल) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1 st Floor) Navrangpura, Ahmedabad-380009
फ़ोननंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- aaahmedabad2@gmail.com		

निबन्धित पावती डाक द्वारा /By REGISTERED POST AD

फ़ा .सं/.IV/16-22/MP/2017-18

आदेश की तारीख / Date of Order : 15.11.2021
 जारी करने की तारीख / Date of Issue : 16.11.2021

द्वारा पारित/Passed by -

/ R. GULZAR BEGUM

संयुक्त आयुक्त

/ JOINT COMMISSIONER

मूल आदेश संख्या /ORDER-IN-ORIGINAL No.21/JC/GB/2021-22

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

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

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार , सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,O-20, मेघानीनगर ,न्यु मेन्टल हॉस्पिटल कम्पाउंड ,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।(अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अंग्रेजित 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 है/दखिल से पतियाँ चार हों उतनी ही उसकी, ही गई की अपील बिना के आदेश जिस साथ उसके तथा जापुगी की क से कम से उतरी) जापुगी की संलग्न पतियाँ एक प्रमाणित प्रति होंगी।

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 प्रथम अंग्रेजी अथवा हिन्दी में होना एवं उसे सक्षिप्त एवं किसी एक अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्ष के अंतर्गत बेधर करना चाहिए एवं उसे 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 फीस स्थित है, वहाँ के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जापुगी अथवा की जापुगी तथा यह माँग ड्राफ्ट अपील के प्रथम 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 1.00रुपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

8. अपील पर शी 4.00 का न्यायालय शुल्क टिकट लगा होना चाहिए।
Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: -कारण बतायी सूचना:



Subject- Proceedings initiated vide Show Cause Notices bearing No. IV/16-22/MP/2017-18 dated 22.4.2021 issued to M/s Narayan Industries, Plot No. 1303/1.2 Phase-IV, G.H.C. Naroda, Ahmedabad.

Brief facts of the case:

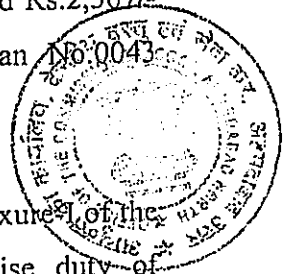
M/s. Narayan Industries, Plot No. 1303/1,2 Phase-IV, GIDC, Naroda, Ahmedabad (hereinafter referred to as "*the said assessee*") were the manufacturers of S.O. Dyes falling under Chapter-32 of CETA-1985 bearing Central Excise Registration No.AABFN2415XM001. After the introduction of GST, they obtained 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).

2. A fire broke out at the premises of *the said assessee* on 01.03.2017 and the *said assessee* had informed about the incident to the Fire Brigade, Police, FSL and Central Excise authorities. The Superintendent of Central Excise had visited the factory premises of the said assessee and had taken stock of inputs as such, inputs contained in semi-finished goods, finished goods and capital goods destroyed in the fire accident under a panchnama drawn on 07.03.2017.

3. The said assessee during the course of panchnama, informed that they are manufacturers of Copper Phthalocyanine Blue (CPC Blue) and pigment Alpha Blue which were combustible in nature and they also informed that their intermediate storage area caught fire at 21:30 hours on 01.03.2017 and the blaze was brought under control around 5.30 P.M. on 02-03-2017 by the fire brigade. The said assessee also informed that finished goods, intermediate stage goods (semi-finished/under process) and inputs were destroyed in the fire, as mentioned in Annexures I,II & III respectively, attached with the panchnama. The duty calculation sheet was worked out as per Annexure-IV for the finished goods, semi-finished goods and inputs destroyed in the fire accident. As per the duty calculation sheet, finished goods worth Rs.19,85,625/-; semi-finished goods of Rs.46,23,788/- and inputs of Rs.1,58,69,120/- were destroyed in the fire accident which involved a total duty of Rs.24,57,891/-.

4. The said assessee had paid total Central Excise duty of Rs.24,67,962/- (Rs.24,57,891/- + Rs.10,071/-) under Rule 3(5C) of the CENVAT Credit Rules, 2004 for wrongly utilizing the CENVAT Credit involved on the inputs as such, inputs contained in semi-finished goods and inputs contained in finished goods burnt/destroyed in the fire accident, vide PLA entry No.21 dtd.31.03.2017, challans dated 29.03.2017 and 28.08.2017 (Rs.24,57,891/-). They had also paid the differential amount of Rs.10,071/- vide challan No.00043 dated 28.08.2017 and Rs.2,567/- towards reversal of CENVAT Credit attributable to input services vide challan No.0043 dt.18.09.2017.

5. *The said assessee* had paid duty on the finished goods as detailed in Annexure I of the panchnama dated 07.03.2017 valued at Rs.19,85,625/- involving Central Excise duty of Rs.2,48,203/- which had been destroyed in the accidental fire. The said assessee filed an application for remission of duty of Rs.2,48,203/- on finished goods, in terms of Rule 21 of Central Excise Rules, 2002. The said assessee had declared that they will not claim the duty element of Rs.24,67,962/- (Rs.24,57,891/- + Rs.10,071/-) involved paid on the inputs contained



in semi-finished goods and inputs contained in finished goods, in their insurance claim. Rule 21 of Central Excise Rules, 2002 empowers the Competent Authority to grant remission of Central Excise duty in respect of excisable goods manufactured in the factory on the ground that the same have been rendered unfit for consumption or marketing.

6. 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. As per the said trade notice, the remission application should be filed along with following documents:-

1. *The copy of First Information Report filed within 24 hours of accident with range office along with panchnama drawn by Excise authorities.*
2. *Copy of F.I.R. filed with the police along with the police panchnama, police investigation report, F.S.L. report or other agency report.*
3. *Details of precaution taken by the owner to safeguard goods and his contentions.*
4. *Worksheet giving details of particulars of loss, quantity of goods, variety, tariff clause, value and duty involved.*
5. *Particulars of goods saved or salvaged and how disposed off.*
6. *If the goods were insured against the accidental damage etc. then the copy of relevant portion of surveyor report which gives the details of Cenvat Credit on the input & Central Excise duty on final product whether considered in insurance claim or otherwise.*
7. *Proof of reversal of Cenvat Credit involved on inputs used in manufacture of finished goods destroyed in fire (along with interest, if any) as required under para 2.4, Chapter 18 of CBEC Excise Manual and CBEC Circular No.800/33/2004-CX dated 01/10/2004.*
8. *Declaration that the duty amount sought to be remitted has not been claimed from the insurance company.*

7. The said assessee had not complied with the condition No.1, 2, 3 & 5 of the Trade Notice No.36/2005 in an appropriate manner even after long lapse of time and even after giving sufficient opportunity to submit the same, their remission application was devoid of the following documents:

- (1) The copy of FIR/intimation to be filed within 24 hours of accident with range officer;
- (2) Copy of FIR filed with the police department;
- (3) Details of precaution taken by the owner to safeguard goods and their contentions;
- (4) Particulars of goods saved or salvaged and how it was disposed off.

8. The FSL report No.FSL/TPN/17/P/205 dated 27.11.2017 submitted by FSL, Ahmedabad found that in r/o sample M/3 (Burnt Cable Wire Bundle), sample N/2 (Burnt Cable Wire Bundle), sample N/3 (Burnt Cable Wire Bundle) there were signs of short circuit and in sample M/1 (Burnt Cable Wire Bundle), sample M/2 (Burnt Cable Wire Bundle), Sample N/1 (Half Burnt Cable Wire Bundle) there were no signs of short circuit. Hence the sample report in totality was not in favour of the said assessee and it appears that the fire in the factory occurred due to the negligence on the part of the said assessee. Further, as per the Final Survey Report dated 8.10.2018 submitted by M/s Bhimani & Co., Ahmedabad, concluded that an electrical

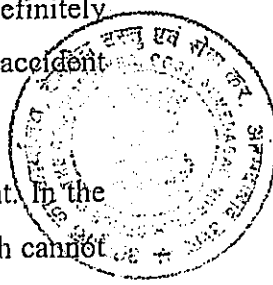
spark generated due to electrical short circuit in the electric motor installed on reactor vessel or its cables might have ignited solvent vapour above Glass lined reactor vessel No.1 during charging time and spread immediately to cluster of other machinery/ accessories, stock lying in trays, drums etc..

9. From the above report, it seems that the said assessee is storing combustible inputs/ finished goods, which is easily flammable or combustible in nature, which can ignite when spark is present with taking any safety precautions. The said assessee should have taken safety measures by installing fire safety equipments. However, while seeking information regarding installation of safety equipments in the factory the said assessee failed to furnish any details. Later on the said assessee informed about the installation of the fire safety equipments. Therefore, it can be inferred that when the fire broke out in the factory there was no fire safety equipment installed in their factory premises by the said assessee. If the said assessee had installed the fire safety equipment, the accident could have been prevented or the damage would have been minimized. As the said assessee was storing inflammable inputs, it was mandatory upon the said assessee to strictly follow the safety norms and should have taken necessary precautions beforehand, which they failed to do so. Further as per the panchnama dated 7.3.2017 the said assessee were the manufacturers of Copper Pthalocyanine Blue (CPC Blue) and pigment Alpha Blue which were combustible in nature. In view of the above, it transpires that there is negligence on the part of the said assessee in as much as they have not installed any fire safety equipments and had not followed any precautionary measures issued by the government in respect of the fire safety. Therefore, it seems that if necessary precautions had been taken by the said assessee such accident could have been averted.

10. The fire accident would not have occurred if proper care were taken by the said assessee as it is clear that no proper care or sufficient precautions were taken by them to avoid possible damage/loss. It is obligatory on part of manufacturer to take adequate precautions to avoid damage or loss of goods. Had they taken utmost care, damage/loss could have been definitely avoided by them. It thus shows that due to negligence of M/s. Narayan Industries fire accident occurred which engulfed the goods.

11. 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 fire accident arose as a result of negligence which cannot be considered as natural cause or unavoidable accident in order to grant remission of duty of excise. 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 the scrutiny of the documents submitted by M/s.Narayan Industries, it appears that fire accident has arisen as a result of the negligence and failure on their part to take adequate precautions.

12. M/s. Narayan Industries, Ahmedabad claimed remission of duty as detailed below:



Sr. No	Finished goods for which remission claimed	Qty.(Kgs)/ Value	Remission amount @ 12.5 % (Rs.)
1.	Finished Goods for which remission claimed as per Annexure-I	Qty. 8825 Value Rs.19,85,625/-	Rs.2,48,203/-
		Total	Rs.2,48,203/-

13. However, as per Rule 21 of CER,2002 and Board Circular No.907/27/2009-CX dated 07.12.2009 the remission is applicable on finished goods or on those semi- finished goods where the work in progress has reached the stage, when the same can be considered as manufactured goods. Whereas, 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 as it appears that M/s. Narayan Industries, Ahmedabad have not taken due precaution to avoid such accidents which could have been avoided, as per the report placed by FSL in their report No.FSL/TPN/17/P/205 dt.27.11.2017.

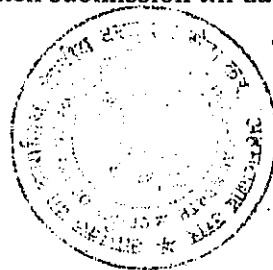
14. A show cause notice No. IV/16-22/MP/2017-18 dated 22.4.2021 was issued by Additional Commissioner, Central GST and Excise, Ahmedabad North, to the said assessee showing cause as to why the application for remission of duty of excise should not be rejected under Rule 21 of the Central Excise Rules, 2002.

Personal Hearing

15. Personal hearing in the matter was fixed on 16.6.2021 which was attended by the assessee's representative by Shri Maulik Patel, Tax Consultant thru Video Conferencing as mandated vide the board's Instruction No.390/Misc-3/2019-JC dated 21.8.2020. During the personal hearing he submitted that they will submit their written submission within 10 to 15 days and requested for time for submission of documents which the adjudicating authority considered.

15.1. The said assessee did not submit their written submission even after 15 days and therefore vide emails dated 5.7.2021; 7.7.2021, 14.7.2021, 19.7.2021, 28.7.2021 and 5.8.2021 were requested to submit their written submissions but the assessee failed to submit any submissions.

15.2. Meanwhile, there was a change in the adjudicating authority and new adjudicating authority accorded a personal hearing on 15.09.2021, 11.10.2021 & 09.11.2021 to the assessee before deciding the issue but no one attended the personal hearing on behalf of the said assessee and also the said assessee did not submit any written submission till date.



Discussion and Findings:

16. I have carefully gone through the facts of the case, evidences on record. I have also carefully gone through the claim papers submitted by M/s Narayan Industries.

17. I find that the assessee was engaged in manufacture of the excisable goods viz. manufacturers of Copper Phthalocyanine Blue (CPC Blue) and pigment Alpha Blue falling under Chapter-32 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, input services and capital goods under CENVAT Credit Rules, 2004. The assessee filed application of remission of Excise duty amounting of Rs.248203/- under Rule 21 of the Central Excise Rules, 2002, on finished goods claiming that their finished goods were destroyed in the fire accident on 1.3.2017.

18. I find that personal hearing was accorded to the said assessee in the matter and the same was attended by the assessee's representative by Shri Maulik Patel, Tax Consultant through video conferencing on 16.6.2021 as mandated vide the board's Instruction No.390/Misc-3/2019-JC dated 21.8.2020, wherein he submitted that they will submit their written submission within 10 to 15 days and requested for time for submission of documents which the adjudicating authority considered. I find that the said assessee was requested to file the submission but even after repeated reminders vide emails dated 5.7.2021; 7.7.2021, 14.7.2021, 19.7.2021, 28.7.2021 and 5.8.2021 the said assessee had not filed any written submissions, in response to the Show Cause Notice. In view of the above, I am inclined to decide the issue on the basis of the records available with this office.

19. 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. 2,48,203/-. 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:

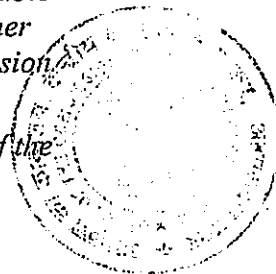
SECTION 5. Remission of duty on goods found deficient in quantity. — (1) The Central Government may, by rules made under this section, provide for remission of duty of excise leviable on any excisable goods which due to any natural cause are found to be deficient in quantity.

(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:

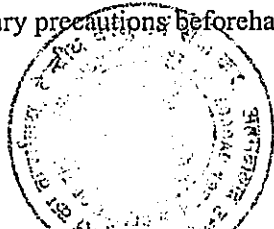


Provided further that where such duty exceeds¹ [ten thousand rupees] but does not exceed² [one lakh rupees], the provisions of this rule shall have effect as if for the expression "Commissioner" , the expression " Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be," has been substituted:

Provided also that where such duty exceeds² [one lakh rupees] but does not exceed³ [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.

20. The jurisdictional Range Superintendent was intimated by the assessee vide their letter dated 6.3.2017 about the fire accident which happened on 1.3.2017. In pursuance to that the JRS visited the factory premises for verification on 7.3.2017 and panchnama dated 7.3.2017 was drawn to ascertain the extent of the damage as claimed by the assessee. During the panchnama the assessee provided the information regarding finished goods, intermediate stage goods (semi-finished/under process) and inputs destroyed in the fire, claim filed by them with insurance company, copies of FIR, Forensic Lab report. The assessee paid Central Excise duty of Rs.24,67,962/- (Rs.24,57,891/- + Rs.10,071/-) under Rule 3(5C) of the CENVAT Credit Rules, 2004 utilizing the CENVAT Credit involved on the inputs as such, on inputs contained in semi-finished goods and inputs contained in finished goods burnt/destroyed in the fire accident, vide PLA entry No.21 dtd.31.03.2017, challans dated 29.03.2017 and 28.08.2017 (Rs.24,57,891/-). They had also paid the differential amount of Rs.10,071/- vide challan No.00043 dated 28.08.2017 and Rs.2,567/- towards reversal of CENVAT Credit attributable to input services vide challan No.0043 dt.18.09.2017.

21. I find that the FSL, Ahmedabad in their report No.FSL/TPN/17/P/205 dated 27.11.2017 regarding the sample had submitted that on the sample M/3 (Burnt Cable Wire Bundle), sample N/2 (Burnt Cable Wire Bundle), sample N/3 (Burnt Cable Wire Bundle) there were signs of short circuit and in sample M/1 (Burnt Cable Wire Bundle), sample M/2 (Burnt Cable Wire Bundle), Sample N/1 (Half Burnt Cable Wire Bundle) there were no signs of short circuit. Hence the sample report in totality was not in favour of the said assessee and it appears that the fire in the factory occurred due to the negligence on the part of the said assessee. This statement could be corroborated with the Final Survey Report dated 8.10.2018 submitted by M/s Bhimani & Co., Ahmedabad, who had concluded that an electrical spark generated due to electrical short circuit in the electric motor installed on reactor vessel or its cables might have ignited solvent vapor above Glass lined reactor vessel No.1 during charging time and spread immediately to cluster of other machinery/ accessories, stock lying in trays, drums etc.. In view of the above, it is clear that the said assessee was storing combustible inputs/ finished goods, which is easily flammable or combustible in nature, which could ignite when spark is present. The said assessee failed to take any safety measures by installing fire safety equipments. However, while seeking information regarding installation of safety equipments in the factory the said assessee failed to furnish any details. Later on the said assessee informed about the installation of the fire safety equipments. Therefore, it can be inferred that when the fire broke out in the factory the said assessee did not have any fire safety equipment installed in their factory premises and to cover up the issue they have installed fire safety equipments after the incident of the fire occurred in their factory. If the said assessee had installed the fire safety equipment, the accident could have been prevented or the damage would have been minimized. As the said assessee was storing inflammable inputs, it was mandatory upon the said assessee to strictly follow the safety norms and should have taken necessary precautions beforehand, which they failed to do

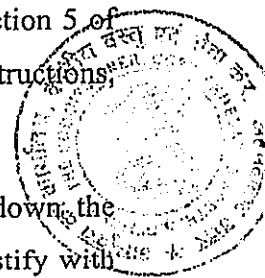


so. Further as per the panchnama dted 7.3.2017 the said assessee were the manufacturers of Copper Pthalocyanine Blue (CPC Blue) and pigment Alpha Blue which were combustibile in nature. In view of the above, it transpires that there is negligence on the part of the said assessee in as much as they have not installed any fire safety equipments and had not followed any precautionary measures issued by the government in respect of the fire safety. Therefore, it appears that if necessary precautions had been taken by the said assessee such accident could have been averted.

22. Further, I rely on the case law of Dharampal Satyapal – 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 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.27lakhs, 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 assessee. In view of the above discussions, I find that the fire accident would not have occurred if proper care were taken by the said assessee as it is clear that no proper care or sufficient precautions were taken by them to avoid possible damage/loss. I find that it is obligatory on part of manufacturer to take adequate precautions to avoid damage or loss of goods. Had they taken utmost care, damage/loss could have been definitely avoided by them. It thus shows that due to negligence of M/s. Narayan Industries fire accident occurred which engulfed the goods.

23. 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 assessee 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.

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



23.2. 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.”

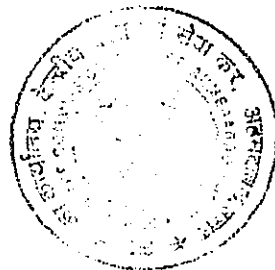
23.3. In view of the decision of the Tribunal in the case of *Mafatlal Industries*, Board has reconsidered the issue of admissibility of Modvat /Cenvat credit on inputs used in the manufacture of finished goods on which duty has been remitted. Accordingly, Board's Circular No.650/41/2002-CX dated 7.8.2002 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.”

In view of the above, I find that the assessee claim for remission of duty is liable for rejection under Rule 21 of the Central Excise Rule, 2004 read with Section 5 of the Central Excise Act, 1944.

24. 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.2,48,203 /- (Rupees two lacs forty eight thousand two hundred and three only).

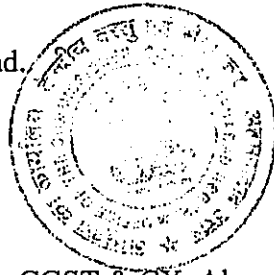


R. Gulzar Begum

(R.Gulzar Begum)
Joint Commissioner,
CGST & CX,
Ahmedabad North.

By RPAD/ Hand delivery

M/s Narayan Industries,
Plot No. 1303/1,2
Phase-IV, GIDC, Naroda, Ahmedabad.



F.No. IV/16-22/MP/2017-18

Date: 15.11.2021

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 I, Ahmedabad North.
4. The Range Superintendent, AR-I, Division I, Ahmedabad North.
5. Guard File.

