(2016) 02 CESTAT CK 0004

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 2343 Of 2006

M/s Modern Woolens Ltd. — APPELLANT

Vs

CCE, Jaipur – II — RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Central Excise Tariff Act, 1985 — Section 51, 55
Cenvat Credit Rules, 2002 — Rule 21

Citation : (2016) 02 CESTAT CK 0004

Hon'ble Judges : S.K. Mohanty, J;B. Ravichandran, Technical Member

Bench : Division Bench

Advocate : Ankit Totuka, Govind Dixit

Final Decision : Dismissed

Judgement

1. This appeal is directed against the impugned order dated 08/5/2006 passed by the Commissioner, Central Excise, Jaipur â?" II, wherein remission

application filed by the appellant was rejected on the ground that theft of excisable goods cannot be equated with goods lost or destroyed by natural

causes or unavoidable accident, and thus, remission of duty on the stolen goods is outside the scope and purview of Rule 21 of the Central Excise

Rules, 2002.

2. Brief facts of the case are that the appellant is engaged in manufacture of Wool Tops, Woolen Yarn and Poly-wool Yarn falling under Chapter 51

and 55 of the Central Excise Tariff Act, 1985. During the disputed period, the appellant had cleared 95 Bales of Wool Tops from its factory for export

to M/s SEFITA, MOROCCO under cover of ARE-I dated 13/11/2003 under bond. The goods were exported through Mumbai Port on 29/11/2003 and

the proof of export was submitted by the appellant to the Central Excise

Department. Upon receipt of the information from the buyer that the

container sent by the appellant was loaded with sand and stones instead of wool tops, the appellant filed the FIR before the Bhilwara Police Station.

On investigation of the matter, the Police Department were able to recover 33 Bales of Wool Tops and handed over the same to the appellant, which

were exported under the cover of ARE-I dated 04/6/2004. The Central Excise duty liability attributable to the balance quantity of 62 Bales of Wool

Top alongwith interest was deposited by the appellant under protest. Subsequently, the appellant vide its letter dated 15/09/2004 had filed the remission

claim before the Jurisdictional Commissioner of Central Excise, claiming remission of Excise duty alongwith interest already deposited earlier. The

application of the appellant was rejected by the Commissioner of Central Excise on the ground that since theft has occurred after the goods were

removed from assesseeâ??s premises, the provisions of Rule 21 ibid will not be applicable for remission of duty. Hence, this present appeal before

the Tribunal.

3. Shri Ankit Totuka, learned Advocate, for the appellant submits that as per the agreed terms, sale of Wool Tops was on Free on Board (FOB) basis,

according to which, the appellant was responsible for delivering the goods at the Port of Loading. Thus, the place of removal should be extended to the

Port of Export. The learned Advocate further submits that since theft had occurred before removal of goods from the port of export, which is due to

unavoidable circumstances, the remission of duty on the lost quantity is allowable to the appellant. To substantiate his stand that theft is an unavoidable

accident and such event qualify for remission under Rule 21 ibid, the learned Advocate has relied on the decision of Tribunal in the case of CCE,

Coimbatore vs. Sree Narasimha Textiles Ltd. reported in 2009 (239) E.L.T. 86 (Tri. â?" Chennai).

4. On the other hand, Shri Govind Dixit, the learned DR appearing for the Revenue submits that loss or destruction of excisable goods due to natural

causes or unavoidable accident can only be remitted under Rule 21 ibid and not on the ground of loss due to theft. To support his above stand, the

learned DR has relied on the decision of this Tribunal in the case of Gupta Metal Sheets vs. CCE, Gurgaon reported in 2008 (232) E.L.T. 796 (Tri.

â?" LB) and also relied on the judgment of Honâ??ble Madras High Court in the case of Golden Hills Estates vs. CCE, Madras reported in 1997 (90)

E.L.T. 301 (Mad.).

5. We have heard the learned Counsels of both sides and examined the appeal records.

6. It is an admitted fact on record that 62 Bales of Wool Tops removed by the appellant from its factory for export were stolen and not

retrieved/recovered by the Police and Central Excise duty liability was discharge by the appellant and that such duty was claimed as remission under

Rule 21 ibid. On perusal of Rule 21 ibid, it reveals that the Commissioner is empowered to grant remission of duty, in the eventuality, when the same

have been lost or destroyed by natural causes or on account of unavoidable accident. Whether theft can be considered as unavoidable accident within

the meaning of the said rule, so as to remit Excise duty on the goods so lost, has been answered negatively by the Larger Bench of the Tribunal in the

case of Gupta Metal Sheets vs. CCE, Gurgaon (supra). The relevant paragraphs in the said decision is extracted herein below:-

â??8. â??Natural causeâ?? has to be understood in the sense of some natural phenomenon i.e. vagary of nature or some act of nature like

fire, flood or a similar natural calamity. Besides, goods like molasses may also lose in quantity while in storage for environmental reasons.

The act of forcibly removing the goods by any means - non-violent or violent - amounting to theft or dacoity under the Indian Penal Code

cannot be said to be a natural cause. â??Theftâ?? has been defined in the Indian Penal Code to mean dishonestly taking of any moveable

property out of the possession of any person without his consent. Theft is robbery if, in order to the committing of the theft, or in committing

the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender voluntarily causes or attempts to

cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. When

five or more persons conjointly commit or attempt to commit a robbery, they are said to commit dacoity. It would thus appear that

â??theftâ?? or â??dacoityâ?? involves forcible removal of goods by non-violent or violent means, as the case may be, and this cannot be said to be a natural cause.

9. The case of the appellant is that theft or dacoity is covered by the expression â??unavoidable accidentâ??. Theft or dacoity, in our

opinion, is an incident and not an accident, much less unavoidable. Accidents take place due to oneâ??s carelessness or negligence and it

cannot be said to be unavoidable. As per the dictionary meaning, â??accidentâ?? means, an event without apparent cause, an unfortunate

event, especially, one causing physical harm or damage, brought about unintentionally; occurring of things by chance (see Concise Oxford

Dictionary, Ninth Edition). Theft and dacoity are committed by a design and they cannot be said to be accident by any logic. By taking due

care and caution they can be avoided and, therefore, it cannot be said that theft or dacoity is â??unavoidable accidentâ??.â??

7. In view of the categoric findings of the Larger Bench of this Tribunal that theft cannot be considered as â??natural causeâ??, we are of the view

that the decision cited by the learned Advocate in the case of CCE, Coimbatore vs. Sree Narasimha Textiles Ltd. (supra) cannot be relied on as per

the judicial decorum.

8. Therefore, we do not find any infirmity in the impugned order. Accordingly, the appeal filed by the appellant is dismissed.

(Operative part of the order pronounced in the open court.)

