
(2023) 04 CESTAT CK 0004

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 716 Of 2012

PGP GLASS P LTD

APPELLANT

Vs

c.C. E. & S.T. ? Surat-II

RESPONDENT

Date of Decision : 11-04-2023

Acts Referred:

Central Excise Rules, 1944 — Rule 9, 44, 47, 47(3), 49, 49(1)

Citation : (2023) 04 CESTAT CK 0004

Hon'ble Judges : Ramesh Nair, Member (J); C.L. Raju, Member (T)

Bench : Division Bench

Advocate : Mehul Jiwani, R.K. Agarwal

Final Decision : Allowed

Judgement

Ramesh Nair, Member (J)

1. The appellant, a manufacturer of glass bottles and vials, is in appeal against the order of the Commissioner of Central Excise, Surat, by which the claim for remission of duty on the goods lost in fire accident which occurred on 22-01-1998, was rejected.

2. The brief facts of the case are that the appellant in its factory at Kosamba, had stored stock of finished goods in approved bonded store room as well as temporary godown. The entire stock was entered in RG-1 register. A fire broke out on 02.01.1998 and immediately intimation was sent to the Superintendent of Central Excise on the same date and panchanama was drawn on 06.01.98. The Appellant made application for remission of duty under Rule 49. As per the letters dtd. 04.01.1998 and 14.05.1998 of Superintendent of Central Excise, appellant has also debited under protest the amount of cenvat credit of Rs. 5,97,062/- contained in inputs used in the manufacture of final products which were destroyed due to fire. The Appellant was issued show cause notice dated 13.04.1998 demanding the duty of Rs. 24,21,535/- on finished goods lost in fire. The deputy Commissioner vide Order-In-Original dtd. 30.11.2000 has passed the

exparte order and confirmed the demand. Being aggrieved by the said order, appellant filed an appeal to Commissioner (Appeals), who passed the order-in-appeal stating that the order passed by the deputy commissioner is pre-mature and the Commissioner who is competent authority is yet to take a decision on the remission of duty application filed by the appellant. The appellant had written various letters to the Commissioner for disposal of remission application. The Commissioner vide impugned order –in-original dtd. 30.05.2012 rejected the duty remission application. Aggrieved from the said order, the appellant is before us.

3. The learned Chartered Accountant shri Mehul Jiwani appearing on behalf of the appellant submits that the deputy commissioner vide OIO dtd, 30.11.2000 noted that the fire accident has taken place due to electric short circuit and it was beyond the control of the appellant. Therefore, the finding given by the Commissioner that the cause of fire is not known is erroneous. There is police report, fire brigade report as well as panchas report clearly stating that the fire was accidental. Nowhere in the said report it has been stated that the fire was caused by the Appellant or negligence. If there is no dispute that fire has been occurred than remission cannot be denied merely because the reason for the fire was not specifically known to the appellants.

4. He placed reliance on the followings Judgments.

- (i) Kalambar Vs. S.S.K. Ltd. – 1995(76)ELT 130 (Tribunal)
- (ii) Titawai Sugar Complex - 2009 (237) ELT 399 (Tri. Del)
- (iii) M.KumarUdyogPvt. Ltd. -2014(306)ELT 19 (All.)
- (iv) Hindustan Zinc Ltd. – 2009 (233)ELT 61
- (v) ArhantStudes Ltd. -2016(332) ELT 827
- (vi) KisanSahkariChini Mills Ltd. – 2008 (222) ELT 540 (Tri.- Del)

5. He also submits that Ld. Commissioner in para 16 of order has observed that vide letter dtd. 10.02.2012 the details were called for in respect of claim of excise duty from insurance company which appellant failed to produce. The said details have been asked after almost 14 years of the incident. In the meantime, a fire occurred in the factory in the year 2006 wherein various documents were destroyed. The said facts also communicated to the department. Thus, there is no point in asking such information after lapse of 14 years.

6. Without prejudice, he also submits that the tribunal as well as high court has consistently held that insurance claim of excise duty is having no bearing on claim or remission of duty. He placed reliance on the following judgments.

- i. Welspun Terri Towels – 2002 (149)ELT 593 (Tri.-Mumbai)
- ii. Tata Advanced Materials Ltd. – 2009(241)ELT 92 (Tri. Bang.)

iii. Commissioner of C.Ex., Bangalore Vs. Tata Advanced materials Ltd. – 2011 (271) ELT 62 (kar.)

iv. Themis Medicare Ltd. 2014 (303) ELT 141(Tri. Ahmd)

7. He also submits that the goods were stored in storeroom which was in factory premises therefore remission of duty should be allowed. The Commissioner has observed that the appellant has contravened the provisions of Rule 44 and 47 of the Central Excise Rules, 1944 for storing duty paid goods and non-duty paid goods together, which was destroyed in fire accident, in storeroom or other place approved by the department and failed to produce any details of not claiming excise duty involved in aforesaid goods from insurance company. Firstly, there is no contravention of Rule 44 and Rule 47 of the Central Excise Rules, 1944. Further there is no such condition under rule 49 for rejection of the remission of duty. In the present matter fire was occurred in the factory and goods were lost in the factory before their removal and thereby remission should have been granted. There is no dispute that temporary godown was within the factory. The same is also evident from the Panchanama drawn by the Superintendent of Central Excise as well as order of the deputy Commissioner. Department has issued license for entire factory and thereby entire factory is approved premises. He placed reliance on the following decisions:

i. Shakti Spinners Ltd. -2004 (167) ELT 364 (Tri. Del)

ii. Sarada Plywood Industries Ltd. – 1987 (32) ELT 116 (Tribunal)

iii. U.P. State Sugar Corporation Ltd. – 1999(107)ELT 674 (Tribunal)

iv. Sportking India Ltd. -2002(145)ELT 535(Tri. Del.)

v. Supreme Industries Ltd. -2011 (271)ELT 241 (Tri. Mumbai)

8. Shri R.K. Agarwal, learned Authorized Representative appearing for the department supports the impugned order.

9. Heard both sides and perused the record. We find that issue to be decided in this matter is whether remission of duty under Rule 49 of Central Excise Rules, 1944 in respect of the goods destroyed due to fire accident is admissible to the appellant or not. The Rule 49 of Central Excise Rule, 1944 provides as under :

Rule49: Duty chargeable only on removal of the goods from the factory premises or from an approved place of storage -

(1) Payment of duty shall not be required in respect of excisable goods made in a factory until they are about to be issued out of the place or premises specified under Rule 9 or are about to be removed from a store-room or other place of storage approved by the Collector under rule 47:

Provided that the manufacturer shall on demand pay the duty leviable on any goods which are not accounted for in the manner specifically provided in these rules, or which are not shown to the satisfaction of the proper officer to have

been lost or destroyed by natural causes or by unavoidable accident during handling or storage in such store-room or other approved premises :

Provided further that the proper officer may not demand duty due on any goods claimed by the manufacturer as unfit for consumption or for marketing subject to such condition as may be imposed by the Collector by order in writing"

From the above erstwhile rule, it can be seen that where excisable goods have been destroyed or lost by natural causes or by unavoidable accidents and the proper officer is satisfied about the same, duty shall not be demanded. In this case it is not in dispute that the goods were destroyed due to fire accident and it is on record that the accident has taken place due to electric short circuit. In the present matter Ld.

Commissioner for rejecting the remission of duty held that assessee could have saved the goods by storing in a approved store room. Hence the loss was indefinitely avoidable and goods could have been saved.

The loss of the excisable goods in the instant case cannot be attributable to unavoidable loss due to natural causes. Assessee kept the excisable goods in the temporary godown made up of Bamboo Poles and Tarpaulin. Thus it reveals that it was grave lapse on the part of the assessee for not taking precautions for keeping safe place. However we find that as per the first proviso of Rule 49 the manufacturer shall on demand pay duty leviable on any goods which are not shown to the satisfaction of the proper officer to have been lost or destroyed by natural causes or by unavoidable accidents during handling or storage. The finding of the Learned Commissioner that the appellant had been negligent in safeguarding excisable goods is not reasonable as the appellant's stake in the destroyed goods was much higher than the stake of the Revenue. Nobody would deliberately indulge in such act or exercise which may result in huge loss and therefore while interpreting Rule 49 the authorities are required to be liberal.

10. Needless to mention that all the accidents occurred due to lack of protections of the personnel responsible for avoiding such accidents and nobody indulges in such accidents purposely. If the observation as made by the Learned Commissioner is accepted then it would make the said rule redundant. It is not the case of the Revenue that there is any mala fide on the part of the appellant to make the accident occur resulting in loss of excisable goods. The fire accident has occurred due to electric short circuit. The finding recorded by the Learned Commissioner in the impugned order, while rejecting the remission of duty application filed by the appellant, is not sustainable. The expression "Natural causes" or "Unavoidable accidents" used in Rule 49 of the Central Excise Rules, 1944 have to be interpreted in their ordinary and natural connotation in reasonable manner to sub-serve the object of Legislature in introducing the remission of duty. An unavoidable accident is an event which lies beyond the control of the assessee and which has taken place despite the exercise of due and reasonable care and protection. In view of the facts as well as the

panchnama drawn by the Superintendent, we are of the view that the accident which has caused the loss of the excisable goods to the appellant was unavoidable.

11. We also find that for rejection of remission of duty Ld. Commissioner take the ground that Appellant stored the goods in store –room without obtaining the permission for storing of excisable goods.

However the Rule 47 of Central Excise Rules 1944 provide that a manufacturer shall provide a store-room or other place of storage at his premises for depositing goods made on the same premise without payment of duty. Here, the word 'same premises' means factory in which the goods are manufactured. We find force in argument of Ld.

Counsel that as per the Notification No. 2/93 dtd. 13.02.1993 power to approve store room under rule 47(3) was delegated to Superintendent of Central Excise who was also licensing authority. In the present matter license was granted by the Superintendent as per procedure and he approved the ground plan. The same should be considered as sufficient approval for the purpose of storing the goods in the factory.

The facts that the goods was stored in the temporary store room and panchnama drawn by the Superintendent of Central Excise is not disputed. In the panchnama proceeding nowhere it was mentioned that the goods was stored outside the factory premises. Therefore in our view on this ground remission of duty cannot be denied. We also noticed that in the matter of M/s Shakti Spinners Ltd. Vs. CCE, Ludhina – 2004 (167)ELT 364 supra the tribunal by relying the judgment of Sportking India Ltd. v. Commissioner of Central Excise, Chandigarh-I - 2002 (145) E.L.T. 535held as under:

3. The remission has been disallowed to the appellants only on the ground that the goods were not lying in the store room or other approved premises in terms of proviso to Rule 49. But I find that the goods were lying at that time in the factory premises itself which was an approved premises. The fact that at that time the goods were not stored by the appellants in an approved store room did not disentitle them from the remission of duty on the goods which were admittedly lost in fire. The loss of the goods in fire had not even been disputed by the Department. The perusal of the Rule 49 reveals that the goods should be either stored in the storage room or any other approved premises for the purpose of claiming remission of duty in the event of destruction of goods by fire or any other natural cause. The factory being the approved premises where the goods were lying at that time therefore, the appellants' claim for remission of duty could not be rejected. The case of the appellants stands squarely covered by the ratio of law laid down in the above referred case.

4. Consequently, the impugned order is set aside. The appeal of the appellants is allowed with consequential relief if any permissible under the law.

12. We find that the crucial fact admitted by both the sides in this case is that the goods in question was destroyed due to fire within the licensed premises / factory premises and the appellant had duly informed the Central Excise officers and the loss was duly evaluated. Under the circumstances, there was no question of demanding any duty. The position in law is very clearly stated in Rule 49 according to which duty is chargeable only on removal of the goods from factory premises or from an approved place of storage. Furthermore, as per the first proviso to Para (1) of Rule 49 in case the goods are lost or destroyed by natural causes or by unavoidable accidents during handling or storage in the store room or other approved premises the duty cannot be demanded. The manufacturer in fact, is required to pay the duty only if he fails to satisfy the proper officer that the goods have been so lost or destroyed by natural causes or by unavoidable accidents. In the instant case, the officers on intimation had verified the facts and it was not the case of the department that they were not satisfied. Therefore, no duty was demandable irrespective of what the insurance companies had done or not done. Therefore, the Ld. Commissioner is obviously wrong in denying the remission of duty by observing that the Appellant have failed to produce details in respect of claim of excise duty from insurance company. In this regard we also agree with the arguments of Ld. Counsel that insurance claim having no bearing on claim for remission of duty. The judgments relied upon by the Ld. Counsel in this context squarely applicable.

13. As we have observed above, in view of the admitted factual position, there was no cause for demand of duty from appellant in the instant case. Therefore, we do not hesitate to hold that the Commissioner's order is misconceived and incorrect in law as well as in fact. Accordingly, the impugned order is set aside. The appeal is allowed with consequential relief, as per law.