Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 10335 of 2020

(Arising out of AHM-EXCUSE-002-COMMR-017-2019-20 Dated-13.01.2020 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-II)

BAJAJ HERBALS PRIVATE LTD **.....Appellant**
PLOT NO. 450, ASHWAMEGH ESTATE
VILLAGE: CHANGODAR
AHMEDABAD-GUJARAT

VERSUS

C.C.E. AHMEDABAD-II **.....Respondent**
CUSTOM HOUSE... FIRST FLOOR,
OLD HIGH COURT ROAD, NAVRANGPURA,
AHMEDABAD, GUJARAT-380009

AND

Excise Appeal No. 10291 of 2022

(Arising out of AHM-EXCUSE-002-APP-73-2021-22 Dated-28.02.2022 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-II)

BAJAJ HERBALS PRIVATE LTD **.....Appellant**
PLOT NO. 450, ASHWAMEGH ESTATE
VILLAGE: CHANGODAR
AHMEDABAD-GUJARAT

VERSUS

C.C.E. AHMEDABAD-II **.....Respondent**
CUSTOM HOUSE... FIRST FLOOR,
OLD HIGH COURT ROAD, NAVRANGPURA,
AHMEDABAD, GUJARAT-380009

APPEARANCE:
Shri R.R. Dave, Consultant for the Appellant
Shri Kalpesh P. Shah, (Superintendent) Authorised Representative for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

Final Order No. A/ 11252-11253 /2022

DATE OF HEARING:11.10.2022
DATE OF DECISION: 20.10.2022

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in the manufacture of the excisable goods namely, hair oil, hair cream, hair dye powder, tooth paste, hand wash liquid, beauty fairness cream, petroleum jelly, hair conditioner/ shampoo, talcum powder etc. falling under chapter 33 of the First Schedule of Central Excise Tariff Act, 1985. The appellant

was also availing the facility of cenvat credit of duty paid on the inputs and capital goods under Cenvat Credit Rules, 2004. The appellant filed application for remission of excise duty amounting to Rs. 22,71,034/- under Rule 21 of the Central Excise Rules, 2002 on finished goods claiming that their finished goods were destroyed in the fire accident on 30.04.2012 as per the detailed annexure-A annexed to the show cause notice. With reference to their remission application a show cause notice was issued wherein it was alleged that the appellant did not take adequate steps and precaution in storing their finished goods as it is established that thefire accident has taken place as result of negligence which can't be considered as natural cause or unavoidable accident in order to grant remission of duty of Excise. It was also alleged that the appellant before filing the remission application have not reversed the cenvat credit of duty involved in the raw material used in the manufacture of finished goods so destroyed. The adjudicating authority vide adjudication order dated 13.01.2020 rejected the remission claim confirming the charges made in the show cause notice. Being aggrieved by the said order in original, the appellant filed the present appeal bearing no. E/10335/2020-SM. Pursuant to the rejection of remission claim in a separate proceeding the adjudicating authority i.e. joint commissioner vide order in original dated 04.02.2021 confirmed the duty demand for which the remission claim was made. Also demanded the interest and imposed penalty under rule 21 of Central Excise Rules 2002. Being aggrieved by the order in original appellant filed the appeal before the Commissioner (appeals) who vide order in appeal no. AHM-EXCUS-002-APP-73/2021-22 dated 28.02.2022 upheld the order in original dated 04.02.2021 and rejected the Appeal of the appellant. Against the said order in appeal dated 28.02.2022, the appellant filed the second appeal bearing number E/10291/2022.

2. Shri R. R. Dave learned consultant appearing on behalf of the appellant submits that the goods have been destroyed in fire accident which is a natural cause beyond the control of the appellant hence the condition laid down in rule 21 of Central Excise rules 2002 is fulfilled for the purpose of claiming remission of Duty. The fire accident was occurred on 30.04.2012 i.e. after factory working hours and though necessary precautionary measures were taken to avoid such fire accident by the appellant, the event of fire is not within the control of appellant hence it is unavoidable accident, therefore, the findings of the adjudicating authority that the appellant have not taken the precautionary measure is absolutely incorrect. As regard, the reversal of cenvat credit in respect of the inputs contained in the finished goods which was destroyed in fire, he submits that as per the provision of Rule 3(5)(C), the reversal of credit has to be made after remission of duty on finished goods is granted, therefore, the observation of the adjudicating authority that the appellant have not reversed the cenvat credit in respect of inputs prior to granting the remission of duty is beyond provision. As regard the second appeal whereunder demand was confirmed, he submits that since the appellant is eligible for remission of duty on the finished goods consequential demand is not sustainable.

3. Shri Kalpesh P. Shah, learned authorized representative appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. I have carefully considered the submissions made by both the sides and perused the records.

I find that there is no dispute that a fire has taken place in the factory of the appellant due to short circuit and the finished goods was destroyed along with other material like packing materials and consumables. It is observed that immediately when the fire took place the management of the appellant company has intimated to the concerned local authorities i.e. Police, fire brigade, excise department, insurance company etc., and these

agencies have started their respective procedure immediately. Thereafter, the jurisdictional superintendent has visited the appellant's factory and recorded the punchnama. In the said punchnama the details were recorded about incident of fire and about the goods destroyed in fire. However, in the said punchnama, there is no mention about the allegation that the appellant have not taken any precaution to avoid the fire incident. I further observe that the insurance survey was also carried out by New India Insurance Company Limited. In the said survey report also, there is no allegation against the appellant that the appellant had not taken proper precaution to avoid the fire incident. The most important agency in such accident is the insurance company, who is the major sufferer by the insurance claim as the same is much more than the excise duty involved in the present case has sanctioned the insurance claim without raising any objection about any misdeed on the part of the appellant, as regard the fire incident, therefore, it cannot be said that the appellant have any involvement or they have not taken any precaution to avoid the fire incident. From the record, it is appearing that the fire has taken place due to short circuit. In my considered view, the short circuit is a usual cause of fire in majority of cases, therefore, the fire due to short circuit cannot be attributed to any malafide on the part of the appellant or it cannot be said that the appellant have not taken abundant precaution to avoid the fire incident. Even as per the forensic report also, it has been concluded that the fire has taken place due to short circuit. In this fact, the contention of the adjudicating authority that the appellant have not taken the proper precaution to avoid the fire incident is baseless and without any support. Therefore, on this ground rejection of remission claim is unsustainable. As regard, the reversal of cenvat credit, there is no dispute that the appellant is duty bound to reverse the cenvat credit on the inputs contained in finished goods which were destroyed in fire incident. However, on going through

the Rule 3(5)(c) of Cenvat Credit Rules, it is absolutely clear that the reversal of the cenvat credit statutorily to be made only after the competent authority grant the remission of duty, therefore, the contention of the learned Commissioner that they have not reversed the credit before remission is without any basis.

5. As per my above discussion and findings, I find that the appellant's case is clearly covered under the four corners of Rule 21 of Central Excise Rules, 2002 and the appellant is clearly eligible for remission of duty on the finished goods destroyed in fire incident. Hence, I set aside the order rejecting the remission of duty.

6. As regard, the other appeal wherein the demand of duty on the goods lost in fire was confirmed, I find that this duty confirmation is consequent to the rejection of remission application of the appellant. Since I hold that the rejection of remission is not sustainable, consequently, the demand in this appeal is also not sustainable.

7. As a result, both the appeals are allowed with consequential relief.

(Pronounced in the open court on 20.10.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

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