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

REGIONAL BENCH- COURT NO.1

Excise Appeal No. 10793 of 2013

(Arising out of Order in Original No. 99/Commr./Surat-II/2012 dated 31.12.2012 passed by the Commissioner of Central Excise & Customs (Adj.)-Surat-II)

Wockhardt Limited **...Appellant**
Plot No. 138, GIDC Estate,
Ankleshwar, Bharuch, Gujarat

VERSUS

Commissioner Of Central GST
& Central Excise, Vadodara-II **...Respondent**
GST Bhavan, Arkee Garba Ground,
Nr. Telephone Exchange, Subhanpura,
Vadodara, Gujarat-390023

APPEARANCE:
Shri Narendra Kumar Pati, C.A. appeared for the Appellant
Shri R.K. Agarwal, Superintendent (AR) appeared for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

FINAL ORDER NO. 10867 /2026

DATE OF HEARING: 04.11.2026
DATE OF DECISION:23.11.2026

SOMESH ARORA

The appellant M/s Wockhardt Ltd., are a 100% EOU located in Ankleshwar. They are importing materials as well as procuring indigenous inputs and capital goods. The same were lying in their premises when a fire took place on 03.04.2010. The incident of fire was intimated to the department on 05.04.2010. After Disaster Management Authority who granted permission to enter the plant area on 20.04.2010, department of officers drew a punchnama dated 21.04.2010 indicating the extent of duty involved on imported and indigenous raw material and capital goods which was Rs.6,16,48,174/-. The department issued a show cause notice on 04.04.2011 proposing to demand custom duty and central excise duty as the goods were not used for intended purpose and subsequent exports did not happen as the appellant had not taken enough necessary precaution for safety and

security of the goods. On the basis of report dated 08.04.2010 of the Assistant Director, Industrial Safety & Health, Bharuch. Revenue alleged that fire took place in the premises as short circuit happened due to lack of earthing provisions. This as per department was an act of negligence violative of the condition No.1 of License No. DIV-MANK/100% EOU/CUSTOMS/01/2005-2006 dated 26.09.2005 issued to the Appellant which mandates that "**The License holder shall be held strictly responsible for the safe custody of bonded goods and for the due observance of the provisions of the Customs Act, 1962 the Central Excise Act, 1944 or any other law for the time being in force.** As per the allegations, appellant had not taken necessary precautions for safety and security of imported goods as well as of excisable goods in the factory cum Customs Bonded Warehouse and violated Schedule XIX Part 3 Para 2(1) of Gujarat, Factory Rule, 1962 and not followed Rule 66-A(7)(A) of the Rules.

2. The appellant is seeking to justify remission of duty as their claim was duly entertained by the Insurance Company who allowed their claim except to the extent of Salvaged goods. They also took following grounds:-

a) Learned Commissioner failed to appreciate that Section 23 of the Customs Act and Rule 6 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, provide that no duty was demandable from the appellant on account of lost, destroyed or abandoned goods. The said Section reads:

"Section 23

> Remission of duty on lost, destroyed or abandoned goods, (1) Without prejudice to the provisions of section 13, where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that any Imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods.
>
> (2)……."

b) The show cause notice has observed that the goods in question were lying in the Customs Warehouse and were destroyed by an accidental fire before their clearance for home consumption. The show cause notice has also rightly observed that there was an accidental fire and all required precautions were taken. When the factum of fire is not in dispute, Section 23 casts an obligation on the authorities to remit duty on such goods which have been destroyed at any time before clearance for home consumption. In view of this, no customs duty is demandable in respect of imported raw materials and imported capital goods.

c) They rely on the decision of Hon'ble Karnataka High Court in the case of Commissioner, Central Excise, Bangalore Vs. Symphony Services Corporation India Pvt Ltd. 2012 (275) ELT 369 (Kar), wherein Hon'ble High Court in para 8 & 9 after examining the scope of Sections 22 and 23 of the Act held that:

> 8. A careful reading of the aforesaid provision makes it clear that, where it is shown to the satisfaction of the authorities that the imported goods had been damaged or had deteriorated at any time before it is cleared for home consumption on account of any accident not due to willful negligence or default of the owner, the goods which are damaged alone should be taken into consideration for the purpose of charging duty under the Act. To the extent the goods are damaged or deteriorated, there is an abandonment of duty by operation of law. Duty is payable only in respect of goods which is not damaged or deteriorated. As the section makes it very clear, the said damage or deterioration to the goods should be on account of any accident not due to any willful act, negligence or title of the importer. Having regard to the phrase used, the accident referred to therein is a man-made accident. It has no application to a natural calamity.
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> 9. In so far as Section 23 is concerned, it deals with remission of duty. The condition precedent for application of this Section is the imported goods should have been lost other than as a result of pilferage or destroyed at any time before clearance for home consumption. Then the duty payable on such goods which is lost or destroyed shall be remitted by the authorities concerned. Sub-section (2) of Section 23 deals with a case where the goods is neither lost nor destroyed but the said goods is of no use to the importer. Then he has the option of relinquishing his title to the goods and thereupon he shall not be liable to pay duty thereon. The proviso to the said Section adds a rider, i.e., such a relinquishment will not be permitted if the goods regarding which an offence appears to have been committed under the Act or any other law for the time being in force. Therefore, a harmonious reading of these two provisions make it very clear if the imported goods are damaged or deteriorated to the extent of the damage or deterioration of the goods, the liability to pay duty abates by operation of law. If the goods imported are lost or destroyed or abandoned then the case for remission of the duty payable is made out. If the goods are lost or abandoned the assessee is expected to bring to the notice of the authorities the factum of the goods being lost or destroyed and seek for remission of the duty payable under the Act. If the goods are there but it is of

> no use and the assessee wants to abandon the goods, then the request should be for relinquishment of the title to such goods. Once such a relinquishment of title to the goods is made by the assessee then the said goods become the property of the Department and as a consequence of which no duty is payable by the importer. Therefore, the finding recorded by the original authority as well as the Appellate Commissioner that the case falls under Section 22 and not under Section 23 proceeds on a mis-conception of these provisions. When once it is admitted that the entire goods imported has been rendered useless because of seepage of water, the assessee is entitled to claim remission of the entire duty payable on the said goods imported. As the goods is not lost or destroyed, the assessee made a request for relinquishment of the title to the goods with the intention of abandoning the same. By such abandonment and relinquishment, the title in the imported goods is divested and the title vests with the Department. The Tribunal on a proper consideration of the facts keeping in mind the legal principles involved has rightly set aside the order passed by the original authority as well as the Appellate Commissioner granting remission of duty to the assessee. It is in accordance with law. Therefore, no error is made out for us to interfere. In that view of the matter, the substantial questions of law framed in this appeal are answered in favour of the assessee and against the revenue."
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> [Emphasis supplied]

d) Similarly, the Hon'ble Tribunal in Commissioner of Central Excise & Customs, Surat Vs. Welspun Terri Towels - 2002 (149) ELT 593, has held that:

> "6. The claim that the assessee had not taken sufficient safeguard against fire is equally untenable. We have already noted that the appropriate authorities had found the fire to be accidental. Whether the accident could or could not have been avoided is a matter of speculation. There is nothing in the department's appeal to show that there was any element of fraud involved in filing the claim. It is not possible for us to agree, as the appeal claims, that if the respondent had taken proper precautions a fire would not have broken out. As we have noted, there is nothing in the report of the police or the fire authorities or any other document to support the view that the fire was caused by the respondent, or occurred because of its negligence. The Commissioner was not required to ascertain the cause of the fire that would be for the appropriate authority, the police or the fire department as the case may be to do.
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> 7. The next ground in the appeal is that the conditions of notification 13/81 not having been complied with duty becomes payable. No doubt, if the conditions of notification granting exemption were not complied with, the duty that is foregone as a result of the exemption contained in the notification would be required to be paid. That would be the situation, if the goods had been cleared for home consumption after being granted the benefit of the exemption. In the case before us, the goods had not been cleared for home consumption and were in the bonded warehouse. By application of the provisions of Section 23, remission of duty payable would be available. Hence, the goods would have been liable to duty in any event, even without the benefit of notification. The Notification 13/81 no doubt was claimed and granted, in order to complete the assessment. But even if the benefit had not been granted, no duty would still be payable. The duty that would be payable as a result of the condition of the notification not having been complied with would be entitled to the provisions in terms of Section 23(1)."

e) Learned Commissioner also failed to appreciate and follow the decision of the Tribunal in Winsome Yarn Ltd Vs. Commissioner of Central Excise, Chandigarh reported at - 2001 (134) ELT 686, wherein it was held that:

> "4. We have considered the submissions of both the sides. The admitted fact in the present matter is that fibre was damaged in fire when it was kept in the bonded warehouse in the premises of the Appellants. We agree with the submissions of the learned Advocate for the Appellants that clearance of goods from port to the warehouse cannot be equated with the clearance for home consumption. This is very much evident from the provisions of Section 68 of the Customs Act which provides that an Importer of any warehoused goods can clear them for home consumption by filing a Bill of Entry and on payment of import duty leviable on the goods. Section 23 of the Customs Act provides that if any imported goods have been lost or destroyed at any time before clearance for home consumption the Custom duty shall be remitted on such goods. As the impugned goods have been damaged by fire when these were kept in warehouse the provisions of Section 23 of the Act will apply and no duty can be demanded from the Appellants. Accordingly we set aside the impugned Order and allow the appeal."

f) Likewise, Hon'ble Tribunal in Jindal Vijaynagar Steel Ltd Vs. Commissioner of Customs, Mangalore 2006 (201) ELT 18, held that:

> "5……
> …In the present case, there is ample evidence to show that the imported goods have been destroyed before their clearance for home consumption. The various case laws cited by the learned Advocate would show that the remission of duty is available where thegoods are destroyed before their clearance for home consumption. As regards the Supreme Court decision in the case of S.K. Patnayak's case (2000 (115) ELT. 9 (SC)] relied on the by the leamed SDR is concerned, we find that the said decision was rendered in the context of section 27 of the Bihar & Orissa Excise Act, 1915, In our view, this decision would not relevant in the present case which is covered by Section 23 of the Customs Act, 1962. The reliance of the Commissioner (Appeals) on Section 72(d) is not correct. The Section 72(d) imposed a responsibility on the importer who has executed a bond under Section 59 for properly accounting of the goods which were warehoused in the present case, the goods were destroyed by fire even before their clearance for home consumption. The leamed SDR made the point that the appellants have claimed insurance which includes Customs duty. Hence they would not be entitled for remission. The leamed Advocate submitted that the insurance claim does not include duty and even if it includes duty in terms of the Tribunal decision in the case of Welspun Terry Towels (supra), the insurance claim has no bearing on claim for remission. We agree with the learned Advocate that the insurance covers risk and is governed by separate enactments. We cannot mix up the provisions of the Customs Act with Insurance Act to deny the benefit specifically provided under Customs Act, 1962. The present case is squarely covered by section 23 of the Customs Act, 1962. The Order-in-Appeal has no merit. Hence we set aside the impugned Order-in-Appeal and allow the appeal."

g) It is now well settled that no duty can be demanded under Rule 6 of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. Both the above aspects with regard to imported as well as indigenous goods are now well settled. Learned Commissioner failed to appreciate and apply the ratio of the decision in Sami Labs Limited Vs. Commissioner of Customs, Bangalore [2007 (216) ELT 59], wherein it held that:

> "5. We have gone through the records of the case carefully. The appellant's unit is 100% EOU. 100% E.O.U. enjoys duty free import and procurement of capital goods and raw materials on the condition that they would export the finished goods in terms of the letter of permission given by the competent authority. The capital goods procured duty free should be used in the manufacture of final products which are to be exported. Similarly the raw

materials procured should be used in the manufacture of final goods to be exported. When the goods are not used for the intended purpose, the assessee who procures the goods at concessional rate of duty is liable to discharge the duty burden. In the present appeal, we are concerned only with the Central Excise duty liability as the appellants already got relief in respect of Customs duty. The Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 have been framed by the Central Government under Section 37 of the Central Excise Act, 1944. In terms of Rule 6, if the goods procured are not used by the manufacturer for intended purpose, the manufacturer shall be liable to pay the differential duty. An explanation has been added to the above Rule. We are reproducing the explanation to Rule 6, herein below :-

> "Explanation For the removal of doubts, it is hereby clarified that subject goods shall be deemed to have been used for the intended purpose even if any of the quantity of the subject goods is lost or destroyed by natural causes or by unavoidable accidents [during) transport from the place of procurement to the manufacturer's premises or from the manufacturer's premises to the place of procurement) or during handling or storage in the manufacturer's premises."

In the present case, the goods were destroyed not during the transport from the place. of procurement to the manufacturer's premises or during handling or storage in the manufacturer's premises. The Original Authority has given a finding that the raw materials have been issued for production and the same is under various stages of production. He has also stated that the capital goods have been installed and put to use. He has also given finding that the conditions of Notification No. 22/2003 C.E., dated 31-3-2003 have been fulfilled and hence the question of demanding the Central Excise duty forgone under the said Notification would not arise. The Commissioner (Appeals) on the contrary has held that the expression "handling in the Explanation means usage of goods and extends up to the point when further process on the goods stop. Therefore according to him, even if the goods were 'work in progress', they would be covered by the expression "during handling" and they would also be hit by the Explanation. They will be considered as having not being used for the intended purpose and duty is rightly demandable. We find that in the fire accident, the imported goods involving Customs duty and indigenous goods involving excise duty were destroyed. The Revenue has no problem in remitting the Customs duty under Section 23 of the Customs Act. As regards the goods indigenously procured, both capital goods and raw materials are involved. On the question that the fire accident occurred in the production premises there is ample evidence and that fact is not under dispute. This clearly indicates that the raw materials have already been issued for the intended purpose. Therefore the materials lost in fire accident were in the form of 'work in progress'. The Revenue's contention and the Commissioner's (Appeals) view that even the 'work in progress material would be covered by the Explanation to Rule 6 is not correct. Further, we would like to point out that according to Rule 21 of the Central Excise Rules, there is a provision for remission of duty in respect of the goods lost or destroyed by natural causes for unavoidable accidents. Even under Section 23 of the Customs Act, there is a provision of remission of Customs duty on goods lost or destroyed before their clearance. Therefore it does not stand to reason that the duty on indigenously procured duty free raw materials should be demanded when they are destroyed due to unavoidable accident/natural causes on the specious ground that they have not been used for the intended purpose. We find that the order of the Original authority is well reasoned. Therefore we hold that the raw materials/capital goods which are in the premises of production would not be hit by the Explanation to Rule 6. The above goods have actually been used for the intended purpose. The accident is not the making of the appellant and it should be considered to be an act of God. Hence it is not correct to demand the duty forgo. We allow the appeal with consequential relief."

This judgment was upheld by Hon'ble Karnataka High Court as reported at 2012 (278) ELT 601 wherein Hon'ble Court observed in para 6,7 & 8 as under:-

"6. We are in complete agreement with the view expressed by the Tribunal Explanation to Rule 6 of the Rules is amply clear. In the instant case, there is no dispute that the goods have been destroyed by accidental fire. The view of the Commissioner (Appeals) was that the expression "handling" used in the Explanation means usage of goods and extends up-to the point when further process on the goods stop. Therefore, according to him, the goods would be covered by the expression "during handling" and they would be hit by the Explanation. The view of the Commissioner (Appeals) that even the "work-in-progress" material would be covered by the Explanation to Rule 6 is incorrect.

7. The Tribunal has rightly passed the order which does not call for interference. The Explanation to Rule 6 is clearly not attracted in the present case. There is no error committed by the Tribunal, that warrants any interference, it is well reasoned order.

8. Hence we are of the considered view that there is no error committed by the Tribunal that calls for any interference. Accordingly the substantial questions of law are answered in favour of the assessee and against the revenue. The Appeal is accordingly dismissed."

h) The Hon'ble Tribunal in Aditya Industries Vs. Commissioner of Central Excise, Ahmedabad [2009 (249) ELT 567] again held that:

"3. After hearing both sides, we find that the issue is no more res integra and in case of M/s. Sami Lab Ltd. v. CC, Bangalore 2007 (216) ELT. 59 (Tri-Bang.), it was observed as under:

"As regards the goods indigenously procured, both capital goods and raw materials are involved. On the question that the fire accident occurred in the production premises there is ample evidence and that fact is not under dispute. This clearly indicates that the raw materials have already been issued for the intended purpose. Therefore, the materials lost in fire accident were in the form of 'work in progress'. The Revenue's contention and the Commissioner (Appeals)'s views that even the work in progress material would be covered by the Explanation to Rule 6 is not correct. Further, we would like to point out that according to Rule 21 of the CER, there is a provision for remission of duty in respect of the goods lost or destroyed by natural causes for unavoidable accidents. Even under Section 23 of the Customs Act, there is a provision of remission of Customs duty on goods lost or destroyed before their clearance. Therefore, it does not stand to reason that the duty on indigenously procured duty free raw materials should be demanded when they are destroyed due to unavoidable accident/natural causes on the specious ground that they have not been used for the intended purpose. We find that the order of the original authority is well reasoned. Therefore, we hold that the raw materials/capital goods which are in the premises of production would not be hit by the Explanation to Rule 6. The above goods have actually been used for the intended purpose. The accident is not the making of the appellant and it should be considered to be an Act of God. Hence, it is not correct to demand the duty forgo. We allow the appeal with consequential relief."

i) Hon'ble Karnataka High Court in the case of Commissioner of Customs, Bangalore Vs. Next Fashion Creators Pvt Ltd., reported at [2012 (280) ELT 374] held as under:

"4. The facts are not in dispute. The assessee is 100% export oriented unit. It has imported goods without paying duty. If they have performed their export obligations, they were not liable to pay the duty before that obligation could be performed, when the goods were warehoused, there was a fire accident, in the fire accident, the entire goods which were imported were destroyed. It is nobody's case that there was any pilferage of these goods. Under these circumstances, when the claim of remission is made under Section 23 of the Act, legal requirements to be fulfilled by the assessee to claim remission stands fully satisfied. The Commissioner was wholly in error in denying the said benefit on the ground that the said benefit is not entitled to EOU under the notification and that the assessee did not take care of the goods imported and also on the ground that the Managing Director of the assessee admitted discrepancy in the

figures. All these factors which weighed with the Commissioner are totally extraneous for considering the claim for remission under Section 23 of the Act. The Tribunal on proper appreciation of the material on record and correct interpretation of Section 23 of the Act was justified in setting aside the order passed by the Commissioner of Customs and in granting relief to the assessee. In that view of the matter, we do not see any merit in this appeal and accordingly, it is dismissed. No costs."

j) Hon'ble Tribunal in Sheela Foam Pvt Ltd., Vs. Commissioner of Central Excise, Noida reported at 2012 (283) ELT 85, wherein the Hon'ble Tribunal held as under:

"9. On reading of Rule 21 of the Central Excise Rules, 2002 it is clear the assessee is entitled to remission of excise duty if he is able to satisfy the Commissioner, Excise, that the goods in question were destroyed as a result of unavoidable accident. This satisfaction envisaged by the Rule is not arbitrary satisfaction but the judicial satisfaction of the Commissioner based upon objective analysis of the facts. The Commissioner (Appeals) have rejected the plea of the appellant on the premise that the fire accident was avoidable by following mandatory safety norms by the appellant. This finding, however, is not supported by facts and reasoning. There is nothing on record of appeal No. 2608 of 2008 to suggest that there was any material available with the Commissioner (Adjudication) to come to the conclusion that the appellant was not following the safety norms, therefore, we find it difficult to accept his finding in this regard.

10. As regards, the plea of Shri S.R. Meena, AR for the respondent that the appellant did not produce any material to show that he had taken insurance claim on the value of the goods including excise duty it may be noted that impugned order of Commissioner (Adjudication) itself reflects that as per the report submitted by Range Officer by letter dated 25th January 2007, the appellant has filed insurance claim without including the duty element. Thus, this plea raised by learned AR is not acceptable.

11. In view of the discussion above, we find it difficult to sustain the order of Commissioner (Adjudication) disallowing the remission of duty sought by the party particularly when the appellant has placed sufficient material on record to show that finished/semi-finished goods were destroyed in fire accident cause due to short circuit.

12. The impugned order of Commissioner (Appeals) is based upon the dismissal of application of remission by the Commissioner (Adjudication), which have held to be not sustainable in law. Therefore, the order of Commissioner (Appeals) also cannot be sustained."

k) The Tribunal in the case of Supreme Industries Ltd. Vs. Commissioner of Central Excise, Pondicherry reported at 2011 (271) ELT 241, has held that:

"8. We have gone through the case records and after going through the case records, we find that the insurance company, who has sanctioned the claim of goods lost in fire has inspected the premises of the appellant in the year 1999 (by the representative of the insurance company) who found that after 1998, the appellants have taken necessary steps to prevent fire in future, which were upto the satisfaction of the insurance company the same has been confirmed by their letter dated 3-1-2000. Thereafter, the allegation that the appellants have not taken any steps to prevent fire in future after 1998, is not sustainable. Moreover, the cause of fire has been observed by all the authorities, (who has inspected the premises and given their report) is that the fire occurred due to short circuit of electric wire and also the fire was unavoidable. Therefore, the allegation that fire was avoidable is not sustainable without any corroborative evidence. The report of Tariff Advisory Committee wherein it was stated that no steps were taken by the appellants cannot be given credence as the said report has been made after the occurrence of the

> fire accident. The letter dated 3-1-2000 of insurance company is very much relevant as the officials of the insurance company had inspected the factory of the appellants in the year 1999 before occurrence of the fire accident and found that the appellant have taken necessary steps to prevent the fire. The other argument is that the goods were not stored in bonded store room has also been examined by us and found that the major goods lost in fire was very much in bonded store room and only a minimum quantity was outside the bonded store room, it is a fact all the goods were within the factory premises of the appellant. We have gone through the case laws cited by both sides and we find that in all the case laws, it was observed that remission of duty can be allowed on account of loss due to fire, if the fire is occurred due to unavoidable circumstances and up to the satisfaction of the adjudicating authority.
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> 9. In this case we find that the main reason for denial of remission of duty by the adjudicating authority that the fire was avoidable. But going through the case records and independent reports by all the five authorities, who found that the fire occurred due to unavoidable circumstances, therefore, we do not find any reason for denial of claim of remission of duty. Accordingly, the order of denial of remission of duty is set aside and the claim of remission of duty is allowed. Consequently, the order of demand of duty on goods lost in fire is also set aside holding that the fire occurred due to unavoidable reasons."

l) Hon'ble Tribunal in Vamsadhara Paper Mills Ltd., Vs. Commissioner of Customs, Vishakapatnam - 2009 (247) ELT 751, held as under:

> "6. We have gone through the records of the case. The goods were imported duty free claiming benefit of Notification No. 17/2001, dt. 17-3-2001. The undisputed fact is that in respect of quantity of 50.571 MTs, no end-use certificate could be produced as the goods were destroyed due to fire. In the case of CCE v. Foods, Fats and Fertilisers Ltd. 1989 (41) ELT. 277 (Trib.), the goods intended for use were removed free of duty from the place of production to the hydrogenation plant within the same factory for further manufacture. There was a fire accident and the goods were destroyed. There was no allegation that the goods had been diverted for other purposes. In those circumstances, the Department demanded duty. However, the Commissioner (Appeals) held that the intention to use for the specified purpose would be sufficient. The Department did not accept the order of the Commissioner (Appeals). It was challenged before the CEGAT, Special Bench. The Tribunal upheld the order of the Commissioner (Appeals). It was held that no duty could be demanded on the materials intended for use in the factory, when they were destroyed by fire accident. The other decision CCE v. Welspun Terri Towels deals with remission of duty u/s 23 of the Customs Act in respect of the goods destroyed by fire accident. In both the above decisions, a sympathetic view has been taken by the Tribunal as the fire accident is beyond the control of the assessee's concerned. In the present case also, the goods which were intended for the use under the relevant notification were destroyed by fire accident. The ratio of the above cases is clearly applicable. In these circumstances, the demand of duty is not sustainable. The same is set aside and we allow the appeal."

m) The demand raised in the show cause notice under Section 11A(1) is not recoverable because Section 11A(1) gets attracted for recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded which is not the case here. Also, if duty is demandable, depreciation need to be allowed in case of capital goods both indigenous and imported - from the date of installation. Ld. Commissioner denied depreciation on the ground that as per Notification No. 22/2003-CE and 52/2003-Cus, depreciation on capital goods is subject to prior approval

from the competent authority. The conditions in the notification envisage a scenario where goods are destroyed for reasons other than accident. The present case was an accident due to fire which was beyond their control and hence Notification No. 22/2003-CE and 52/2003-Cus was not applicable. They rely on the decision of the Tribunal in Khabros Steel India Limited Vs. Commissioner of Central Excise, Jaipur reported at 2006 (114) ELT 117 (Trib) wherein it was held:

> 4. Depreciation is almost a rule of nature. Business accounting invariably provides for it. Thus, the appellant's claim for depreciation is in terms of common practice. Whether de-bonding of old equipment was in terms of permission or not, should not affect depreciation. Since LOP has been cancelled, the appellant cannot continue as EOU and has to de-bond the capital goods and pay customs duty. It is also noted that depreciation up to 90% on straight line method remains approved in the Circulars of the Board. In these circumstances, the duty payable by the appellant on the capital goods would be the amounts indicated above. Duty demand made in excess of the said amounts in the impugned order is not sustainable.

Similar ruling was given by the Tribunal in the case of Shiva Analyticals (I) Ltd Vs. Commissioner of Customs, Bangalore 2008 (224) ELT 417.

n) The Tribunal in case of Commissioner of Customs, Bangalore Vs. Maharashtra Hybrid Seeds Co. Ltd 2008 (226) ELT 575 held that:

> "4. We have carefully considered the submissions made by both sides. We are not agreeable with the grounds raised by the revenue. The Commissioner has followed the ratio of the Tribunal ruling rendered in the case of Natural Stones Exports case noted in para 15 of his Order. He has also looked into the condition 3(b) of the Notification in question. Tribunal has been consistently holding that the assessee is eligible for the benefit of depreciation when partial export obligation has been fulfilled. Revenue is not denying the fact of the assessee having partially fulfilled the export obligation. Therefore, the order passed by the Commissioner granting the benefit of depreciation is in order. The duty has to be calculated on the depreciated value. We do not find any merit in the appeal filed by the revenue and the same is rejected. The cross objection is disposed of in the light of the above finding."

o) The learned Commissioner failed to appreciate that the judicial pronouncements have consistently taken the view that except in cases of malafide, a fire is always a result of an accident which may sometimes arise as a result of negligence or carelessness of manufacturers. Even in such cases, it has been held that if the factum of fire is not in dispute and no malafides are being alleged, remission of duty must be granted. The appellant had taken all precautions as

required by law and enclosed affidavits sworn by various independent agencies as well as their Plant-in-Charge detailing the precautions and extra steps taken to ensure that no mishap occurs. The show cause notice and the order also does not allege any malafides.

p) The entire scheme is that a manufacturer is allowed to bring imported raw materials and capital goods with an undertaking to use them for manufacture of goods which will be exported. Both the capital goods brought and the raw materials purchased are in fact used and deemed to have been used for the purpose for which they have been imported when they are put in the plant. Only when there is a pilferage or theft or removal in unauthorised manner, question of demand of duty arises. In case of fire, flood, earth-quake etc (circumstances beyond control / act of God), there can be no question of demanding any duty because the law recognizes that a manufacturer has lost valuable capital goods and raw materials as a result of such accident. Learned Commissioner failed to appreciate that despite uncontroverted evidence on record that earthing connections were proper and that fire was a result of accident as there was no negligence or let up on their part, he held that there was absence of proper and effective earthing connection which caused the fire. The finding is not correct in view of affidavits submitted of various independent agencies as well as their Plant-in-Charge detailing steps taken to ensure that no mishap occurs. The appellants had also offered the deponents for cross-examination which Commissioner did not do and those affidavits remained uncontroverted evidence on record.

q) The finding of the Commissioner that since there was huge excess of permissible legal and safety limits, such major fire was caused is ex-facie erroneous. He failed to appreciate that as an EOU, appellant was supposed to keep the entire quantity of raw material in the bonded

warehouse and not only the quantity which could be there in the work room. He also failed to appreciate that Section 28 of the Customs Act, 1962 is not applicable in the facts of the present case as no duty is payable on the destroyed goods in the first place. They have not removed the goods from the bonded warehouse when the same were destroyed in fire. The question of violation of Rule 25 of the Rules also did not arise at all as goods were destroyed due to fire before removal. Also, the question of charging interest and imposition of penalty under Rule 25 read with Section 72 read with Section 112 of the Customs Act does not arise.

r) The learned Commissioner failed to appreciate that even if duty was payable by the appellant despite above submissions, rate of duty applied by him was ex-facie incorrect and, therefore, the impugned order deserves to be quashed and set aside. He also failed to follow the ratio of the judgment of Hon'ble Supreme Court in Weston Components Ltd. Vs. CCE [2000 (115) ELT 278] and proceeded to confiscate the goods under Rule 25 of the Central Excise Rules, 2002 and Section 111(j) and Section 111(0) of the Customs Act. The imposition of fine is ex-facie illegal and bad in law. He failed to appreciate that neither Section 111(j) nor Section 111(0) of the Customs Act is applicable in this case.

s) The learned Commissioner has failed to appreciate that neither Section 72 nor Section 112 of the Customs Act, 1962 are not attracted in the present case because none of the ingredients of the said section are present. Similarly, Rule 25 has no application in the facts and circumstances of the present case. Despite clarification of the legal position by the appellant, Learned Commissioner did not appreciate and passed the impugned order imposing penalty which deserves to be quashed and set aside.

For the Department:-

3. Learned Authorised Representative reiterates the findings as are contained in the Order-in-Original and justified rejection of remission claim of the party on the following grounds. The relevant paras of the impugned order are as under:-

> *"15 It is observed that there was a fire accident in the duty premises of the Assessee on 03.04.2010 and the inputs, raw materials, goods in work-in-progress, finished goods, Capital Goods and Plant and Machinery got destroyed. Mis. Wockhardt Ltd., is a 100% EOU and were granted letter of permission by the Development Commissioner, KASEZ, Kandla and license for private bonded warehouse under Section 58 of the Customs Act, 1944 and were permitted manufacturing activities in the bonded premises under Section 65 ibid. the Assessee has obtained various raw materials and Capital goods either locally or through imports without payment of Applicable Central Excise / Customs Duty under respective notifications. The duty-free procurement of raw materials and capital goods was subject to the condition that these goods shall be used to manufacture the final products, which shall be exported. In this regard, the Assessee has executed a B-17 Bond for Rs. 15,00,00,000/- with the DC, Central Excise, Division-III- Ankleshwar, wherein they have committed and bound themselves to fulfil the conditions stipulated in Duty Free procurement of raw materials / capital goods Notifications and various Sections of the Customs and Central Excise Acts. They have also undertaken to pay on demand amount of Customs and Central Excise duty on the goods which were not duly accounted for them for intended use and subsequent exports.*
>
> *16 It is undisputed that the goods were destroyed in fire. It is observed that the Assistant director, Industrial Safety & Health, Bharuch, vide his report dated 08.04.2010 has reported that the cause of fire is that the earthing provisions (in the form of earthing wire, further extending to earthing strip leading to earthing pit at the ground level) were in place. 6 drums had been charged under Vaccume while 7th drum was being charged, the contents in the drum got fire. The possible reason for fire as reported would be temporary discontinuity in the earthing circuit which resulted in a spark due to activation of static charges, which were already residing in the premises during the transfer of solvent, hence the fire accident. The report further states that during the time of charging of HDPE toluene drum static charge gathered in the drum and in the absence of not getting proper and effective earthing connection, the contents in the drum got spark, which let to major accident. The report stated that the owner / management of the unit, therefore had violated schedule 19 Part 3 Para 2(1) of Gujarat Factory Rules, 102. The report further stated that litres of Toluene, 16385 litre of Chloroform. 8641 litres of Acetone and 3423 litres of*

at the time of accident there were stocks of 13143 litre methanol (Methyl Alcohol), 15539 Methylene Chloride. About 125 drums of solvent were lying at the top floor, 50 drums at the first floor and 25 drums at the ground floor. The flash point of said solvent was 16 degree and Methanol flash point was 11 degree and as per the provisions of Gujarat Factory Rules 66-A (7) (A), if the flash point of Chemicals / Solvents are less than 21 degrees, then no more than 20 litres of stock of chemical / solvent are allowed to be stocked in the plant. And whereas, in the instant case, there was more than the prescribed stock of chemicals/solvents lying in the plant and thus the unit has violated the provisions of Gujarat Factory Rules.

17 It is therefore clear that there was absence of proper and effective earthing connection which led to fire. Further, the Assessee were not permitted legally to store more than 20 litres of solvents and methanol. However, as against the permitted quantity of 20 litres, the Assessee was storing 13143 litre methanol (Methyl Alcohol) and 15539 litres of Toluene in their factory. Further Acetone and Methylene Chloride which are also highly inflammable chemicals were stored to the tune of 12000 litres in their factory. Similar incident report was submitted by the Assessee also.

18 It is therefore clear that the Assessee had not taken proper care to avoid the Accident. They have not installed proper and effective earthing connection which led to fire. Furthermore, such major fire could have definitely been averted had they adhered to the Rule 66A (7)(A) by retaining 20 litres of chemicals having low flash point. "The flash point of a volatile material is the lowest temperature at which it can vaporize to form an ignitable mixture in air. Measuring a flash point requires an ignition source. At the flash point, the vapor may cease to burn when the source of ignition is removed.". Thus the Flashpoint is the temperature at which the chemical / solvent can catch fire. Also if the source of the ignition is removed the vapour may cease to burn. Thus, it is seen that due to improper and ineffective earthing is a source of ignition was provided to the volatile chemicals / solvents. Also because of availability of abundant quantities of such low flash point chemicals /solvents in huge excess of permissible legal and safety limits, such major fire was caused. The major fire could have been prevented by adhering to proper and effective earthing connection and permissible storage limits. I therefore observe that in view of severe negligence on the part of the Assessee such major fire accident can not be termed as "unavoidable accident". The fire could have been prevented with proper earthing. Also if 20 litres of chemicals instead of thousands of litres were stored, such major fire could have been prevented.

19 In Jandial Shoe Factory Vs CCE 2009 (239) ELT 203 (Tri.), remission of duty was rejected as Assessee was found to be negligent. In DHARMAPURI CO-OP SUGAR MILLS LTD. Vs. COMMR. OF C. EX., CHENNAI 2010 (253) E.L.T. 303 (Tri. - Chennai), it was held that when the loss is entirely due to negligence of the Assessee, remission cannot be granted.

20 In Voltas Ltd., Vs. CCE 2003 (156) ELT 295 (Tri.) it was observed "It is reasonable to conclude that the term "unavoidable accident would mean an accident which has not arisen as a result of negligence or wilful omission on the part of the manufacturer and has arisen despite reasonable precautions that he has taken. In the instant case I find that the Assessee has violated Schedule

9. Part 3. Para 2(1) of Gujarat Factory Rule, 102 and the provisions of Rule, 66-A(7)(A) of Gujarat Factory Rules. And it was solely because of negligence, carelessness and wilful omission on the part of the manufacturer. Therefore, the duty is as stipulated in the Show Cause Notice are liable to be demanded and recovered.

21 Section 72 of Customs Act, 1962, stipulates that the Customs Duty is recoverable on the goods in respect of which a bond has been executed or improperly removed from the bonded warehouse and which have not been cleared for home consumption or exportation and are not accounted for to the satisfaction of proper officer. The license for bonded warehouse was granted to the Assessee on 26.09.2005 with the condition No. (1) "The license Holder shall be held strictly responsible for the safe custody of bonded goods and for due observance of the provisons of the customs Act, 1962, the Central Excise Act, 1944 or any other law for the time being in force. Condition No 22 stipulated - "in case of any theft, damage or deterioration of ware house goods the licensee shall have to discharge full duty liability in respect of such goods. Condition No. 23-"The licensee shall ensure that there are adequate provisions for fire-fighting operations in the bonded area". The letter of permission of the Development Commissioner, KASEZ also stipulated that the EOU shall be strictly responsible for safe custody and for due observance of all Laws in force.

22 As observed the Assessee had been careless, negligent and has omitted to comply with the permissible storage limits, thus contravening the prevailing laws. They have not taken necessary precautions for safety of imported goods, Excisable goods, Raw materials and capital goods in the factory cum custom bonded warehouse and have violated the provisions supra. Therefore, the conditions of the license and the notifications under which the goods were procured duty free but were not exported are liable to be recovered. Also, they failed to account for the goods and preserve the goods properly.

23 M/s. Wockhardt cited all the case laws which allow remission of duty due to unavoidable accidents. Also, the noticee have contended that all fire accidents are accidental. However as observed by me above, the fire ws because of utter disregard to the safety rules and Fire Regulations. A fire which is conclusively in violation of fire safety laws is not accidental. Hence with respect it is observed that the cited case laws are not applicable.

24 The Assessee has contended that these were three calculation errors in quantification of duty on following grounds :-

(a) Simple arithmetic error in addition in the value and duty in the year 2008-09in Annexure B to the SCN

(b) Rate of duty prevailing at the time of fire should be applied

(c) Depreciation on capital Goods as per notification 22/2003 should be allowed.

25 It is observed that in the annexure B to the SCN, yearwise quantification has been made for the respective years 2005-06. 2006-07. 2007-08 and 2008-09. For duty involved in indigenous capital goods. In the annexure after each year total of value and duty demanded has been made for the first three years of demand. However, after the enumeration of entire for the fourth year i.e. 2008-09, it is clear that sub totals have again been added. Also in

some places two zeroes after decimal point have been taken which has increased the figures 100 times. However, the discrepancy is only in totalling the value and duty in the year 2008-09.

26 I therefore observe that in 2008-09, the correct value should be Rs. 27,38,728/- (as per arithmetic correction) and the correct duty demand should be Rs. 3,94,926/- in place of Rs.3,74,72,476/- mentioned in Annex B to the SCN. The quantification for the four years would be therefore as follows -

Year	Value after rectification of totalling error	Duty after rectification of totalling error
2005-06	Rs. 4,39,08,656/-	Rs. 73,34,984/-
2006-07	Rs. 81,25,105/-	Rs. 17,38,650/-
2007-08	Rs. 5,05,62,121/-	Rs. 94,65,141/-
2008-09	Rs. 27,38,728/-	Rs. 3,94,926/-
Grand Total	Rs. 10,53,34,610/-	Rs. 1,89,33,701/-

28 Regarding the rate of duty applicable for the bonded goods in the EOU, the duty forgone is required to be recovered for the raw materials.

29 The noticee has requested for allowing depreciation on the capital goods. However I find that as per notification 22/2003 CE, dated 31.03.2003 and 52/2003-Cus, depreciation is allowed on clearance of capital goods subject to prior approval from the competent authority. In the instant case the condition of the notification was not complied with. Hon'ble Supreme Court in the case of CCE Surat-II vs Favourite Industries 2012 (278) ELT 145 (SC) in para 14 has observed as under:-

> *14. Before we deal with the contentions canvassed by the learned counsel for the parties to the lis, we deem it appropriate to notice the observations made by the Constitution Bench of this Court in the case of Commissioner of Central Excise, New Delhi Vs Hari Chand Shri Gopal&Ors., 2010 (260) E.LT. 3 (S.C.), insofar as the mechanism and interpretation of an exemption notification issued under a fiscal enactment. This Court has observed in the said decision:*
>
> *"A provision especially a fiscal statute providing for an exemption, concession or exception has to be construed strictly. An exemption notification has to be interpreted in the light of the words employed by it and not on any other basis. A person who claims exemption or concession must establish clearly that he is covered by the provision(s) concerned and, in case of doubt or ambiguity, the benefit of it must go to the State."*

In view of this, the depreciation as requested is not available.

30 M/s. Wockhardt Ltd., have contravened the provisions of Customs Bonded Warehouse, the terms of B-17 Bond executed by them, Section 72, 65 and 58 of Customs Act. Therefore the goods are liable for confiscation under Section 111(0) of the Customs Act read with Section 72 of Customs Act. They also liable for penal action under Section 72 and Section 112 of Customs Act and the Customs Duty foregore on imports, raw materials and capital goods is recoverable from them. Under Section 72 read with Section 28 of

the Customs Act and in terms of B-17 bond. The Central Excise Duty foregone on inputs / raw materials and capital goods procured indigenously are liable to be recovered from them under Section 11A of the Act and in terms of B-17 bond. Interest at the applicable rate is also recovereable under Section 11AB of Central Excise Act for the goods procured indigenously and under Section 28AB of the Customs Act for the goods imported.

31 The inputs / raw materials and capital goods valued at 31,22,92,936/- and Rs. 1,85,08,350/- though not physically available for confiscation are liable for confiscation under Rule 25 of Central Excise Rules and Section 111 (o) of the Customs Act. The goods are confiscable since the Assessee had executed a B-17 bond. Hon'ble Supreme Court in the case of M/s. WESTON COMPONENTS LTD. Vs. CCE 2000 (115) E.L.T. 278 (S.C.) has held that when the goods are covered by a bond, the redemption fine is imposable. However, considering the fact that the Assessee has suffered huge losses, even though the Accident was fully avoidable and took place as a result of their negligence and carelessness, I would take a lenient view while arriving at the quantum of the redemption fine.

On the basis of the findings above. I order as follows:

(i) The Central Excise Duty foregone on inputs/raw materials procured indigenously to the tune of Rs. 1.81.956/- and duty on capital goods procured indigenously to the tune of Rs.1,89,33,701/- is confirmed under Section 11A(1) of Central Excise Act and in terms of B-17 Bond executed by them. The demand in excess of Rs. 1.89,33,701/- out of Rs. 5.60.11.251/- , which occurred due to arithmetic error is dropped. Annexure B of the SCN shall be part of this Order In Original.

(ii) Customs Duty foregone on inputs / raw materials imported to the tune of Rs. 1,43,782/- and on capital goods imported to the tune of Rs. 53,11,185/- is confirmed under Section 72 read with Section 28(1) of Customs Act, 1962 and in terms of B-17 Bond executed by them.

(iii) I impose penalty of Rs. 50,00,000/- on M/s. Wockhardt Ltd., under Rule 25 of Central Excise Rules, 2002. I impose penalty of Rs. 25,00,000/- on M/s. Wockhardt under Section 72 read with Section 112 of Customs Act, 1962.

(iv) I confirm interest at the appropriate rate under Section 11AB of Central Excise Act, 1944 and under section 28AB of Customs Act, 1962 as applicable.

(v) The input / raw materials and Capital Goods valued at Rs. 10,71,01,172/- and Rs. 1,85,08,350/- are ordered to be confiscated in terms of Hon'ble Supreme Court's Decision in Weston Components under Rule 25 of Central Excise Rules and under Section 111(0) and 111(j) of Customs Act and in terms of B-17 bond executed by them. I impose fine of Rs. 1,25,00,000/- against M/s. Wockhardt Ltd.

(vi) B-17 bond shall be enforced."

4. In rejoinder, the appellant stated that the claim stands entertained by the Insurance Company after due verification by the surveyor which allowed their claim of Rs. 13,18,37,216/- out of claim of Rs.14,29,42,353/- except to the extent of salvaged goods values

Rs.95,72,768/- which were cleared after payment of duty of Rs.18,86,176/-. This establishes that there was no negligence on their part. No insurance claim is granted of the duty as the same could not have been done in a case of EOU where goods are procured duty free. They submitted the following document in support:-



Dated: 9th May 2012

To

The United India

Sub: Settlement of Fire Claim under policy no.180601/11/09/11/00000083

Dear Sir

This is in reference to our fire loss occurred in our MPP Plant **on 3rd April 2010** causing damage to the plant & machinery, Building and inventories. As appointed by United India our surveyor is Mr. P S Ramnathan. We have received interim payment of **5 Crores** in the month of August 2010.

On **4th April 2012** we were being informed about assessment of probable loss and after discussing the same with the surveyor, final settlement amount as worked out is as per **Annexure A**

Claim assessment amount as per the calculation is **14,29,42,353/- .**

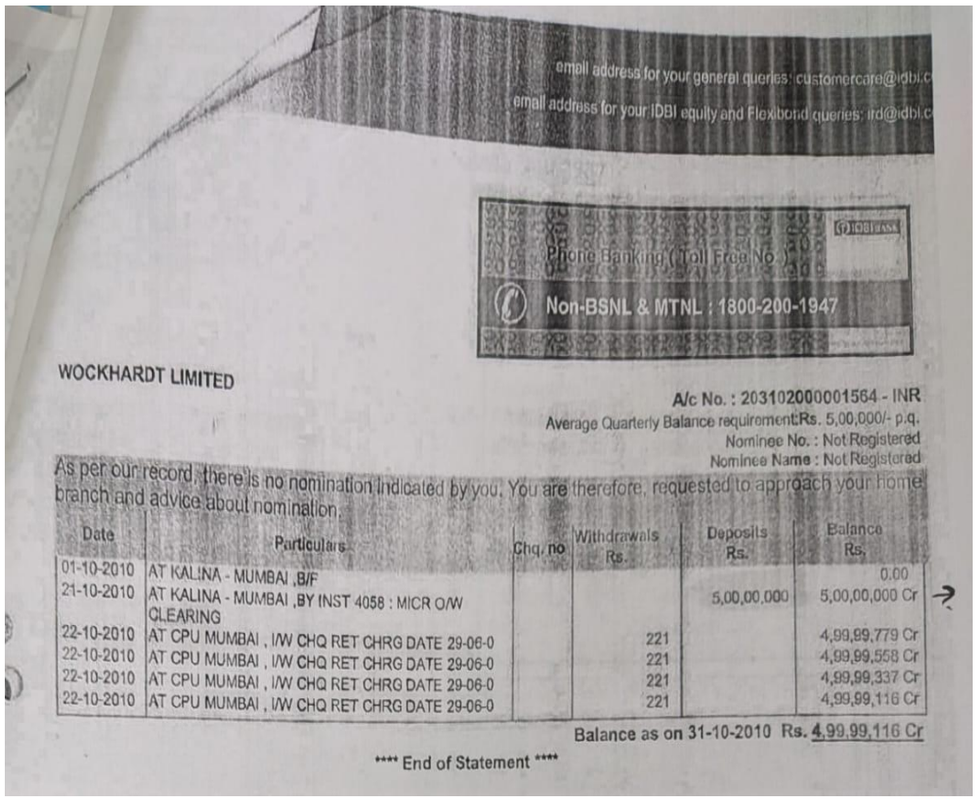
Kindly look into the matter and release the balance payment at the earliest as our claim is pending since more than 2 years.

Yours Truly

Authorised Signatory

CC

1. P S Ramnathan



email address for your general queries: customercare@idbi.c
email address for your IDBI equity and Flexibond queries: ird@idbi.c

Phone Banking (Toll Free No.)
Non-BSNL & MTNL : 1800-200-1947

WOCKHARDT LIMITED

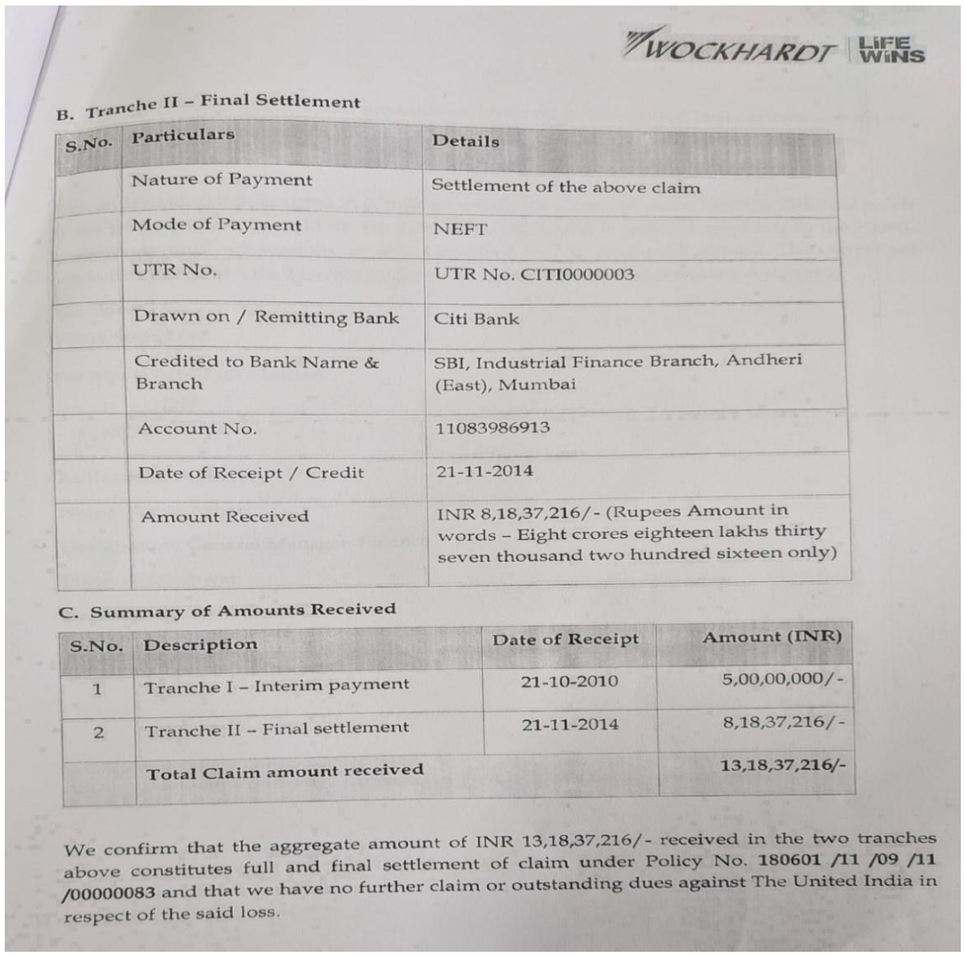
A/c No. : 203102000001564 - INR
Average Quarterly Balance requirement:Rs. 5,00,000/- p.q.
Nominee No. : Not Registered
Nominee Name : Not Registered

As per our record, there is no nomination indicated by you. You are therefore, requested to approach your home branch and advice about nomination.

Date	Particulars	Chq. no	Withdrawals Rs.	Deposits Rs.	Balance Rs.
01-10-2010	AT KALINA - MUMBAI ,B/F				0.00
21-10-2010	AT KALINA - MUMBAI ,BY INST 4058 : MICR O/W CLEARING			5,00,00,000	5,00,00,000 Cr
22-10-2010	AT CPU MUMBAI , I/W CHQ RET CHRG DATE 29-06-0		221		4,99,99,779 Cr
22-10-2010	AT CPU MUMBAI , I/W CHQ RET CHRG DATE 29-06-0		221		4,99,99,558 Cr
22-10-2010	AT CPU MUMBAI , I/W CHQ RET CHRG DATE 29-06-0		221		4,99,99,337 Cr
22-10-2010	AT CPU MUMBAI , I/W CHQ RET CHRG DATE 29-06-0		221		4,99,99,116 Cr

Balance as on 31-10-2010 Rs. 4,99,99,116 Cr

**** End of Statement ****



WOCKHARDT LIFE WINS

B. Tranche II – Final Settlement

S.No.	Particulars	Details
	Nature of Payment	Settlement of the above claim
	Mode of Payment	NEFT
	UTR No.	UTR No. CITI0000003
	Drawn on / Remitting Bank	Citi Bank
	Credited to Bank Name & Branch	SBI, Industrial Finance Branch, Andheri (East), Mumbai
	Account No.	11083986913
	Date of Receipt / Credit	21-11-2014
	Amount Received	INR 8,18,37,216/- (Rupees Amount in words – Eight crores eighteen lakhs thirty seven thousand two hundred sixteen only)

C. Summary of Amounts Received

S.No.	Description	Date of Receipt	Amount (INR)
1	Tranche I – Interim payment	21-10-2010	5,00,00,000/-
2	Tranche II – Final settlement	21-11-2014	8,18,37,216/-
	Total Claim amount received		**13,18,37,216/-**

We confirm that the aggregate amount of INR 13,18,37,216/- received in the two tranches above constitutes full and final settlement of claim under Policy No. **180601 /11 /09 /11 /00000083** and that we have no further claim or outstanding dues against The United India in respect of the said loss.

The party has further declared as follows:

WOCKHARDT LIFE WINS

To,
The Assistant Registrar,
Hon'ble CESTAT,
New C.Ex. Building, Opp. Gandhi Baug,
Surat, Ahmedabad,
Gujarat 395001

INWARD NO 1693
12 NOV 2026
INWARD CLERK
CESTAT, AHMEDABAD.

Appeal No. E/10793/2013

M/s Wockhardt Limited ... Appellant

Versus

Commissioner, Central Excise & Customs, Surat-II ... Respondent

Sir,

Sub: Undertaking regarding payment of Central Excise duty on salvage materials arising from the fire at the Appellant's plant, furnished pursuant to the direction of the Hon'ble Tribunal

Ref: (i) Appeal No. E/10793/2013 filed against Order-in-Original No. 99/COMMR/Surat-II/2012 dated 31.12.2012 passed by the Commissioner, Central Excise & Customs, Surat-II.

(ii) Personal hearing held on 4th November 2026.

At the personal hearing held on 4th November 2026, the Hon'ble Tribunal directed the Appellant to declare whether the applicable duty had been paid on the salvage value of the goods affected by the fire accident. In compliance with the said direction, the Appellant, M/s Wockhardt Limited, respectfully submits as under:

1. That on 3rd April 2010, a fire broke out at the Appellant's plant situated at 138, GIDC Ankleshwar, Ankleshwar, Bharuch, Gujarat – 393002, causing extensive damage to the plant, machinery, raw materials and finished goods. The incident was reported to the local Fire Brigade / Police Station and is recorded in the First Information Report (FIR).

2. That, in consequence of the fire, certain goods were rendered unusable and were identified as salvage materials. The said salvage materials were disposed of by way of sale to M/s Mohammad Salim & Brothers, on payment of the applicable duty.

SPS/PA 12/11/26

WOCKHARDT LIFE WINS

3. That the particulars of the salvage materials so sold, together with the duty paid thereon, are reflected in Excise Invoice No. 0012300066 dated 26.02.2011, a copy of which is enclosed herewith as Annexure A.

In view of the foregoing, the Appellant hereby declares and undertakes as follows:

(a) that Central Excise duty at the applicable rate has been paid on all salvage materials sold or otherwise disposed of;

(b) that the particulars furnished in this undertaking are true and correct to the best of the Appellant's knowledge and belief; and

(c) that the said particulars are supported by the Appellant's books of account, stock records, and insurance and surveyor documents, which shall be made available for verification whenever required.

This undertaking is submitted in compliance with the direction of the Hon'ble Tribunal given at the personal hearing held on 4th November 2026, and is without prejudice to the rights, contentions and submissions of the Appellant in the captioned appeal. The Appellant respectfully requests the Hon'ble Registrar to kindly take this undertaking on record.

Thanking you,
Yours faithfully,

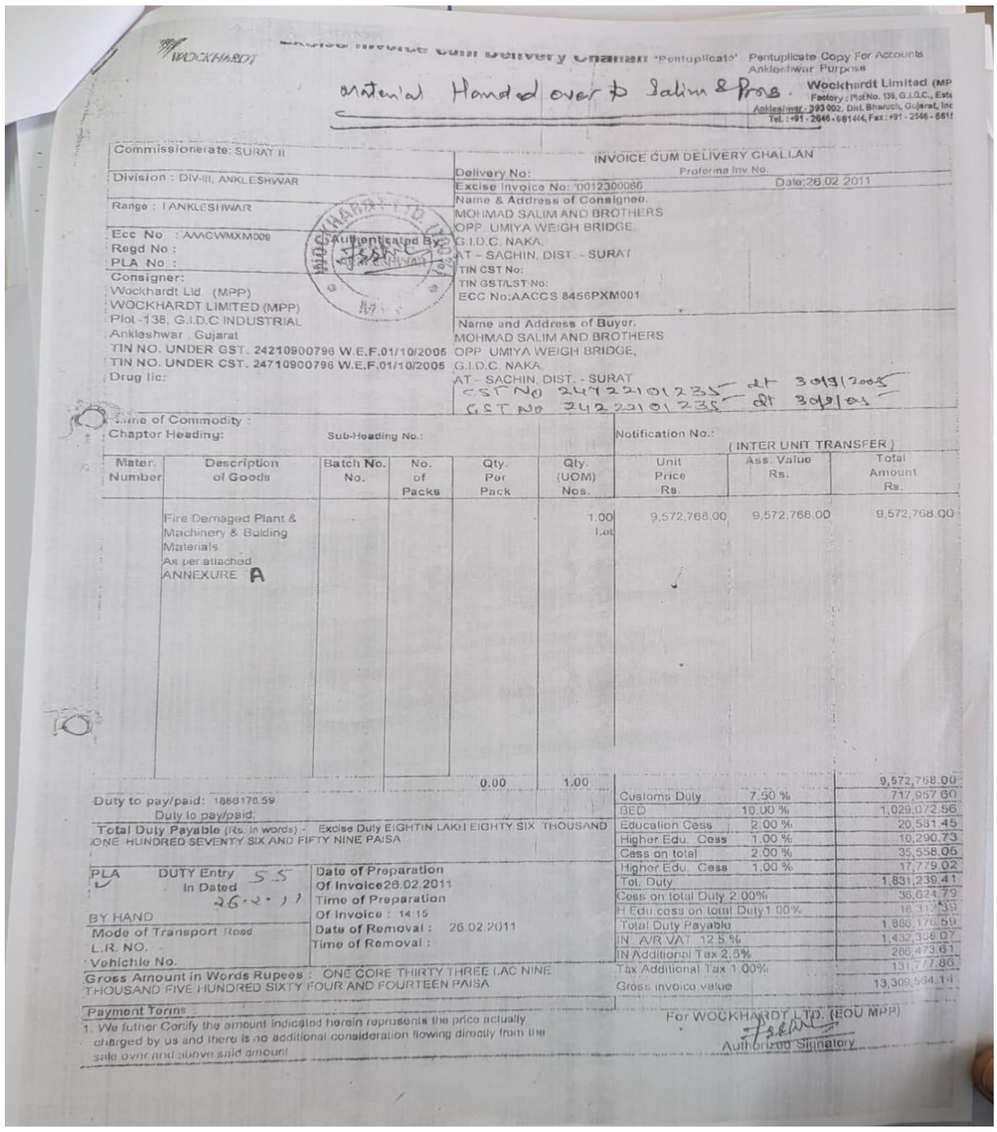
For M/s Wockhardt Limited

Parag Ashar

WOCKHARDT LTD.

Authorised Signatory

Name: Parag Ashar
Designation: General Manager, Finance
Place: Ankleshwar
Date: 5th November 2026
Enclosure: Annexure A – Copy of Excise Invoice No. 0012300066 dated 26.02.2011



WOCKHARDT

INVOICE CUM DELIVERY CHALLAN 'Pentuplicate' Pentuplicate Copy For Accounts Ankleshwar Purpose

Material Handed over to Salim & Bros.

Wockhardt Limited (MP
Factory : Plot No. 138, G.I.D.C., Ext
Ankleshwar- 393 002, Dist. Bharuch, Gujarat, Inc
Tel. : +91 - 2646 - 661414, Fax : +91 - 2646 - 6615

Commissionerate: SURAT II
Division : DIV-III, ANKLESHWAR
Range : I ANKLESHWAR
Ecc No : AAACWMXM009
Regd No :
PLA No :
Consigner:
Wockhardt Ltd. (MPP)
WOCKHARDT LIMITED (MPP)
Plot -138, G.I.D.C INDUSTRIAL
Ankleshwar , Gujarat
TIN NO. UNDER GST. 24210900796 W.E.F.01/10/2005
TIN NO. UNDER CST. 24710900796 W.E.F.01/10/2005
Drug lic:

Authenticated By

Delivery No: Proforma Inv No.
Excise Invoice No: 0012300086 Date:26.02.2011
Name & Address of Consignee.
MOHMAD SALIM AND BROTHERS
OPP. UMIYA WEIGH BRIDGE
G.I.D.C. NAKA,
AT – SACHIN, DIST. - SURAT
TIN CST No:
TIN GST/LST No:
ECC No:AACCS 8456PXM001

Name and Address of Buyer.
MOHMAD SALIM AND BROTHERS
OPP. UMIYA WEIGH BRIDGE,
G.I.D.C. NAKA,
AT – SACHIN, DIST. - SURAT
CST NO 24722101235 dt 30/9/2005
GST NO 24229101235 dt 30/9/05

Name of Commodity :
Chapter Heading: Sub-Heading No.: Notification No.:

(INTER UNIT TRANSFER)

Mater. Number	Description of Goods	Batch No. No.	No. of Packs	Qty. Per Pack	Qty. (UOM) Nos.	Unit Price Rs.	Ass. Value Rs.	Total Amount Rs.
	Fire Demaged Plant & Machinery & Bulding Materials As per attached ANNEXURE A				1.00 Lot	9,572,768.00	9,572,768.00	9,572,768.00
				0.00	1.00			9,572,768.00

Duty to pay/paid: 1886176.59
Duly to pay/paid:
Total Duly Payable (Rs. In words) - Excise Duly EIGHTIN LAKH EIGHTY SIX THOUSAND ONE HUNDRED SEVENTY SIX AND FIFTY NINE PAISA

Customs Duly	7.50 %	717,957.60
BED	10.00 %	1,029,072.56
Education Cess	2.00 %	20,581.45
Higher Edu. Cess	1.00 %	10,290.73
Cess on total	2.00 %	35,558.06
Higher Edu. Cess	1.00 %	17,779.02
Tot. Duty		1,831,239.41
Cess on total Duty 2.00%		36,624.79
H Edu cess on total Duty1.00%		18,312.39
Total Duty Payable		1,886,176.59
IN A/R VAT 12.5 %		1,432,306.07
IN Additional Tax 2.5%		286,473.61
Tax Additional Tax 1.00%		131,777.86
Gross invoice value		13,309,564.14

PLA
DUTY Entry 55
In Dated 26-2-11
BY HAND
Mode of Transport Road
L.R. NO. -
Vehicle No.

Date of Preparation
Of Invoice26.02.2011
Time of Preparation
Of Invoice : 14:15
Date of Removal : 26.02.2011
Time of Removal :

Gross Amount in Words Rupees : ONE CORE THIRTY THREE LAC NINE THOUSAND FIVE HUNDRED SIXTY FOUR AND FOURTEEN PAISA

Payment Terms :
1. We futher Certify the amount indicated herein represents the price actually charged by us and there is no additional consideration flowing directly from the sale over and above said amount

For WOCKHARDT LTD. (EOU MPP)
Authorized Signatory

4.1 The appellant relied on following cases:-

1.	1999 (113) ELT 394 (CAL)	GANPATI ENTERPRISES
2.	2003 (157) ELT 9 (DEL)	MOUNT SHIVALIK BREWERIES
3.	2001 (128) ELT 273 (TRIB)	GINNI FILAMENTS
4.	2009 (247) ELT 820 (TRIB)	AUROBINDO PHARMA LTD
5.	2010 (262) ELT 909 (TRIB)	VOLTAMP TRANSFORMERS
6.	2007 (208) ELT 336 (TRIB-LB)	GRASIM INDUSTRIES
7.	2008 (223) ELT 514 (TRIB)	BOMBAY DYEING & MFG CO
8.	2008 (224) ELT 548 (TRIB)	BIOPAC INDIA CORPN LTD
9.	2010 (258) ELT 56 (GUJ)	BIOPAC INDIA CORPN LTD
10.	1998 (100) ELT 358 (TRIB)	QUEST INTERNATIONAL
11.	2004 (176) ELT 143 (TRIB)	ONIDA SAVAK LIMITED
12.	2006 (198) ELT 527 (TRIB)	HINDUSTAN CABLES LTD

5. Discussions and Findings:

5.1 We have considered the rival submissions, various findings, case laws and other material produced by either side. We find that the basis of the allegation against the present appellant is B-17 Bond executed with the Deputy Commissioner of Central Excise and Customs, Division-

III, Ankleshwar, which is reproduced in para 2 of the impugned order, as shown below:-

> "[We the obligors, shall fulfill the export obligation and conditions stipulated in Customs/Central Excise Notification, as amended, under which the specified goods, have been imported/sourced, as well as the under wholicy for 2009, as amended from time to time and to pay on demand an amount equal to the Customs and Central Excise duties leviable on the goods as are not proved to the satisfaction of Assistant Commissioner of Customs/Central Excise to have been used in the manufacture of articles for export and any penalty imposed under Customs Act, 1962 or Central Excise Act, 1944 and Rule or Regulations made there under as the case may be.
>
> We, the obligors, shall discharge all dues whether Central Excise duty or the lawful charge which shall be demandable on the goods obtained by us without payment of duty from the domestic tariff area and transported from the place of procurement to out premises for use in Special Industrial purpose and shall also pay after final assessment by the proper officer/Assistant Commissioner of Central Excise or such other delegated authority, as the case may be, which were assessed on provisional basis under the Central Excise Rules all dues within 10 days of the date of demand thereof being made in writing by such officers."]"

Thus, we find that while recording that the goods which were reported to be destroyed in fire, were not proved as per department to have been used in the manufacture of articles for export under the then applicable EOU Scheme. It is not disputed that the fire accident took place on 03.04.2010 at 3:20 PM which was duly intimated to the department on 05.04.2010 and on 20.04.2010 only the Disaster Management Team allowed entry into the plant area and punchnama was drawn on 21.04.2010. As per the report dated 08.04.2010 of the Assistant Director, Industrial Safety and Health, Bharuch, the reason found was one drum caught fire despite earthing provisions in the form of earthing wire and earthing strip leading to earthing pit being in place at the ground level. There were 7 drums and it was the 7th drum while being charged which got fire. The possible reason for the fire was temporary discontinuity in the earthing circuit which resulting in a spark. The para 6 of the impugned order states as follows:

> 6 "Whereas it also appear that as per Licence No. DIV-III/ANK/100% EOU/CUSTOMS/01/2005-2006 dated 26.09.2005, condition No. 1 "The License holder shall be held strictly responsible for the safe custody of bonded goods and for the due observance of the provisions of the Customs Act, 1962 the Central Excise Act, 1944 or any other law for the time being in forfe." Condition No. 22 "In case of any theft, damage or deterioration of warehoused goods, the licensee shall have to discharge to full duty liability in respect of such goods." Condition NO. 23, "The licenses shall ensure that there are adequate provisions for fire fighting operations in the bonded area."

On the basis of such allegation, department demanded custom duty foregone on the imported raw materials and capital goods as well as on indigenously procured capital goods. Vide paras as enumerated above, the adjudicating authority found the appellant negligent of not taking proper care to avoid the accident including earthing connection which led to fire. Ultimately, the adjudicating authority demanded duty on various materials and imposed various penalties under Rule 25 of the Central Excise Rules and confiscated goods under Section 111(o) and 111(j) of the Customs Act and in terms of B-17 bond executed by them. Since the matter is almost 16 years old, lot of development has taken place including their Insurance Claim have not only been entertained, admitted and allowed as made by the party except to the extent of salvage of the goods valued Rs. 95,72,768/- already cleared on payment of duty or as per law by the party. Party has sought remission of duty on the goods to the extent they have destroyed in fire. We find that a claim of Rs. 13,18,37,216/- of Wockhardt Limited stands admitted and allowed by the United Insurance Company. The appellant being 100% EOU, it is clear that there was no duty involved on the goods destroyed and therefore, claim made by the party and allowed by the Insurance Company is without any duty element and it cannot be said that the party has enriched itself through destruction of various material and duty thereon as are listed in the show cause notice. We find that goods were kept on floor of their bonded area. Party has relied on various case laws, however, since the matter pertains prior to 2015 and amendment in law carried out before that date. We find that the decision of the Larger Bench in the matter of Grasim Industries reported in 2007 (208) ELT 336 (Tri. L.B.) which has also approved by Hon'ble Madras High Court in 2015 (322) ELT 209 (Mad.) in the matter of CCE Chennai vs Joy Foam Pvt. Ltd. deserves our

consideration. In para 6 and 7 of the decision, it has been pointed out as follows:-

> **"6.** We find that the Tribunal in the case of *Inalsa Ltd.* v. *CCE, New Delhi* (supra) held that the final product has not suffered duty only as a result of remission of duty given on fulfilling the conditions, therefore, under Rule 49, it is not to be equated to a general exemption from duty or goods being charged to nil rate of duty. Therefore, the credit in respect of inputs used in the manufacture of such goods need not be reversed. In the case of *Mafatlal Industries* (supra), the Tribunal agreed with the earlier view in the case of *Inalsa Ltd.* (supra) that remission of duty on finished goods cannot be equated with exemption to goods. However, it is further held that in case remission granted to finished goods destroyed in fire, a manufacturer is not entitled for credit of duty in respect of inputs used in the manufacture of such goods. We find that the Tribunal in the case of *CCE* v. *Indchem Electronics* reported in 2003 (151) E.L.T. 393 has taken the view that inputs which were to be used in the manufacture of final product and the final product was destroyed due to fire and remission of duty was granted, the credit in respect of inputs used on such inputs is not desirable. The Revenue filed appeal against this order and the same was dismissed by Supreme Court reported in *CCE* v. *Indchem Electronics* reported in 2003 (157) E.L.T. A206.
>
> **7.** We find that reading of Rule 49 of Central Excise Rules, 1944 and Rule 21 of Central Excise Rules, 2002 which provides for remission of duty in respect of goods lost or destroyed by natural cause or by unavoidable accidents or in case goods become unfit for consumption or for marketing at any time before removal does not provide reversal of credit in respect of inputs used in the manufacture of such goods. The Modvat rules prohibits the credit of duty paid in respect of the inputs which are used in the manufacture of exempted goods or which are chargeable to nil rate of duty. The Tribunal in both the cases, that is *Mafatlal Industries* (supra) and in the case of *Inalsa Ltd.* (supra) held that in case the goods were destroyed due to natural cause or by unavoidable accident during handling or storage, cannot be equated with exemption to goods and the inputs can be considered to have been put to intended use for manufacture of the final product. Reading of rules under which remission is granted in respect of goods which were lost or destroyed by natural cause or by natural accident, does not provide any condition regarding reversal of credit taken in respect of inputs used on such goods, hence we are unable to support the view taken in the case of *Mafatlal Industries* (supra) whereby it has been held that assessee has to reverse the credit taken of inputs used in such goods on which remission is granted. Therefore, we approve the view of the Tribunal taken in the case of *Inalsa Ltd.* (supra) in this regard. The issue to the Larger Bench is answered in the above terms and the matter be placed before the Regular Bench."

5.2 Again in matter of Techtextil vs CCE Indore, reported in 2017 (355) ELT 442 (Tri. Del.), it has been provided as follows in para 7,8 and 9.

"7. The appellant, who is a 100% EOU, has procured indigenous goods without payment of duty by availing the benefit of Notification No. 22/2003-C.E., dated 21-3-2003. Likewise, they also procured imported goods without payment of duty under Notification No. 52/2003-Cus., dated 31-3-2003. In the fire, which took place in the factory on the mid-night of 27-28th February, 2010 all goods got destroyed. The claim for remission of duty filed before the jurisdictional Commissioner stands rejected. Rule 21 of the Central Excise Rules, 2002 and Section 23 of Customs Act, 1962 read as follows :

Rule 21 of the Central Excise Rules, 2002 :

"Remission of duty. - Where it is shown to the satisfaction of the Principal Commissioner, as the case may be 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 in writing."

Sec. 23 of Customs Act, 1962 :

"Without prejudice to the provisions of Section 13, where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that any imported goods have been lost otherwise than as a result of pilferage or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods."

Commissioner, in the impugned order, has denied to grant remission under the above provisions. He has taken the view that the goods have been lost in fire but cannot be considered as destroyed by natural causes, inasmuch as, the fire was a result of not taking proper care while storing the same within the factory.

8. We have perused the records of the case. We find that the District Fire Officer, Pithampur, has certified, vide his certificate dated 13-3-2010 that adequate firefighting equipment and provisions of sufficient water was available with the appellant and sufficient efforts were made to put off the fire by the company. Accordingly, the fire department has certified that there is no foul play and that the fire has due to reasons beyond the control of the appellants. This establishes the fact that the fire was nothing but an unfortunate accident. The appellant has relied upon, the following case laws to support the argument that they were entitled to the grant of remission under Rule 21 of the Central Excise Rules as well as Section 23 of the Customs Act, 1962.

i. *Sumit Chemicals Pvt. Ltd.* v. *Commissioner of C. Ex., Kanpur* - 2016 (337) E.L.T. 299 (Tri.-All.).

ii. *Commissioner of Cus., Bangalore* v. *Next Fashion Creators Pvt. Ltd.* - 2012 (280) E.L.T. 374 (Kar.).

In the case of *M/s. Joy Foam Pvt. Ltd.* [2015 (322) E.L.T. 209 (Mad.)], the Hon'ble High Court has held as follows :

> "8. We find that once the goods are destroyed or lost due to natural causes, remission of duty is granted on such goods. Since the inputs are considered to be put to intended use in the manufacture of finished products, it is deemed to have been consumed in the process of manufacture and since the foods are lost or destroyed due to unavoidable accident, the claim of reversal of credit cannot be countenanced, more so, when the said provision does not provide for reversal of credit, as has been observed by the Tribunal, which we approve."

In the case of *M/s. Next Fashion Creators* reported in 2012 (280) ELT 374 (Kar.) of Hon'ble High Court of Karnataka has held as follows :

"4. The facts are not in dispute, the assessee is a 100% export oriented unit. It has imported goods without paying duty. If they have performed their export obligations, they were not liable to pay the duty. Before that obligation could be performed, where the goods were warehoused, there was a fire accident; in the fire accident, the entire goods which were imported were destroyed. It is nobody's case that there was any pilferage of these goods. Under these circumstances, when the claim of remission is made under Section 23 of the Act, legal requirements to be fulfilled by the assessee to claim remission stands fully satisfied. The Commissioner was wholly in error in denying the said benefit on the ground that the said benefit is not entitled to EOU under the notification and that the assessee did not take care of the goods imported and also on the ground that the Managing Director of the assessee admitted discrepancy in the figures. All these factors which weighed with the Commissioner are totally extraneous for considering the claim for remission under Section 23 of the Act. The Tribunal on proper appreciation of the material on record and correct interpretation of Section 23 of the Act was justified in setting aside the order passed by the Commissioner of Customs and in granting relief to the assessee. In that view of the matter, we do not see any merit in this appeal and accordingly, it is dismissed. No costs."

9. In view of the facts as discussed above and keeping in view the decision of the Hon'ble High Court of Karnataka as well as Madras, we come to the conclusion that this is a fit case for grant of remission under both Central Excise as well as Customs provisions as above. Once remission is granted for Excise and Customs duties in respect of goods destroyed in the fire accident, there will be no justification for the demands made in the impugned order. Accordingly, the impugned order is set aside and appeal allowed."

5.3 In the case of Tej Shoe Factory reported in 2018 (363) ELT 863 (Tri. All.) the Tribunal in para 5 held as under:

"5. Having considered the rival contentions, we find that the Ld. Commissioner have erred in holding that the fire accident due to electric short circuit, does not come under the category of unavoidable accident, is not sustainable under Rule 49 of CER, 1944 read with Rule 21 of CER, 2002. The conditions which has been prescribed for remission of duty, are natural causes, or unavoidable accident and the product becoming unfit for human consumption or marketing. The Ld. Commissioner have also erred in holding that electric short circuit in his view cannot be said to be a natural cause. Under the facts that all the records of the appellant had been destroyed in fire, the Ld. Commissioner have erred in observing that in the intimations given to the Revenue recording the fact of fire and loss given on 24-5-1999 and 7-2-2000 without any supporting or statutory records to the satisfaction of the Revenue Officer. The Ld. Commissioner is also in error in holding that the appellant failed to inform the

Department about the exact loss of footwear and also did not produce or submit statutory records for the relevant period. The Ld. Commissioner have also erred in holding that on the goods manufactured but not cleared for home consumption as such, exemption from excise duty on the goods lying in store and got destroyed, is not available under the SSI exemption notification. The Ld. Commissioner have also erred in holding that the fire accident cannot be said to have occurred due to natural cause beyond the control of the assessee. We hold that it is the fire authority which is the competent authority for accepting the reason for the fire accident. We find from the copy of report issued by the fire authority wherein, they have accepted the cause of fire as electric short circuit. The Police Authority has also accepted the reason of fire as electric short circuit. Under the circumstances, we hold that the Ld. Commissioner have erred in substituting in his own findings for the cause of fire accident. We also take notice of the fact that the insurance company have also accepted the reason of loss and have settled the claim of the appellant. We also rely on the ruling of Hon'ble Allahabad High Court in the case of *Commissioner of Central Excise* v. *M. Kumar Udhyog (P) Ltd.* - 2014 (306) E.L.T. 19 (All.) wherein the question before the Hon'ble High Court, was whether it was correct and proper for this Tribunal to hold that the fire having been caused in respondent's factory on account of electric short circuit, was covered by expression unavoidable accident for the purpose of remission of excise duty. The Hon'ble High Court analyzing words natural causes and unavoidable accident observed that these words have to be interpreted in their ordinary/natural connotation in reasonable manner to sub-serve object of legislature in introducing remission of duty. Unavoidable accident is event which is beyond control of assessee and has taken place despite exercise of due/reasonable care/protection. The Hon'ble High Court, further, held that fire accident due to short circuit, is an unavoidable accident for which an assessee is entitled to remission of duty under Rule 21 of CER of 2002. Accordingly, we allow the appeal and set aside the impugned order with consequential benefit to the appellant."

5.4 In case of Sanskriti Packaging Pvt. Ltd. reported in 2015 (318) ELT 451 (Tri. Ahmd), para 5.1-5.3 is relevant, the same is reproduced below:

"5.1 In this regard it will be relevant to examine the cause of accident. The facts about incidence of fire are available in Para 17.2 (5) and (6) of the show cause notice dated 28-3-2013 and are reproduced below :-

"5. Description of accident : On 31-3-2012 at about 12.30 PM, the above referred coating process was in progress on Coating Machine No. 1. During the said process, due to some reason the plastic film broke at the upper portion of the dryer and fell into the tray containing hot liquid solvent which then inflamed. As soon as the same was noticed by the workers/labourers, they immediately informed the factory manager, Shri Rishi Ashok Seth, who immediately rushed to the accident spot along with a Fire Extinguisher in his hands and tried to extinguish the fire which took place in the solvent tray. But due to the pressure of the Fire

> Extinguisher which was sprayed on the solvent tray, the inflamed solvent spilled from the tray in the surrounding area which also caught fire and subsequently took a huge form. On seeing the said situation, Shri Rishi Seth informed all the workers/labourers to immediately vacate the said factory. Thereafter, he informed the Sachin GIDC fire station about the said incidence and asked for help. Fire tankers from Sachin GIDC arrived the affected site at about 0100PM and initiated the onsite process of fire extinguishing. On seeing the huge form of fire, they said Fire Fighting team informed the other Fire Stations for suitable help. Thereafter, at about 0130 PM Fire Fighter from Pandesara, Majura and Nanpura arrived at the affected site and thereafter much efforts, the fire came under control at about 0700PM.
>
> 6. Due to above fire accident, the machineries and materials lying at the Ground Floor of Plot No. 2124/B in name of Sanskriti Packaging Pvt. Limited got heavily damaged. The machineries and materials of M/s. R.K. Textiles and M/s. Krishna Prints (engaged in the Embroidery Work and located on the First Floor the said building premises) also got heavily damaged. During the said fire accident, no workers/labourers of the said factories got injured. This dangerous incident was intimated in our office in Form No. 21A, dated 2-4-2012. Prior to this, the said incident was also telephonically informed to them."

5.2 Based on the above factual matrix, police authorities has filed the fire case as an 'accident' after due investigation. Even Insurance Company has also settled the claim of the appellant and has not raised the objection that fire accident was avoidable or that there was any negligence on the part of the appellant. Negligence on the part of the appellant could be attributed if they were required to take certain actions/precautions as per laws of the land but they failed to take such precaution/action. Therefore, we do not agree with the view of the department from the facts and circumstances of the case that the fire accident was 'avoidable'. Our views are fortified by the view taken by Rajasthan High Court in the case of *UOI* v*. Hindustan Zinc Limited* [2009 (233) E.L.T. 61 (Raj.)]. Paras 12 and 13 of this case law are relevant and are reproduced below :-

> "12. In our view, the expressions, being "natural uses" and "unavoidable accident" are required to be given, reasonable and liberal meaning, lest the provisions of Rule 21, so far they relate to admissibility of remission, on these two grounds, is rendered altogether otiose. If things were to be stretched in the manner, and to the extent, as the learned counsel for the appellant wanted us to, probably, no loss or destruction, would fall in either of these clauses, obviously, because in either case, grounds may be projected, on the anvil of requirement of appropriate storage, or safety measures, and so on and so forth. Even in cases of "unavoidable accident" it can always be contended, that the accident could be avoided by taking recourse of one or more measures. Thus, a bit liberal rather more practical approach is required to be taken in the matter. Of course, we quite agree with the learned counsel, that mere accounting practice of the assessee, could not be considered for granting remission, under Rule 21, rather, only requirement of Rule 21 is, that the concerned authority should be

satisfied that goods have been lost or destroyed, by "natural causes" or by "unavoidable accident".

13. Then in very nature of things, contemplated by Rule 21, the aspect of satisfaction, about the destruction or loss of goods, by natural causes or unavoidable accident, is essentially a subjective satisfaction of the authority concerned, and that having been recorded by the learned Tribunal, it is a pure satisfaction of fact, altogether subjective. The findings recorded by the Tribunal have already been quoted above, which in our view leaves no manner of doubt that the learned Tribunal had independently recorded its satisfaction about the loss, or destruction having been sustained by the assessee under the circumstances as covered by Rule 21. Then, merely because the Tribunal also referred to, or relied upon the accounting policy, which as held above, is not relevant, would not in any manner vitiate the finding, recorded by the Tribunal. The finding remains the findings of fact."

5.3 Similar views were expressed by Allahabad High Court in the case of *CCE* v. *M. Kumar Udhyog (P) Limited* [2014 (306) E.L.T. 19 (All.)] in Para - 7 of this order reproduced below :-

"7. Under Rule 21, a remission of duty is contemplated where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by (i) natural causes; or (ii) unavoidable accident; or are claimed by the manufacturer as being unfit for consumption or for marketing. The remission is to be granted subject to such conditions as may be imposed. The expressions "natural causes" or "unavoidable accident" have to be interpreted in their ordinary and natural connotation. 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. Both the expressions have to he construed in a reasonable manner to sub-serve the object of the legislature in introducing the provision for remission of duty in Rule 21.""

6. It is thus clear that even as per the Karnataka High Court and as per the law existed at that time, remission of duty has nothing to do with the consideration like EOU was not entitled to remission even importer has not taken proper care of goods and all these factors were extraneous provisions under Section 23 of the Customs Act, 1962. We find further that the very fact that Insurance company, after thorough investigation, has allowed the claim to the extent of Rs. 13,18,37,216/-, out of 14,29,42,353/-. The remaining amount has been disallowed on the basis of material salvaged which has been cleared in accordance with law on payment of duty under invoice No. 0012300066 dated 26.02.2011. Only we find that there is a mismatch in reconciliation to the extent of Rs.15,32,369/- which deserves to be explained by the

party or the same is also required to be cleared as salvage, if any, by the party. Except to the extent as indicated above, we find that the claim of duty on the goods destroyed to the extent of Rs. 13,18,37,216/- is liable to be rejected. Since the incident was accidental as has been accepted by the party and there is no adverse report against that, claim of remission of duty to the extent of goods found destroyed by the Insurance Company in fire including machinery, raw material (imported as well as indigenous) is required to be allowed and demand of duty on the same, cannot be sustained. Penalties and the interest demanded would also likewise fail. Only it will be incumbent upon the party to explain the value difference of Rs.15,32,369/- between the amount claimed and amount allowed as claimed plus goods cleared as salvage to the department. If goods are still available, they shall be free to clear the same as salvage on payment of duty. In above terms, we allow appeal with all the consequential reliefs.

(Pronounced in the open court on 23.11.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Neha