

Dond

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.138 OF 2014

Commissioner of Central Excise, Customs And
Service Tax, Vapi

..Appellant

Vs.

M/s Sun Pharmaceutical Industries Ltd.

..Respondent.

Mr. Suhas M. Oak with Mr. Sonawane, for the Appellant.

**CORAM: B.R. GAVAI &
A.S. GADKARI, JJ.**

DATE : 13th April 2015.

P.C.:

1 The appeal challenges the order passed by the CESTAT dated 12th January 2007 thereby allowing the appeal filed by the Respondents arising out the adjudicating authority.

2 The facts in brief giving arise the present appeal thus:

(a) The Appellant;s factories were flooded by water due to heavy rains and flood in Damam Ganga river in August 2007. After the flood water receded the appellant took stock of the situation and informed the

departmental officers regarding loss of finished goods on which duty liability approximately worked out as Rs.27.70 lakhs. It was informed to the department that the said finished goods were unfit for human consumption and requested them to grant remission on duty. The said application was unanswered by the officer of the Commissioner of Central Excise or the office of the Assistant Commissioner of Central Excise.

(b) The Appellant wrote three reminders dated 27.8.2004, 27.1.2005 and 17.2.2005 informing the authorities that the said goods became unfit for human consumption since they were affected by flood and if the said goods are not destroyed, fungus would contaminate the production area and it would be hazardous for the persons. Despite the said letters/reminders, there was no response and as such the Appellant destroyed the said goods on 7th March 2005 after giving intimation to the Commissioner of Central Excise and the Superintendent of Central Excise dated 18.2.2005.

(c) Subsequently, the Appellant was called for hearing on the application of the applicant for remission on duty. The Application of the assessee came to be rejected on the ground that the goods were destroyed in the absence of the officer of the Central Excise Department.

(d) Being aggrieved thereby an appeal came to be preferred before the learned CESTAT and the said appeal was allowed. Being aggrieved thereby, the present appeal.

3 Shri Oak, the learned Counsel appearing for the Appellant-Commissioner of Central Excise, Customs And Service Tax submits that the learned Tribunal has grossly erred in allowing the appeal. The learned Counsel submits that when the law requires that the goods should not be destroyed in the absence of the officer of the department, the learned Tribunal has erred in allowing the remission on duty.

4 We have perused the material on record. The facts in the present case are not disputed. The learned Tribunal while allowing the appeal of the Respondent has relied on the judgment delivered by the Madhya Pradesh High Court in the case of Godrej Food Ltd. Vs. Union of India (1995 (75) ELT 777 (M.P.) so also its own judgment in another case.

5 In the present case, undoubtedly after the goods became contaminated and though several reminders were sent to the department as aforesaid, the department chose to remain silent and as such the

Respondent was left with no other option, but to destroy the goods as there was a risk of entire production area being contaminated and hazardous to the human-being. These goods were destroyed only after giving intimation to the department. The department woke up after the goods were destroyed and issued a notice to the Respondent to remain present for hearing on his application for remission and after that the said application was rejected on the ground that the goods were destroyed in the absence of the officer/representative of the department. The Chapter 18 of the Excise Manual provides for a time-bound programme in which the officer of the department is expected to act in such matters. Undoubtedly, in the present case the department has not acted in the time-bound programme.

6 The department cannot be permitted to take advantage of its own wrong. Having not responded to the Application of the assessee for a period between August 2004 till March 2005 though the assessee informed the department that the goods were unfit for human consumption the department cannot be heard to say that respondent is not entitled to remission since goods were destroyed in the absence of representative of department. We are in full agreement with the view taken by the Madhya Pradesh High Court that the procedure adopted by the department cannot

be said to be just and fair.

7 We do not find any substantial question of law arises for consideration in the present appeal and as such the appeal is without merit. The appeal is dismissed.

(A.S. GADKARI, J.)

(B.R. GAVAI, J.)