CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No. III

EXCISE APPEAL No.40856 of 2014

(Arising out of Order-in-Original No.03/2014 dated 27.02.2014 passed by the Commissioner of GST and Central Excise, M.H.U. Complex, Nandanam, Chennai 600 035)

M/s. Super Auto Forge Ltd. **…. Appellant**
Plot No.12 & 13, Sidco Industrial Estate
Thirumudivakkam, Chennai 600 044

Versus

Commissioner of GST & Central Excise **…Respondent**
Chennai Outer Commissionerate
Newry Towers, No.2054
I Block, II Avenue, 12th Main Road
Anna Nagar, Chennai 600 040

APPEARANCE:

Shri S. Murugappan, Advocate
For the Appellant

Shri Rudra Pratap Singh, Additional Commissioner (A.R)
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVIC.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 11.10.2023

DATE OF DECISION: 20.10.2023

FINAL ORDER No.40948/2023

ORDER : Per Ms. SULEKHA BEEVI C.S.

1. Brief facts are that the appellants are holders of Central Excise registration and are engaged in manufacture of pistons falling under CETH 87081090 of the Central Excise Tariff Act 1985. They are holding registration as a 100% EOU till 13/3/2012 and cleared their goods for

export as well as to DTA on payment of duty. Consequent upon MEPZ Final Exit Order dated 13/3/2012, they surrendered EOU status and obtained an amended registration for functioning as DTA unit. They applied for NOC to exit from EOU status. They have procured raw materials on payment of duty and availed CENVAT credit of the same. After exit from EOU, the appellant carried forward the CENVAT credit lying in their balance to the DTA Unit. The department was of the view that the status of the EOU unit is different from DTA unit and as there is no change of ownership as contemplated under Rule 10 of CENVAT Rules 2004, the credit cannot be carried forward. Further that, there is no provision for transfer of accumulated unutilised CENVAT credit of EOU unit to a DTA unit after its conversion. It appeared that the CENVAT credit carried forward by the appellant to the DTA unit is not correct for which Show Cause Notice was issued proposing to disallow the credit so transferred from EOU to DTA Unit and for recovery of the same with interest and for imposing penalties. After due process of law, the original authority confirmed the demand along with interest and imposed penalties. Aggrieved by such order the appellant is now before the Tribunal.

2. The Ld. counsel Shri S. Murugappan appeared and argued for the appellant. It is submitted that there is no bar under Rule 10 to transfer the credit when the same legal entity is converting its status from EOU to DTA. The credit accumulated belongs to the appellant. Only because the status of Unit is converted from EOU to DTA, the accumulated credit which is unutilised cannot be denied to both the units. The issue is covered in the case of Tecumseh Products India Pvt. Ltd. Vs. C.C., C.E. & S.T. Hyderabad IV 2016 (336) E.L.T. 685 (Tri.-Bang.)

3. The Ld. AR Shri Rudra Pratap Singh appeared and argued for the department. The Ld. AR referred to Rule 10 of CENVAT Credit Rules 2004 and argued that as there is no merger, transfer of ownership, the accumulated unutilised credit cannot be transferred to the DTA Unit.

4. Heard both sides.

5. The issue is whether the accumulated CENVAT Credit of the EOU Unit can be transferred to the DTA Unit after exit of EOU status. As per Rule 10 if a manufacturer shifts the factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture then the manufacturer is allowed to transfer the CENVAT credit lying un-utilised in its accounts to the Unit that is sold, merged, leased or amalgamated. In the present case, the Unit has become a DTA after exiting from EOU status. Under Central Excise law both these units are considered as separate entities. The accumulated credit cannot be denied to both the units and the department cannot recover such credit which belongs to the appellant. The issue stands covered by the decision in the case of Tecumseh Product India Ltd. (supra). The relevant paragraph is reproduced as under:

> **"5.** All the facts and the submissions of both the sides have been carefully considered. The department's main premise is that an EOU when it is converted from EOU to DTA unit, it (successor DTA unit) cannot get the credit of balance in Cenvat account of EOU on date of its conversion to DTA unit, by way of transfer.
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> **5.1** In this case the appellant has been running Domestic Tariff Area Unit as well as an Export Oriented Unit. When they decided to de-bond the EOU unit and necessary permissions were granted by the Special Economic Zone Authority (Development Commissioner) and for that they paid applicable duties as well. The

question then arose is "whether the unutilized Cenvat credit lying in the account of EOU, which was allowed de-bonding, can be transferred to its successor Domestic Tariff Area (DTA) unit."

5.1.1 The fact as stated by the Advocate of the appellant is that the appellant has two units one DTA and another EOU and they were under the same name; in other words they were two parts of one entity and the ownership of these two parts was common. The simple question here is when one part has got unutilized Cenvat credit balance, why and which law/rule prohibits transfer of the unutilized credit balance lying with the other unit? In this case the successor unit is DTA unit and this DTA unit is part of the same ownership.

5.2 The main case law cited by the appellant in support is *GTN Exports Ltd.* v. *CCE* (supra) decided by the CESTAT, Chennai. In this case CESTAT allowed an EOU to take the credit of its predecessor domestic tariff area unit (DTA unit) citing that Rule 10 of Cenvat Credit Rules did not prohibit availment of such credit at the time of conversion of DTA to EOU. By applying the same rational we are unable to understand how the department would prohibit an EOU, when it is converting itself to a DTA scheme, to take the credit of the balance credit lying with the predecessor EOU. There is no logic and rational in the department's contention that Rule 10 of Cenvat Credit Rules, 2004 does not cover such a situation. The CESTAT Chennai's decision in *GTN Exports* (supra) is very clear that Rule 10 of Cenvat Credit Rules did not prohibit availment of balance credit by an EOU at the time of its conversion to EOU from the DTA; by the same logic an EOU when it is converted to DTA unit would be entitled to take the balance credit lying in the Cenvat account of EOU at the time of its conversion to DTA unit. In other words a successor DTA unit can get the transfer credit of the unutilized credit lying with its predecessor unit, which is an EOU in the present case.

6. Based on above discussions and the decision of the CESTAT in *GTN Exports Ltd.* v. *CCE* (supra) the appeal is allowed with consequential benefits and when appeal succeeds in above terms penalty is also not sustainable."

6. Similar view was taken by the Tribunal in the case of Technocraft Industries India Limited 2019 (369) ELT 1144 (Tri - Mumb.) Relevant paragraph reads as under:

"5. Having considered the rival submissions, we find it necessary to step back and scan the broad canvas for a satisfactory resolution of this dispute before us. Doubtlessly, the appellant operates under an export promotion scheme in the Foreign Trade Policy with certain attendant privileges of exemption from duties of excise and duties of customs on their procurement conferred in notifications issued under Central Excise Act, 1944 and Customs Act, 1962 which are in furtherance of the general principle of divesting duties and taxes from the value of exports. This principle is also brought to bear on other domestic manufacturers of export goods through other neutralization provisions. The scheme for which exemptions are notified under the tax laws is, thus, a facilitating measure that may, according to their commercial judgment, be accessed by the holders of 'letter of permission' under the scheme without any compulsion to avail the exemption. The alternative of other neutralization facilities are not, therefore, excluded to such holders.

6. Whether holding the title to those privileges or not, all manufacturers, other than those operating outside the 'customs territory', are registered under the Central Excise Act, 1944 and subject to the same excisability under Central Excise Act, 1944. The administration of the registration system does not, and cannot, create a separate class of coverage under the Central Excise Act, 1944 other than as

envisaged in that statute. The sole difference, therefore, lies in duty structure that is applicable to them. Duty liability on domestic clearances confers on both the access to Cenvat credit scheme. That is not disputed by Revenue. There any dispute on the factum of exports effected by the appellant from the two facilities operated as '100% export oriented units' with resultant inevitable accumulation of credit.

7. The scheme of indirect taxation requires that the tax burden is borne by the ultimate consumer, i.e. non-assessee, and all assessees in the production chain merely collect the duty for remitting to the government. At the same time, excise duties are limited to the contribution made to the manufacture of any goods; this requires that, for the proper administration thereof, each stage in the manufacturing process should be entitled to disassociate itself from the duties discharged upto the immediately preceding for computation of excise liability. Thus the full burden of duty should, without the privilege of passing on, be borne by the first non-assessee in the chain of transactions. The input credit scheme is devised towards that end and embodied as the Cenvat Credit Rules, 2004. Denial of Cenvat credit accumulated from duties discharged on procurements employed in exported goods would, therefore, load the burden on the exporter which defeats the very premise that is contained in the Cenvat Credit Rules, 2004.

8. As pointed out in the impugned order, the provisions of Rule 10 or Rule 11 will not apply to debonding units. It is also patently clear that a similar provision has not been explicitly incorporated in the Cenvat Credit Rules, 2004 for such debonding units. At the same time, Rule 5 of Cenvat Credit Rules, 2004 entitle exporting units, including '100% export oriented units', to claim refund of such accumulated credit at periodic intervals. Non-recourse to this privilege does not exclude them from entitlement to such. It may also be worth noting that the eligibility for refund is contingent only upon inability to utilize the accumulated credit for discharge of duty liability on clearance of goods domestically. Unlike the limitation of periodic eligibility for recourse to the refund route, utilization is open-ended. This provision obviates the need for explicit provision that the adjudicating authority seeks.

9. The existence of the appellant as an assessee has not been erased, substituted or subsumed at any point in time. The continued existence of the manufacturing facility is not compromised by a hiccup that is rooted in administrative orderliness. The provenance of the accumulated credit is not questioned. The statutory entitlement to regular monetization of the accumulated credit cannot be alienated; the alternative of utilization is not restricted by any condition. Denial of such utilization would have the impact of taxing the exporter as ultimate consumer and burdening the appellant with an implied duty on exports that is not authorized by law. To do so is an act illegality. Accordingly, we hold that denial of carry forward of accumulated Cenvat credit to assessees debonding from the '100% Exported Oriented Unit' scheme to continue operations without the privileges is not correct in law and is set aside. Appeals are allowed."

7. After appreciating the facts and evidence and applying the ratio of the decisions laid in the above cases, we are of the opinion that the demand cannot sustain and requires to be set aside. The impugned order is set aside. The appeal is allowed with consequential relief if any.

(Pronounced in court on 20.10.2023)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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