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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.11557 of 2014

(Arising out of OIO-DMN-EXCUS-000-COM-028-13-14 dated 31/12/2013 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Cps Color India Pvt Ltd **……Appellant**
Plot No. 10-13, Oidc Udyog Nagar Industrial Estate,
Ringanwada,
Daman, Ut Of Dadra & Nagar Haveli

VERSUS

C.C.E. & S.T.-Daman **……Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat - 396191

APPEARANCE:
Shri Suyog Bhave, Advocates for the Appellant
Shri Vinod Lukose, Superintendent (Authorized Representative) for the Respondent

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

Final Order No . A/ 10820 /2022

DATE OF HEARING: 27.07.2022
DATE OF DECISION: 27.07.2022

RAMESH NAIR

The issue involved is that whether the appellant is entitled for cenvat credit in respect of CVD paid through Challan. The case of the department is that the challan is not a proper document in terms of Rule 9 of CCR, 2004.

2. Shri Suyog Bhave, Learned Counsel appearing on behalf of the appellant submits that the CVD was paid for the reason that the export obligation was not fulfilled. He submits that CVD was paid through challan with reference to Bill of entry filed in respect of import of goods therefore, credit should be allowed. He placed reliance on the following judgments:

- Hubergroup India Pvt. Ltd vs. CCE & ST- Daman – 2021 (11) TMI 945-CESTAT
- ABB Ltd Vs. Commissioner of C.Ex. Kolkata – 2006 (205) ELT 448 (Tri.Bang)
- Arora Fibers Ltd vs. Commissioner of Central Excise – 2010 (259) ELT 404 (Tri.Del)

- Commissioner of Central Excise,Jaipur- I vs. Bharti Hexacom Ltd – 2018 (360) ELT 515(Raj.)
- Kevin Process Technologies Pvt. Ltd Vs. Commr. Of C.Ex., Ahmedabad-II

3. Shri Vinod Lukose, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the record. The limited issue to be decided by us is whether the appellant is entitled for the cenvat credit on the strength of challan whereby the CVD was paid subsequent to the import of goods . We find that the very same issue has been considered by this Tribunal in the case of Hubergroup India Pvt. Ltd the same is reproduced below:-

> *"4. We have gone through the rival submission. We find that the impugned order the Commissioner holds that what was paid by the appellant due to failure to fulfill the export obligation in their erstwhile DTA unit were Customs recovery due to failure of assessee to comply with the conditions of the notification under advance licence scheme. We find that it may be true that the duties were paid due to failure of appellant to fulfill export obligation but that fact has no relevance. In the instance case the availability of Cenvat Credit only depends on the fact if the duties have been paid and if the inputs are Admissible inputs and the same were received by them in their limit. The fact that the duties were recovered due to failure of appellant to fulfill export obligation is irrelevant for this purpose.*
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> *4.1 It has been argued in impugned order that the erstwhile DTA unit which had imported this inputs duty free under the advance license scheme is a different legal entity then the unit in which the credit is sought to be taken. We find that this is a mistaken proposition. Both the units are part of the same legal entity and under one ownership. The fact that the merger of two units were allowed clearly shows that they were part of the same legal entity. The Cenvat credit Rules permit to transfer of credit from one unit to another in such circumstances. In view of the above, we find that no merit in this objection raised by the Learned Commissioner.*
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> *4.2 The impugned order holds that the Cenvat credit cannot be availed on the basis of supplementary invoices issued by a manufacturer or importer in case of additional amount of Excise duty or additional duties leviable under section 3 of the Customs Tariff Act paid become recoverable on the account of non levy or short levy by reason of fraud collusion or any willful mis- statement or suppression of fact etc. We find that there is no charge that in the show cause notice that there was any fraud collusion or any willful mis- statement or suppression of fact on the part of the appellant and therefore the observations made in the impugned order are irrelevant. In fact the impugned order does not even allege that the said duty was recovered on account of fraud collusion etc.*
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> *4.3 The next issue raised by the impugned order relates to the document on the strength of which credit has been taken. The*

impugned order takes note of Rule 9 of Cenvat Credit rules, to hold that challans are not specified documents except in the circumstances when they are supplementary to the original invoice. It takes note of Rule 9(1) (b) of Cenvat Credit Rule,2004 which reads as follows:-

> *"For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable undersection 3 of the Customs Tariff Act."*

It is notice that the said Rule permits taking of credit on challans, however, the impugned order holds that credit cannot be taken on the strength of all the challans. It holds that only when an additional amount on duty becomes payable that credit can be availed on the strength of the challans. We hold that in the instance case the original duty paying document is bill of entry and the challans are the documents on the strength of which additional duty has been paid. Thus, even going by the logic given by the Commissioner in the impugned order there is no bar on availing credit on the strength of challans. Thus, we find no merit in this argument of the Commissioner in the impugnedorder.

4.4 The next issue raised by the Commissioner relates to the delay in taking of credit. In the instances case the duties were paid in the year 2008 and 2009 and credit was taken on 30.11.2009. The Commissioner has relied on the decision of Tribunal in the case of Motch Technology Ltd-2008 (12) STR 532 (Tri.) wherein the term 'immediate' was interpreted. We do not find any merit in the argument of the Commissioner as in the instance case there is no significant delay in availment of credit. The duty was paid in the year 2008/2009 and credit was availed on 30.11.2009. At the material time there is no time limit specified for taking of credit. In the year 2014 when time limit for availment of credit was specified, a limit of 1 year was given. In these circumstances, we do not find any merit in this argument of Commissioner also.

4.5 The next issue raised by the Commissioner relates to Rule 10 of the Cenvat Credit Rules. Rule 10 of the Cenvat Credit Rule reads as under:-

> ***"RULE10. Transfer of CENVAT credit.-*** *(1) if a manufacturer of the final products shifts his 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 with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged leased or amalgamated factory.*
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> *(2) If a provider of output service shits or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business then, the provider of output service shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated business.*
>
> *(3) The transfer of the CENVAT credit under sub-rules (1)*

and (2) shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Deputy Commissioner ofCentral Excise or, as the case may be, the Assistant Commissioner of Central Excise."

It is seen that the said rule clearly specified that in case of merger transfer of credit shall be allowed only if the stock of input as such or in process or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs or capital goods on which the credit has been availed are duly account for to the satisfaction of Deputy Commissioner of Central Excise as a case may be. In the instance case, it is notice that the permission for conversion of DTA unit to EOU unit was initially granted by the Development of Commissioner, KASEZ, thereafter, the Assistance Commissioner of Central Excise and Customs, Div- Vapi granted license on 15.01.2007. However, from the record it is not clear if the exercise of dealing the transfer of stock of inputs as such or in process all the capital goods transferred was done. However, in the instance case, it is seen that the issue is not covered by the mischief of Rule 10. It is seen that the appellant merged two units in the year 2007. This duty was paid subsequently by the merged unit in the year 2008/2009. Thus, it is not a case falling within the ambit of Rule 10 of the Cenvat Credit Rules and the same is therefore not applicable to the instance case.

5. Thus, we find no merit in the impugned order and it is set aside. The appeal is allowed."

5. In the present case the issue is identical to the case cited above. Accordingly the issue is no longer res – integra. The impugned order is set aside appeal is allowed.

(Dictated & Pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Geeta