

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

REGIONAL BENCH- COURT NO. 3

EXCISE APPEAL NO. 11372 OF 2017-DB

(Arising out of OIO-VLD-EXCUS-000-COM-050-16-17 Dated 27/02/2017 passed by
Commissioner of Central Excise, Customs and Service Tax-Valsad)

Bayer Vapi Pvt Limited

Plot No.306/3, 143, 2nd Phase,
Gidc, Vapi
VAPI, GUJARAT

.....Appellant

VERSUS

Commissioner of C.E & S.T.-Valsad

Third Floor, Adarashdham Building,
Vapi-Daman Road, Vapi, Gujarat
Gujarat-396191

.....Respondent

APPEARANCE:

Shri Jitendra Motwani, Advocate with Miss Sweta Garge, Advocate appeared for
the Appellant

Shri Mihir G Rayka, Additional Commissioner (AR) appeared for the Respondent

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

FINAL ORDER NO. 12832/2024

DATE OF HEARING: 09.10.2024
DATE OF DECISION: 26.11.2024

RAMESH NAIR

This appeal has been filed against the impugned Order-in-Original
No.VLD-Excus-000-COM-050-16-17 dated 27-02-2017 passed by the
Commissioner of Central Excise, Customs and Service Tax, Valsad
Commissionerate.

1.1 The brief facts of the case are that the appellant is engaged in the
manufacture of agrochemicals. In the year 2012 the appellant converted
its 100% EOU into the existing DTA unit. Chronology of events during the
said period is as under:

- a) On 24-12-2012 the appellant, then 100% EOU, sought permission
from the central excise department to convert the 100% EOU into
DTA.

- b) On 16-01-2023, the department issued 'no dues certificate' basis which Deputy Development Commissioner, Kandla issued 'final exit order' on 15-02-2013.
- c) On 18-02-2013 the appellant applied for surrendering the Central Excise Registration of EOU. The request was made to excise authorities to approve revised ground plan and to permit transfer of CENVAT credit of EOU unit balance to their existing DTA unit.
- d) Then after, on 26-02-2013, the appellant filed application before excise authorities requesting for amendment of the existing excise registration certificate of the DTA unit for including/incorporating the de-bonded EOU into DTA and basis said request amended excise registration was issued on 11-03-2013.
- e) Subsequently, in December 2013, during the department audit, preventive officers were called for verification of correctness of transfer of CENVAT credit from EOU to DTA.
- f) Upon concluding inquiry, a show cause notice dated 15.02.2014 was issued demanding CENVAT credit of Rs. 15,06,11,859/-.
- g) The SCN was adjudicated by the Learned Commissioner whereby the entire central excise demand has been confirmed along with interest and penalty of Rs. 10,77,05,805/-. Aggrieved by the said order, the appellant has filed the present appeal.

2. Shri Jitendra Motwani, the Learned Counsel with Miss Sweta Garge, Advocate appearing on behalf of the appellant made detailed arguments before us.

2.1 Submission for credit of Rs. 10,77,05,805/-

- a) He submitted that appellant requested for permission of debonding their EOU unit in December 2012 which was approved in February 2013 by excise authorities as well as by development commissioner and final exit

order was issued. Post debonding of EOU unit the appellant wanted to merge its EOU unit into adjacent DTA unit and accordingly the appellant surrendered its EOU registration and on 26-02-2013 applied for amendment of DTA registration to add debonded EOU unit premises in the excise registration of DTA. He referred to letter dated 26-02-2013 to submit that in the said letter re-defined boundaries as per amended registration were also provided. vide the said letter the appellant clearly mentioned that the said amendment was made pursuant to the Appellant –de-bonding one of its units which was being subsumed within the area of the existing DTA unit. Considering their application the department issued amended certificate on 11-03-2013 wherein the plot no 143 which is premises of debonded EOU unit was not mentioned. He argued that when the amendment took place for adding premises of debonded unit into existing DTA, merely non-mention of plot no 143 cannot lead to denial of otherwise eligible credit. He also submitted that plot no. 143 was not expressly required to be mentioned in the statutory Form A-1 at the time of amendment as the area of the de-bonded unit was being subsumed by the already existing DTA unit situated at plot 306/3.

b) He further argued that, even otherwise, it is settled law that there are no statutory provisions which prescribe that registration is mandatory for claiming the credit. He argued that taking registration under the Central Excise Act is not the pre-requisite condition for availing the CENVAT credit.

c) He also argued that allegation that plot no. 143 was not mentioned in the amendment Form A-1 could at max be regarded as a procedural lapse or a technical breach which was duly capable of being rectified which was indeed also done w.e.f. 11.08.2013. He also pointed out it is not the case of the department that the credit in dispute is ineligible, but the denial is merely based on a technical ground of alleged non-having of registration

under the Central Excise Act for which substantial right of credit should not be denied.

2.2 Submission for credit of Rs. 4,21,16,159/-

a) He argued that the reliance on provision of Rule 10 of the CENVAT Credit Rules, 2004 has been misplaced for denying the credit of Rs. 4,21,16,159/-. After referring to provision of Rule 10 of CCR he submitted that appellant did not fall within the scope of Rule 10 of CCR as it is applicable only in cases where manufacturer shifts his factory to another site or if there is change of ownership on account of sale, merger, amalgamation, lease or transfer. The factory earlier registered as the EOU continues to be situated at the same premise even after de-bonding. The said factory was a unit of the appellant Company that was under common management; having same CIN, PAN & Sales Tax Numbers and continues to remain the same even after de-bonding. Based on the said arguments, he concluded that transitional credit during conversion of a unit is not prohibited under Rule 10 of CCR or any other rule of CCR.

2.3 Submission on transfer of PLA balance of Rs. 7,89,895/-

a) He submitted that there is no dispute on appellant having balance of the PLA which is nothing else but the appellant's own money lying earmarked as deposit for utilizing the same against payment of excise duty. No permission or sanction is required from the excise department as the same is merely the cash of the appellant that is deposited in a running account for the future appropriation towards the payment of excise duty. Also, when the debonded EOU merged into DTA the new unit is right in carrying forward PLA balance and no permission is required for doing so.

b) He argued that penalty under Rule 15(1) of CCR has been wrongly imposed as the credit has not been taken in contravention of any of the

provisions of CCR and most importantly when there is no dispute on eligibility of credit, penalty has to be dropped.

3. Shri Mihir Rayka, Learned Departmental Representative for the Revenue opposed the contention of the appellant and reiterated the findings made in the impugned order by the Learned Commissioner.

4. We have carefully considered the submissions made from both sides and perused the records. There are 3 main issues before us for decision:

- (i) denial of CENVAT credit of Rs. 10,77,05,805/- on allegation of non-registration of debonded EOU;
- (ii) denial of credit of Rs. 4,21,16,159/-, under Rule 10 of CENVAT Credit Rules, 2004; and
- (iii) denial of transfer of PLA balance of Rs. 7,89,895/- of debonded EOU to CENVAT credit of DTA.

4.1 We have perused the letter dated 26-02-2013 and observed that the purpose for amendment of excise registration of existing DTA unit was to add premises of debonded EOU unit in DTA unit. In the letter dated 26-02-2013 it was specifically mentioned that appellant wanted to amend DTA registration to include debonded EOU, which is located in adjacent plot within perimeter of DTA which was earlier separated by fencing. Also, the appellant provided re-defined boundaries as per amended registration. In our opinion, the appellant provided all possible disclosures in their application. Pursuant to this letter, the department issued amended central excise registration certificate on 11-03-2013. In this background, when the appellant made all disclosures in their application and amended central excise registration was issued, we do not find any merit in confirming the demand on allegation of non-registration.

4.2 We also find force in appellant's arguments that the department is taking contrary stand as at one hand it is denying credit on the ground that DTA excise registration does not bear address of debonded EOU but at the same time has accepted payment of central excise duty on the clearance made from the premises of EOU.

4.3 When the appellant provided re-defined boundaries for amended registration in their application and basis the said application revised excise registration was issued, merely non mentioning of the specific plot number cannot lead to denial of credit.

4.4 Also, we find force in appellant's arguments that it is a settled law that registration of premises is not a pre-requisite for availing credit. This issue is supported by following judgments:

- Beico Industries Private Limited vs. Commissioner of Central Excise, Service Tax, Vapi [2014 (36) STR 551 (Tribunal – Ahmd.)

"8. Adjudicating authority has come to the conclusion that the eligibility to credit is not the issue, but it has been denied on the ground that assessee cannot avail the Cenvat credit as manufacturer until they get themselves registered as a manufacturer. We find that the adjudicating authority has completely misdirected himself in coming to a conclusion relying upon Rule 9 of the Cenvat Credit Rules, 2002 to hold that the appellant assessee herein is not a manufacturer as per the provisions of central excise law till he got registration certificate.

9. While trying to deny the Cenvat credit to the appellant on this ground, we find that the adjudicating authority has taken a diagonally opposite direction, as against the principles of the reducing the cascading effect of taxes. It is a common sense that unless a factory is setup, trial runs are taken, an assessee will be unable to manufacture excisable products. The entire exercise of the assessee for setting up of factory is for manufacturing excisable goods which can be done so only when he erects, installs and commissions the capital goods with the help of various agencies. In the case in hand, we find that there is no dispute that appellant has received the capital goods and the input services, utilized them for seating up the manufacturing facilities. To deny credit of the central excise duty paid and Service Tax paid, would be travesty of justice, more so when the assessee herein is discharging appropriate excisable duty on the finished goods cleared after taking the

registration certificate. We also find that there is no dispute as to the fact that the Cenvat credit on the items like capital goods and input services is not denied for any other reason and appellant assessee is eligible for availment of such credit. In our view, such an order which denies Cenvat credit to the appellant on a very technical ground is unsustainable and needs to be set aside."

- mPortal India Wireless Solutions P. Ltd. V/s. C.S.T. Bangalore, 2012(27) S.T.R. 134 (Kar):

"4. Therefore, short question that arises for consideration is, whether the authorities were justified in refusing to grant Cenvat credit to which the assessee was legally entitled to on the ground that he is not registered with the department.

5. We have heard the learned counsel for the parties.

6. The assessee is a 100% export oriented unit. The export of software at the relevant point of time was not a taxable service. However, the assessee had paid input tax on various services. According to the assessee a sum of Rs. 4,36,985/- is accumulated Cenvat credit. The Tribunal has categorically held that even though the export of software is not a taxable service but still the assessee cannot be denied the Cenvat credit. The assessee is entitled to the refund of Cenvat credit. Similarly insofar as refund of Cenvat credit is concerned, the limitation under Section 11B does not apply for refund a accumulated Cenvat credit. Therefore, bar of limitation cannot be a ground to refuse Cenvat credit to the assessee.

7. Insofar as requirement of registration with the department as a condition precedent for claiming Cenvat credit is concerned, learned counsel appearing for both parties were unable to point out any provision in the Cenvat Credit Rules which impose such restriction. In the absence of a statutory provision which prescribes that registration is mandatory and that if such a registration is not made the assessee is not entitled to the benefit of refund, the three authorities committed a serious error in rejecting the claim for refund on the ground which is not existence in law. Therefore, said finding recorded by the Tribunal as well as by the lower authorities cannot be sustained. Accordingly, it is set aside."

4.5 Also, the appellant's submission that substantial benefit of credit cannot be denied for procedural lapse is a settled preposition of law as has

been held by various decisions including the Bombay High Court decision in Commissioner of Central Excise, Nagpur V/s. Larsen & Toubro Ltd 2022(380) ELT 25 (Bom).

4.6 In view of the above, in so far as denial of CENVAT credit of Rs. 10,77,05,805/- is concerned, we are of the considered opinion that the said demand cannot sustain.

4.7 Further, as the second issue of denial of the credit of Rs. 4,21,16,159/-, has been denied under Rule 10 of CCR, relevant extract of the said provision is reproduced as under:

"RULE 10. 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."

On a bare perusal of provision of Rule 10 of CCR it can be seen that the said provision can be invoked in specific circumstances like shifting of manufacturing unit at another site or transfer of factory due to change of ownership, sale, merger, amalgamation, lease or transfer of the factory to a joint venture. Herein, the appellant has merged adjacent debonded EOU into their DTA unit for which clearly provision of Rule 10 of CCR cannot be invoked and therefore, no demand can sustain under Rule 10 of CCR.

4.8 The appellant converted its EOU unit into DTA and during the said conversion transferred the balance CENVAT credit of EOU into DTA. We find force in appellant's arguments that during conversion of unit from DTA to EOU or from EOU to DTA there is no bar on transfer of CENVAT credit. The ratio laid down by below mentioned decisions is applicable:

- GTN Exports Ltd V/s. Comm of C.Ex., Coimbatore 2009 (240) ELT 53 (Tri. Chennai):

" **11.** *The issues to be decided are :*

(i) The entitlement of EOU to take balance of credit relating to inputs/capital goods lying in the Cenvat account of the DTA on the date of its conversion to EOU; and

(ii) Amount of duty to be paid on removal of inputs as such.

As regards issue at (i), we find that as held in Order-in-Appeal No. 92/06, Rule 10 of Cenvat Credit Rules, 2004 did not prohibit availing by EOU of the balance credit at the time of conversion of DTA. Rule 10 of CCR '04 dealt with transitional credit in situations such as shifting of factory or change in ownership or sale, merger or amalgamation or lease.

The claim of the appellant that the credit balance available related to inputs received on or after 6-9-04 is not contested. In any case, no provisions prohibited an EOU from availing balance of credit when the unit converted to EOU from DTA. EOU also manufactured goods for DTA clearances. Therefore GTN's claim in this regard is correct. As regards the second issue, the Commissioner (A) ordered that the appellant was required to reverse the credit originally availed when the inputs were removed as such. We find the order to be in accordance with Rule 3(5) of CCR, 04. The appellant had reversed credit as per the said rule and the demand in this regard was dropped by the original authority in the order passed following the directions in Order-in-Appeal No. 92/06. The appeals are allowed."

- Sun Pharmaceuticals Industries Ltd. v. Commissioner [2010 (251) E.L.T.312 (Tri-Chennai)]

"8. We find that at the material time the CER or CCR did not contain any provision barring the 100% EOUs from availing cenvat credit or utilizing the same for payment of duty on excisable goods removed to the DTA or for payment of duty on goods exported under claim for rebate. Also there exists no bar for a DTA unit carrying over inputs and the cenvat credit balance in its accounts when it got converted into an EOU. ...

9. *In the absence of provisions requiring the DTA unit to reverse the credit balance at the time of its conversion into an EOU, the above observations of the Tribunal apply. Therefore, the impugned demand and penalties are not sustainable. In the result, the impugned order is set aside and this appeal allowed."*

- Commissioner of Central Excise, Belapur V/s. Sandoz Pvt Ltd 2013 (291) ELT 325 (Bom)

"1. Whether the CESTAT was justified in holding that the respondent- assessee, a DTA unit converted into a 100% Export Oriented Unit with effect from 14-7-2004 was not required to reverse the balance CENVAT credit available in the books of accounts of the assessee on the date of conversion and utilize the said credit in respect of the clearances effected from the 100% Export Oriented Unit is the question of law in this appeal.

2. The Tribunal has held that the assessee is entitled to avail the credit in balance as on the date of conversion by relying upon the decisions by the Tribunal in Sun Pharmaceuticals Industries Ltd. v. Commissioner of Central Excise, Pondicherry - 2010 (251) 312 (Tri.-Chennai); GTN Exports Ltd. v. Commissioner of Central Excise, Coimbatore - [2009 \(240\) E.L.T. 53](#) (Tri.-Chennai) and Commissioner of Central Excise, Rajkot v. Ashok Iron & Steel Fabricators - [2002 \(140\) E.L.T. 277](#) (Tri.-LB). It is not in dispute that the decision of the Tribunal in the case of Sun Pharmaceuticals Industries (supra) and GTN Exports Ltd. (supra) have been accepted by the Revenue. It is also not in dispute that appeal filed by the Revenue against the decision of the CESTAT in the case of Ashok Iron & Steel Fabricators (supra) has been dismissed by the Apex Court. In this view of the matter, in our opinion, no fault can be found with the decision of the CESTAT. Hence, the appeal is dismissed with no order as to costs."

4.9 While the aforesaid judgments deal with scenarios of conversion of DTA to EOU and the issue at hand pertains to conversion of EOU to DTA, we observe that there is no provisions under the law which bars debonded EOU unit to avail credit in its DTA unit post conversion. Therefore, the ratio of the aforesaid judgments is applicable in the present case. Accordingly, in our view, demand of Rs. 4,21,16,159/-, cannot sustain.

4.10 The third issue of transfer of PLA balance of Rs. 7,89,895/-, of debonded EOU unit to DTA unit is concerned we find force in appellant's arguments that when there is no dispute on availability of PLA balance and when due to EOU merger into DTA unit, EOU and DTA becomes one entity and the said one entity is legally entitled to use the unutilized PLA balance. This issue is supported by following judgment:

- PSP Projects Pvt Ltd V/s. Commissioner of S.T. Ahmedabad 2016(42) STR 301 (Tri. Ahmd)

"4. On consideration of the arguments of both sides and scrutiny of records, it is observed that there is no dispute that Rs. 5,89,415/- was lying in the PLA account of M/s. BPC Projects as on 1-4-2009. Since M/s. BPC Projects merged with M/s. PSP Projects Pvt. Limited with effect from 1-4-2009, the legal existence of M/s. BPC Projects ceased on 1-4-2009. Whatever assets and liabilities M/s. BPC Projects had as on 1-4-2009 were automatically vested on M/s. PSP Projects Pvt. Limited. Simply because M/s. BPC Projects had not surrendered the service tax registration, it cannot be said that PLA balance lying unutilised was available with M/s. BPC Projects even after 1-4-2009. M/s. PSP Projects Pvt. Limited was the successor and the only legal entity with effect from 1-4-2009 and hence was legally entitled to utilise the said unutilised PLA balance. Hence, we find that the issue herein is only non-observance of procedure of intimation to Range Superintendent, etc. and is only a technical violation, if any. We also find force in the arguments of the learned Consultant that the appellant had intimated the department, albeit the Divisional Commissioner, about their intention to transfer the amount lying unutilised in the PLA account of M/s. BPC Projects to M/s. PSP Projects Pvt. Limited, on 26-5-2009 and the objection/demand was raised only on 21-10-2010 and hence liable to be held as time barred.

5. *In view of the above analysis, we find that the demand of short-levy is not fair and just, nor can it be legally sustained. Hence, the impugned order of the lower authorities are set aside."*

4.11 We are also of the view that PLA is nothing, but appellant's own money lying in balance which can be utilized at a future event for payment of excise duty. Herein, transiting of credit into DTA unit, on merger of EOU into the said DTA, also serves the same purpose. Also, since the Leaned Commissioner admits that the appellant is entitled for refund of the same, transiting the credit in DTA unit has no revenue impact. As has been held in Jay Shree Tea & Industries Limited V/s. CCE Kolkata 2005 (190) ELT 106 (Tri.Kol) pending utilization of the PLA amount towards excise duty, the department has no claim over such amount. As such, demand on this issue is not sustainable.

5. Basis the observations on each issue in dispute, we are of the considered opinion that no demand can sustain. Accordingly, we set aside the impugned order and allow the appeal with consequential reliefs, if any.

(Pronounced in the open court on 26.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)