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Customs, Excise & Service Tax Appellate Tribunal,
West Zonal Bench : Ahmedabad,
2nd Floor, Bahumali Bhavan Asarwa,Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004

Dated: **13/07/2018**

File No. :-E/11411/2014

In the matter of :-

Mohit Industries Ltd
(Appellant as per address below) **(Appellant)**

Vs

C.C.E. & S.T.-Surat-ii
(Respondent as per address below) **(Respondent)**

I am directed to transmit herewith a certified copy of Order No. : **A/11415/2018** dated : **12/07/2018** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

13/7/18

Assistant Registrar/ ~~Technical Officer~~

S.NO, Case Number, Name & Address of Appellant :-

1 E/11411/2014 Mohit Industries Ltd
Advocate Mukund Chauhan, 731, Ajanta Shopping Centre,
Ring Road,SURAT
GUJARAT -395002

S.NO, Case Number, Name & Address of Respondent :-

1 E/11411/2014 C.C.E. & S.T.-Surat-ii
NEW C.Ex BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR,
SURAT,GUJARAT-395001

Copy To :-
1. Chief Commissioner Customs & Central Excise :**Vadodara**
2. Commissioner Customs & Central Excise (Appeal) :**Nil**
3. O/o Commissioner (AR) CESTAT, Ahmedabad
4. CESTAT Bar Association, Ahmedabad
5. CESTAT Bar Association, New Delhi
6. Master File
7. M/s Centax Publications Pvt. Ltd.
8. LawCrux Advisors (P) Ltd.
9. MS Knowledge Processing Pvt. Ltd.
10. The ICFAI Society
11. Taxongo Pvt Ltd
12. M/s Company Law Institute Of India Pvt. Ltd.
13. M/s Taxman Allied Services Pvt. Ltd.
14. Advocate/(s) / Consultant/(s) / Representative:-

ISSUED ON 18 JUL 2018
CESTAT, AHMEDABAD.

1 E/11411/2014 **MUKUND CHAUHAN**
731 AJANTA SHOPPING CENTRE RING
ROAD SURAT-395002

Prepared By :-

13/7/18

Assistant Registrar/ Technical Officer
CESTAT - AHMEDABAD

DB-D 15*6

Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
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Appeal No. E/11411/2014-DB

(Arising out of OIA No. SUR-EXCUS-002-COM-099-13-14 dated 06.03.2014 passed by the Commissioner (Appeals) of Central Excise & Customs, Surat-II)

Mohit Industries Ltd. : Appellant (s)

Vs

CCE-Surat-II : Respondent (s)

Represented by:
For Appellant (s) : Shri Mukund Chauhan, CA
For Respondent (s): Shri Sameer Chitkara,Addl. Commr, (AR)

CORAM :
Mr. Ramesh Nair, Hon'ble Member (Judicial)
Mr. Raju, Hon'ble Member (Technical)

Date of Hearing: 08.06.2018

Date of Decision: 19.07.2018

ORDER No. A/11415/2018

Per : Mr. Ramesh Nair

The facts of the case are that the appellant shifted their factory including plant & machinery equipments and raw-material to their Surat Unit. They have also transferred the unutilized credit lying in the books of Silvassa Unit to Surat Unit under Rule 10 of CCR, 2004. Revenue has denied the credit on the ground that the appellant have not obtained the prior permission for transfer of credit and stock of the goods. The shifting of factory was done before surrender of the registration of Silvassa Unit for which no procedure was followed by the appellant. Therefore, the present appeal filed by the appellant.

Nair.
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2. Shri Mukund Chauhan, Ld. Chartered Accountant appearing on behalf of the appellant submits that Rule 10 does not prescribe any permission to be obtained, the only requirement is that the stock of goods such as capital goods, inputs etc., of which credit was availed and lying in stock is transferred to the transferee unit. There is no dispute about this fact that the plant & machinery and other capital goods and raw-materials in stock have been transferred to their Surat Unit. He submits that the appellant by various letter communicated to the department regarding shifting of their factory and transfer of the credit under Rule 10, therefore, entire facts of transfer of factory from Silvassa to Surat Unit was informed from time to time. Therefore, even though all these requirements is not prescribed, but, the appellant have taking precautionary measure and informed the department of their bonafide, therefore, there is no reason to deny the transfer of credit to their Surat Unit. He placed reliance on the judgement of this Tribunal in the case of *Kirloskar Oil Engines Ltd. Vs. Commissioner of Central Excise, Kolhapur – 2014 (304) ELT 317 (Tri.-Mumbai) and Kiran Pondy Chem Ltd. Vs. Commissioner of Central Excise, Coimbatore-2009 (239) ELT 192 (Tri.-Chennai).*

3. On the other hand, Shri Sameer Chitkara, Ld. Additional Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the Ld. Commissioner given in the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the facts of the case is that the appellant factory of Silvassa Unit has been shifted to Surat Unit, they had an accumulated utilized Cenvat credit in their Cenvat account which is permissible to be transferred to the transferee unit in terms of Rule 10 of CCR, 2004, which reads as under:-

> "(l) 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."

As per the reading of the above Rule 10, it is observed that the Rule does not prescribe any procedure to be followed for transfer of the credit lying unutilized from transferred unit to transferee unit. The only requirement is that if any stock of raw-material, capital goods and other goods on which Cenvat credit had been availed, the same should also be transferred to the transferee unit. Only with this aspect, the Jurisdictional Assistant Commissioner or Deputy Commissioner as the case may be, should be satisfied. This fact can be verified from the Cenvat account of transferee unit and Cenvat account of transferee unit. Since, there is no requirement, the Adjudicating Authority imposing condition on the appellant that they should have taken prior permission is absolutely unwarranted. As regard the ground that the shifting was done before registration, the same is not the condition before transfer of unutilized credit. It is obvious that if any unit has to be transferred it can be transferred during the registration only and there is no mandatory requirement that shifting can be done only after surrender of the registration of the transferred unit. Therefore, this condition was also unnecessarily imposed by the Adjudicating Authority. We do not agree with the contention of the Adjudicating Authority that the appellant has violated any condition for transfer of the credit from the transferor unit. Moreover, it is observed that the appellant vide their letter dated 09.11.2012 and 10.12.20112 intimated to the Jurisdictional Assistant Commissioner of Silvassa as well as Surat regarding the transfer of factory including plant & machinery, stock of raw-material and transfer of unutilized credit. The Jurisdictional Assistant Commissioner should have satisfied himself about the correctness of the transfer of credit on the basis of Cenvat account of both the Units. Without doing, merely on assumption basis allegation made against the appellant is not tenable. However, we find that the Adjudicating Authority denied the credit transferred from Silvassa to Surat only on the ground which is not supported by any authority of law. At the same time, no verification of records of Silvassa and Surat was carried out by the Adjudicating Authority or the Jurisdictional Assistant Commissioner. In these circumstances, we are of the view that the Adjudicating Authority must get the records verified and thereafter pass a reasoned order. We reiterate that only on the ground which was made in the adjudication order such as the shifting was done without permission and without surrendering the registration, the Cenvat credit cannot be denied. With our above observations, the appeal is allowed by way of remand to the Adjudicating Authority.

(Order Pronounced on 12/7/18.)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

G.Y.