CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 10076 of 2020-SM

[Arising out of Order-in-Original/Appeal No AHM-EXCUS-002-APP-92-2019-20 dated 24.10.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-II]

Transformers & Rectifiers India Limited .... **Appellant**
S.No. 344-350, Sarkhej- Bavla Highway Village:
Changodar, Taluka: Sanand, Ahmedabad
Gujarat-82213

VERSUS

Commissioner of Central Excise & ST, Ahmedabad .... **Respondent**
Custom House, First Floor, Old High Court Road,
Navrangpura, Ahmedabad, Gujarat-380009

APPEARANCE :

Shri M.G. Yagnik, Advocate for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Revenue.

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

DATE OF HEARING : 02.02.2023
DATE OF DECISION: 06.02.2023

FINAL ORDER NO. A/10207 / 2023

RAMESH NAIR :

In the present case the appellant was denied Cenvat credit by the Revenue on the ground that Cenvat credit of other unit i.e. Moriya unit was transferred to appellant's unit before the due date and utilized the same for payment of duty in terms of Rule 10A of Cenvat Credit Rules, 2004.

2. Shri M.G. Yagnik, learned Counsel appearing on behalf of the appellant submits that even though there is procedural lapse of transferring credit before due date but for the period between the credit was due and credit was taken, the appellant have paid interest. Therefore, the Cenvat credit on the appellant's end should not have been denied. He submits that the issue raised only on the basis of audit conducted at the transferor unit i.e. Moriya and on the observation of audit, appellant had paid interest and the issue

was closed, therefore at the appellant's end the Cenvat credit cannot be denied. He further submits that if at all there is lapse, it is only on the part of Moriya Unit who is transferor, for that reason appellant cannot be made sufferer for the substantial benefit of Cenvat credit.

3. Shri Rajesh K Agarwal, learned Superintendent (AR) appearing for the Revenue reiterates the findings of the impugned order.

4. I have carefully considered the submissions made by both the sides and perused the record. I find that the lower authorities have denied Cenvat credit on the challans issued for transfer of credit from their other unit at Moriya to the unit of the appellant at Changodar. The reason for denial was that credit was transferred two months before the period prescribed under Rule 10A of Cenvat Credit Rules, which is reproduced below:-

> **RULE [10A. Transfer of CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act.** — (1) A manufacturer or producer of final products, having more than one registered premises, for each of which registration under the Central Excise Rules, 2002 has been obtained on the basis of a common Permanent Account Number under the Income-tax Act, 1961 (43 of 1961), may transfer unutilised CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises at the end of a quarter, to his other registered premises by—
>
> (i) making an entry for such transfer in the documents maintained under rule 9;
>
> (ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i),
>
> and such recipient premises may take CENVAT credit on the basis of the transfer challan.

From the above Rule, the transferor assessee is required to transfer the credit at the end of the quarter. In the present case, for the quarter ending December 2013, instead of transferring credit on 31.12.2013, it was transferred on 31.10.2013. Similarly for the quarter ending September 2014, instead of transfer of credit on 30.09.2014 it was transferred on

31.07.2014. I find that there is no dispute that the credit which was transferred was lying accumulated in the Cenvat account of transferor unit. The transfer of credit from one unit to another unit of the same assessee company in terms of Rule 10A is only a procedural requirement and it is not a case of any fresh payment of duty. The credit which is transferred is in respect of duty which was already paid. Therefore, by transfer of credit there is no Revenue implication. Moreover, for the early transfer of credit and availment thereof, the appellant has admittedly paid the interest due to which the availment of credit shall be treated as on last date of the quarter in both the cases. Therefore, only for early transfer, credit cannot be denied.

5. Without prejudice to the above findings, I further find that if at all there is lapse, it is on the part of the transferor unit against which the audit had already raised the issue and on payment of interest the issue was settled and no further action was taken against the transferor unit. For this reason also Cenvat credit should not have been denied to the appellant.

6. As per my above discussion and findings, I do not find any reason that in the facts and circumstances of the present case why the credit can be denied. Accordingly, the impugned order is set-aside and appeal is allowed with consequential relief.

(Pronounced in the open court on 06.02.2023*)*

(Ramesh Nair)
Member (Judicial)

KL