**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**REGIONAL BENCH : ALLAHABAD**
**COURT No. I**

**MISC Application No. ST/MISC/70255/2018**
**APPEAL No. ST/70737/2017-CU[DB]**

(Arising out of Order-in-Original No. 07/Commissioner/ST/Noida/2017-18 dated 18/08/2017 passed by Commissioner, Central Goods & Service Tax, Noida)

**Technip India Ltd.** **Appellant**

Vs.

**Commissioner of Central Goods & Service Tax, Noida** **Respondent**

Appearance:

Shri Tarun Jain (Advocate)) for Appellant
Shri Shiv Pratap Singh (Deputy Commissioner) AR for Respondent

**CORAM:**

**Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**
**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

Date of Hearing : 20/11/2018
Date of Pronouncement : 11/12/2018

FINAL ORDER NO **72840 / 2018**

**Per: Archana Wadhwa**

1. The present appeal arises on account of amalgamation of three entities, namely, (1) Technip India Limited (earlier registered for Service Tax in Channai), (2) Technip ENC India Limited (earlier registered for Service Tax in Mumbai) and (3) Technip KT India Limited, Delhi (registered with Service Tax in Noida). All the three companies had a common holding company which decided to amalgamate these companies. The

scheme of amalgamation was presented and obtained the approval of three Hon'ble High Courts, namely, High Court of Madras, Bombay High Court and Delhi High Court in respect of each of these entities respectively.

2. The following features of the scheme are noteworthy;-

(a) All assets (including tax benefits) and liabilities of the Chennai and Mumbai companies would stand transferred and be succeeded by Techip KT India Limited.

(b) The scheme would take into effect (i.e. the effective date) after all the formalities regarding the scheme are completed. These formalities were completed and sheme effective on 21.04.2014.

(c) With the coming into effect of the scheme the transferee entity, namely, Technip KT India Limited would be known as Technip India Limited.

3. In terms of the orders of the Hon'ble High Courts sanctioning the amalgamations scheme, which came into effect on 21.04.2014, the appellant intimated the Service Tax Department. On 19.05.2014 the appellant intimated the Noida and Chennai Service Tax Authorities and on 22.08.2014 the Service Tax Authorities in Mumbai were informed. In these letters, it was duly pointed out by the

Appellant that the scheme has been sanctioned by the Hon'ble High Court and in terms of the scheme the Cenvat Credit available with the entity registered at Chennai and Mumbai, stood transferred to the entity registered at Noida with effect from 21.04.2014.

4. In this background, the Appellant took the credit available with the Chennai and Mumbai entities and this credit was duly shown in statutory returns pertaining to the period April, 2014 filed by the appellant with the Noida Service Tax Department. Thereafter, the appellant also applied for the centralized registration of these units which was duly granted to the appellant on 08.10.2014. The process was also initiated by the appellant for surrender of registration with Chennai and Mumbai Service Tax Authorities which were also duly surrendered.

5. Thereafter, an audit was undertaken by the Service Tax Department Noida dated 01.04.2016, in which it was accepted by the Department that credit was available with the entities registered in Chennai and Mumbai. There was no dispute on the quantum or correctness of the credit. However, in this audit memo it was pointed that no permission had been taken by the appellant from the Chennai and Mumbai Service Tax Authorities and accordingly the approval of credit was registered by the Department.

6. These audit proceedings resulted in show cause notice which was issued the very next day that i.e. on 02.04.2016. In the show cause notice the following allegations were made against the appellant:-

(i) That the appellant had not complied with the condition under Rule 10 of the Cenvat Credit Rules.

(ii) No information was provided regarding surrender of registration with Chennai and Mumbai and;

(iii) Transfer could not take place before reversing the credit in the accounts of Chennai and Mumbai entities. In this background, the entire credit claimed by the appellant was sought to be denied by the Department.

7. In response to the notice the appellant submitted that (a) in terms of settled law there was no requirement to obtain permissions from the Department for transfer of credit in terms of Rule 10, (b) that in any case the appellant itself had intimated the Department regarding the transfer of credit in terms of the scheme approved by the Hon'ble High Courts, (c) in any case the credit transfer was not subject to compliance with the sub Rule 10 (3) in view of the fact that under Rule 10 (3) the requirement was only to account for credit on inputs or capital goods.

8. In the aforesaid background, the impugned order has been passed. It is pertinent to point out that the leanred Commissioner has accepted the submission of the appellant that no permission is required by the appellant for transfer of credit in terms of Rule 10 of the Cenvat Credit Rules. Nonetheless, the Impugned Order has been passed for the following reasons;

(i) Learned Commissioner has proceeded to hold that the appellants were required to intimate the Department prior to the transfer and the failure on the part of the appellant to intimate prior to the transfer leads to violation of Rule 10(3) of the Cenvat Credit Rules.

(ii) Further, it has been pointed out in the impugned order that the appellant has not reversed Cenvat Credit prior to the transfer with the Chennai and Mumbai Authorities.

(iii) The amendment in the centralized registration took place only on 08.10.2014 and therefore for the purpose of Service Tax all the three entities continued to exist till such date; meaning thereby that credit could not be transferred prior to 08.10.2014.

(iv) In respect of the contention of the Appellant that there is no requirement for satisfaction of the officers in respect of credit of input service alone, it has been held in the impugned

order that according to the Department credit of only input services also requires satisfaction of Rule 10(3).

(v) Furthermore, the learned Commissioner has found the Appellant guilty of suppression to confirm the entire demand with equal penalty and also against interest while denying the Department transfer of the entire Credit.

Hence the present appeal.

9. On hearing both the sides duly represent by Shri Tarun Jain, Advocate appearing on behalf of the appellant and Shri Shiv Pratap Singh, Deputy Commissioner AR appearing for the Revenue we find that the show cause notice proposed to deny credit on the ground that no prior permission stands taken by the appellant. However, the said issue stands accepted by the Adjudicating Authority and as such it was not open to the Revenue to deny the credit on further allegations. The legal issue that Adjudicating Authority cannot go beyond the show cause notice is well settled by catena of judgments. Reference can be made to the Hon'ble Allahabad High Court's decision in the case of Sarika Jain vs. Commissioner of Income Tax (2018) 407 ITR 254 (All.) wherein it was held in that Appellate Authority cannot confirm the demand on the basis which was not the foundation of the Department's case in the show cause

notice. As such we are of the view that impugned orders are liable to be set aside on thus ground alone.

10. Otherwise also we note that the credit was transferred from Chennai and Mumbai after intimating the Service Tax Authorities, under the orders of the Hon'ble High Court and as such cannot be questioned by the Revenue. The scheme of amalgamation has clearly provided that all the assets of the Transferor Companies would be available to the Transferee Company. Inasmuch as the transfer of the unutilized credit has been done under the approval of the Hon'ble High Court as per the scheme sanctioned by the High Courts, the denial of the same is neither justified nor warranted. It is also noted that there is no dispute about the availability of credit with the transferor in which case the transfer of the same cannot be questioned in terms of Rule 10(3) which has been the subject matter of various Tribunals' decisions. Reference can be made to the decision in the case of Hewlett Packard (India) Sales Private Limited vs. CC, reported at 2007 (6) STR 155 (Tri.-Bang.), which stands approved by the Hon'ble Karnataka High Court reported as CC vs. Hewlett Packard (India) Sales Private Limited, 2012 (279) E.L.T. 203 (Kar.) wherein the appeal filed by Revenue was rejected. Similarly non-surrendering of the registration prior to transfer stands decided by the Tribunal in the case of Mohit Industries Limited vs. CCE, Surat-II reported at 2018 (7) TMI 853

CESTAT-Ahmd, wherein it was observed that there is no requirement of Rule 10 for surrendering of registration before transferring the credit.

11. In view of the foregoing we find no merits in the Revenue's stand and accordingly we set aside the impugned orders with consequential relief to the appellant.

(Pronounced in Court on **11.12.2018**)

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| **Sd/-** | **Sd/-** |
| **(Anil G. Shakkarwar)** | **(Archana Wadhwa)** |
| **Member (Technical)** | **Member (Judicial)** |

*Ankit*