CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.71088 of 2018-Single Member

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-1881-1882-17-18 dated 21/03/2018 passed by Commissioner (Appeals) Central Goods & Service Tax, Noida)

M/s U. V. Graphic Technologies Pvt. Ltd. .....Appellant

(Plot No.15, Sector-140A, Noida, U.P.-201301)

VERSUS

CGST, Noida ....Respondent

(C-56/42, Sector-62, Noida-I)

APPEARANCE:

Absent on Call for the Appellant
Shri Sandeep Kumar Singh, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINAL ORDER NO. - 71584 / 2019

Date of Hearing : 22 August, 2019
Date of Decision : 22 August, 2019

PER: ARCHANA WADHWA

On matter being called neither anybody appeared nor is there any adjournment request, I also note that the matter has repeatedly coming up on record and was being adjourned in the interest of justice. Accordingly, I proceed to decide the appeal itself after hearing the learned A.R.

2. On going through the impugned order, I find that the appellant shifted his business factory premises from one place to another alongwith transferring the inputs lying as such or in the

process to the new unit alongwith the transfer of the available Cenvat credit in terms of the provisions of Rule 10 of Cenvat Credit Rules, 2004. The Lower Authorities sought to deny the said transfer of Cenvat credit on the ground that no prior permission was taken from the Assistant Commissioner or the Deputy Commissioner having jurisdiction over their factory. Accordingly after due adjudication, the Cenvat credit of Rs.4,71,883/- stands confirmed against the appellant alongwith confirmation of interest and imposition of penalty of identical amount. The said order of the Original Adjudicating Authority stands upheld by Commissioner (Appeals) and hence the present appeal.

2. The entire dispute revolves around the interpretation of the provisions of Rule 10 of Cenvat Credit Rules, 2004 which read as under:-

> *"4.3 Rule 10 of the CENVAT Credit Rules, 2004 reads as under:*
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> *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.*
>
> *(2) If a provider of output service shifts 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 of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise."

3. As is seen from the above, the assessee is entitled to transfer the balance Cenvat credit available with him on shifting of his factory, subject to the satisfaction of the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise. The Lower Authorities have observed that such satisfaction mentioned in the said Rule has to be interpreted as seeking prior permission of the Authorities. Otherwise, I find that there is no dispute about the availability of the credit, transfer of stock of inputs or capital goods etc. In fact the Original Adjudicating Authority has himself observed as under:-

"As regards the ingredient (ii) & (iii) there is no dispute as the transfer of inputs as such or in process, or the capital goods to the new site, has not been questioned and the proper accounting of the same is also not disputed in the notice to show cause. However, from the ingredients (i) & (iv) above it implies that the credit shall be allowed subject to the satisfaction of the Deputy/Asstt. Commissioner of Central Excise on the ingredient (iii). To comply with this, it is expected that the assessee/unit informs about transfer to the proper authority who will satisfy itself and for that purpose may call for certain documents/records and, accordingly, may allow the transfer of CENVAT credit."

However, he has observed that before taking credit under Rule 10 the appellant has to be allowed by the proper authority. Though the appellants have filed an application with the Revenue but the Revenue Authorities are denying the said fact.

I note that without referring to the said filing of application by the assessee, there is no requirement in the said Rule seeking prior permission from the Department. The said Rule only talks about the satisfaction of the proper officer. The said satisfaction stands arrived in the present case when the Revenue accepts that the inputs as also capital goods were properly transferred. It stands held in various decisions that the condition prescribed in Rule 10 for transfer of unutilized credit is only satisfaction of the Authorities and there is no requirement of seeking prior permission. Reference can be made to Tribunal decisions as under:-

Flex Art Foil P Ltd. vs. CCE-2010 (260) E.L.T. 261 (CESTAT)
Hewlett Packard (I) Sales (P) Ltd. vs. CCE-2007 (211) E.L.T. 263 (Tri.-Bang.)
Solaris Bio-chemicals Ltd. vs. CCE, Vadodara-2005 (179) E.L.T. 216 (Tri.-Mumbai)
CCE, Bangalore III vs. Tata Auto Component Systems Ltd.-2012 (277) E.L.T. 318(Kar.-HC)

4. As Authorities in the present case themselves observed that the stocks were transferred and credit was transferable and has only denied the credit on the ground of non seeking of prior permission, I find no justification in the present impugned orders. Accordingly the same are set aside and appeal is allowed with consequential relief to the appellant.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks