CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD.

REGIONAL BENCH

EXCISE APPEAL NO. 70110 OF 2020

[Arising out of the Order-in-Appeal No. NOI-EXCUS-001-APP-1254-19-20 dated 11/12/2019 passed by The Commissioner, Central Goods & Service Tax (Appeals), Noida.]

M/s Indica Industries P. Ltd. **Appellant**
C-157, Sector – 63,
Noida – 201 301.

VERSUS

The Commissioner, **Respondent**
Central Goods & Service Tax,
Noida.

Appearance

Shri Rajesh Chhiber, Advocate – for the appellant.

Shri Amit Bhardwaj, Authorized Representative (DR) – for the Respondent.

CORAM :
HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI P. ANJANI KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING : 10/03/2022.

FINAL ORDER NO. 70108/2022

ASHOK JINDAL

The appellant is in appeal against the impugned order denying transfer of Cenvat credit on transfer of the unit.

2. The facts of the case are that the appellant is having its factory at B-8, Sector 58, Noida and also at C-157, Sector 63, Noida. For both the units appellant is having separate units. On

31 March 2017 the appellant informed the Assistant Commissioner that they are shifting their factory from B-8, Sector 58, Noida to C-157, Sector 63, Noida. It was also informed that the capital goods were shifted on payment of duty in terms of Rule 10 (3) of Cenvat Credit Rules, 2004, but since the appellant was not having any closing balance of input, as such, or in process they requested him to allow transfer of closing balance of input credit lying in their Cenvat credit account of B-8, Sector 58, Noida to Cenvat credit account of C-157, Sector 63, Noida. The assistant Commissioner turned down the request of the appellant on the ground that provision of Rule 10 (3) of Cenvat Credit Rules, 2004 applicable and it is only be transferred if stock of input, as such, in process of capital goods are also transfer alongwith factory with business premises. The said order was challenged before the learned Commissioner (Appeals), who observed that transfer should have been immediately in 2013 and there were no supporting documents to ascertain the actual admissibility of credit at a belated stage, therefore, denial the credit. Against the said order appellant is before us.

3. The learned Counsel for the appellant submits that the reasoning of the appellate authority beyond the finding of the original Adjudicating Authority who denied the request of transfer of credit on the basis of no stock of input, as such, or in process of capital goods were transfer. The said finding contrary to Rule 10 of the Rules and issue has already been settled in favour of

the appellant reported in **Commissioner of Central Excise, Pondicherry versus CESTAT – 2009 (240) E.L.T. 367 (Mad.); Kevin Enterprises Pvt. Ltd. versus Commissioner of Central Excise, Vadodara – 2009 (15) S.T.R. 119 (Tri. – Mumbai) ; & Aar Aay Products Pvt. Ltd. versus Commissioner of Central Excise, New Delhi – 2003 (157) E.L.T. 40 (Tri. – Del.)**.

4. On the other hand learned Authorized Representative supported the impugned order.

5. Heard the parties considered the submissions.

6. We find that it is a fact on record that there were no physical input or were in progress available at the time of shifting of the factory, but Cenvat credit was lying in their Cenvat credit account, therefore, as held by this Tribunal in the case law cited by the learned Counsel of the appellant, particularly in the case of **Kevin Enterprises Pvt. Ltd.** (supra), wherein this Tribunal observed as under :-

> "5. It appears to us from the record that while sending a cryptic communication to the appellant, stating that the Commissioner did not consider the appellant's request as there were no provisions for transfer of credit without transfer of inputs, there was no indication as to whether the Commissioner had applied his mind for reaching the satisfaction as contemplated under sub-rule (21) of Rule 57F, which corresponds to Rule 8(2) of Cenvat Rules. It is apparent that, no hearing was given to the appellant by the Commissioner before the making of the said order. No speaking order of the Commissioner has been placed on record. As held in *Aar Aay Products* (supra), there was a clear lapse, where neither hearing, nor a speaking order had been made in such cases. It was incumbent upon the Commissioner to have given a specific finding in connection with the appellant's plea that there was no stock of inputs which could be transferred, and whether the capital goods on which credit was availed were duly accounted for, as contemplated

> by Rule 8(2)of the Cenvat Rules. It is evident that the question of transferring stock of inputs could arise only if it exists in cases where capital goods on which credit has been availed have been duly accounted for. In other words, where the stock did not exist and the capital goods, .on which the credit was availed, were duly accounted for, transfer of Cenvat credit lying unutilised, should not be refused. For statistical purposes, where in such cases there is no stock of inputs, the transfer entry would show transfer of "Nil" stock".

7. Therefore, we hold that appellant is entitled for transfer of Cenvat credit lying in their Cenvat credit account on transfer of the factory although no input or work in progress is on record. In view of the above observations, we set aside the impugned order and allow the appeal with consequential relief, if any.

(operative part of the order pronounced in open court.)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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