IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI

COURT HALL No.III

EXCISE APPEAL No.41443 OF 2014

(Arising out of Order-in-Appeal No.72/2014 (P) dated 08.04.2014 passed by Commissioner of Central Excise (Appeals), No.26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

M/s. ETA Engineering Pvt. Ltd. **.... Appellant**
R.S.No.79, 80 & 81,
Kalitheerthakkuppam,
Pallinelyanur,
Puducherry 605 107.

Versus

The Commissioner of GST & Central Excise, **...Respondent**
Puducherry Commissionerate
No.1, Goubert Avenue,
Puducherry 605 001.

APPEARANCE :

Mr. M.N. Bharathi, Advocate
For the Appellant

Mr. M. Ambe, Deputy Commissioner (A.R)
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 08.12.2023
DATE OF DECISION : 08.12.2023

FINAL ORDER No.41099/2023

ORDER : Per Ms. SULEKHA BEEVI C.S.

Brief facts are that the appellant is engaged in manufacture of Centralised Airconditioning Equipment like Air Handling Unit, Ductable Spit Air Conditioner etc. They had two units of which one unit was situated in SIPCOT Industrial Estate, Mambakkam, Sriperumbudur, Kancheepuram District and Unit II was situated in Kalitheerthalkuppam, Mannadipet Commune, Puducherry. The appellant informed the department that they intend to close down the Puducherry unit and to transfer the assets and liabilities to their Sriperumpudur unit. The adjudicating authority rejected the request of the appellant to transfer unutilized cenvat credit. Aggrieved by such order, the appellant filed appeal before the Commissioner (Appeals) who upheld the rejection of request to transfer the unutilized cenvat credit to the Sriperumbudur unit. Against the said order, the appellant is before the Tribunal.

2. The Ld. Counsel Sri M.N. Bharathi appeared and argued for the appellant. The relevant Rule 10 of CCR 2004 was adverted to by the learned counsel which reads as under :

> **"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 un-utilized in his accounts to such transferred, sold, merged, leased or amalgamated business.
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> (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. It is argued by the learned counsel for the appellant that the department has rejected the request for transfer of unutilized cenvat credit holding that the above provision does not include closure of factory. The Hon'be High Court of Madras has considered the very same issue in the case of *CCE Chennai Vs Featherlite Products Pvt. Ltd*. – 2017 (353) ELT 439 (Mad.) and held that the transfer of credit in the cases of closure of factory is permissible in terms of Rule 10 of CCR 2004. The said decision was followed by the Tribunal in the case of *Tejas Networks Ltd. Vs Commissioner of GST & Central Excise* - 2022 (2) TMI CESTAT CHENNAI. So also, similar view was taken in the case of *Super Spinning Mills Ltd. Vs CCE Coimbatore* – 2018 (7) TMI 779 – CESTAT CHENNAI. It is prayed that the appeal may be allowed.

4. Ld. A.R Sri M. Ambe supported the findings in the impugned order.

5. Heard both sides.

6. The issue is whether the rejection of request of transfer of the unutilized credit in terms of Rule 10 of CCR 2004 in a situation of closure of factory is legal and proper. On perusal of records, we find that the appellant vide letter dt. 15.12.2011 intimated the department that their Puducherry unit is being closed down and that they intend to transfer the unutilized cenvat credit to Sriperumbudur, Kanchipuram District. The very same issue was considered by the Hon'ble High Court of Madras in the case of *CCE Chennai Vs Feartherlite Products Pvt. Ltd*. – 2017 (353) ELT 439 (Mad.). The assessee in the said case had requested for transfer of assets, stocks as well as cenvat credit from Hosur unit to their unit at Bangalore, after closure of the factory situated at Hosur. The Hon'ble High Court after considering the Rule 10 of CCR 2004 observed as under :

> **"12.7** Thus, having regard to the purpose behind the rule, which is, broadly, to enable an assessee to use unutilised Cenvat credit, we see no difficulty in holding that an assessee will be able to transfer his unutilised Cenvat credit, even in a situation, where he shifts his factory from one site to another.
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> **13.** At this juncture, Ms. Hemalatha says that transfer of Cenvat credit under Rule 10 of the 2004 Rules, could only be made available to the respondent/assessee, if, the stock of inputs, as such, or in process, or capital goods were also transferred to the new site.
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> **14.** According to us, this was not an aspect, which was adverted to by the Adjudicating Authority, while, deliberating on the issue concerning transfer of unutilized Cenvat credit by the respondent/assessee to its Bangalore unit.
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> **14.1** Furthermore, as indicated in our narration, the entire original record was made available to the Adjudicating Authority for examination.
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> **14.2** We have been shown the copy of the reply filed which details out the annexures appended thereto. A perusal of the same leaves no manner of doubt that information *qua* this aspect was supplied, which is why, perhaps, no objection was raised by the Adjudicating Authority in this regard.

> **14.3** Accordingly, for the reasons given above, the conclusions arrived at, by the Tribunal is sustained, albeit, for different reasons. Consequently, the question of law, as framed, is answered in favour of the respondent/assessee and against the appellant/Revenue"

7. The very same issue was considered by the Tribunal in the case of Tejas Networks Ltd. Vs CGST & Chennai as well as in the case of Super Spinning Mills Ltd. Vs CCE Coimbatore. The decision of Hon'ble High Court of Madras in the case of *M/s. Feartherlite Products Pvt. Ltd.* (supra) was appealed by the Department before the Hon'ble Supreme Court. The appeal was dismissed by the Hon'ble Supreme Court as reported in 2018 (360) ELT !26 (SC). The Hon'ble Apex Court observed that there are no grounds to interfere with the order passed by the Hon'ble High Court. The decision of the Hon'ble jurisdictional High Court being affirmed by the Hon'ble Supreme Court, ratio of the judgment is squarely applicable to the facts before us. After appreciating the facts and following the decision as cited supra, we are of the considered view that the rejection of request to transfer unutilized cenvat credit owing to closure of factory, is not justified. The impugned order is set aside. Appeal is allowed with consequential relief, if any.

(Dictated and pronounced in court)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(SULEKHA BEEVI C.S.)
Member (Judicial)

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