IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/85584/2017

CROSS-OBJECTION NO: E/CROSS-91061/2017

[Arising out of Order-in-Appeal No: SK/48/TH-I/2016 dated 24/11/2016 passed by the Commissioner of Central Excise (Appeals), Mumbai – I.]

Commissioner of Central Excise
Thane – I …***Appellant***

versus

Sequent Scientific Limited ***…Respondent***

<u>*Appearance:*</u>

Shri S.J. Sahu, Assistant Commissioner (AR) for appellant

Shri PK Shetty, Advocate for respondent

CORAM:

Hon'ble Shri M V Ravindran, Member (Judicial)

Date of hearing: 12/03/2018
Date of decision: 12/03/2018

<u>ORDER NO: A/85666 / 2018</u>

This appeal is filed by Revenue against Order-in-Appeal No: SK/48/TH-I/2016 dated 24/11/2016 passed by Commissioner of Central Excise (Appeals), Mumbai – I.

2. Heard both sides and perused the records.

3. The relevant facts that arise for consideration are, respondent herein was a 100% EOU and was availing CENVAT credit of the service tax and Central Excise duty till 18/11/2011 and was holding Central Excise registration. Subsequently, the respondent opted out of EOU and continued their operations as DTA unit under the same Central Excise registration and the final debonding took place on 18/11/2011 as per the letter issued by the Development Commissioner, SEZ, Mumbai. On the date of debonding respondent EOU unit had unutilised balance of CENVAT credit of duty paid on inputs and capital goods which was utilised by them for the clearance effected as a DTA unit. Show cause notice came to be issued to respondent on the ground that CENVAT credit lying in the balance of EOU unit stands lapsed on debonding and that the said amount lying as unutilised credit could not be transferred to DTA. The adjudicating authority after following due process of law confirmed the demand of CENVAT credit which remained unutilized in the EOU unit along with interest and imposed penalty. Aggrieved by such an order, an appeal was preferred before the first appellate authority, who by the impugned order, and following the various judgments of the Tribunal, set aside the order-in-original.

4. Learned Authorised Representative draws my attention to the

grounds of appeal in the appeal memorandum and submits that provisions of Rule 10 will not apply to the case in hand for the transfer of credit as the provisions do not apply for transfer of credit from EOU to DTA. Reliance placed by the first appellate authority on the various case laws appears seems to be erroneous and the GOI (reviewing authority) under Section 35EE of Central Excise Act, 1944 in the case of *Technocraft Industries (India) Ltd. v. Before the Government of India, Ministry of Finance* [2014 (313) ELT 888 (GoI)] has specifically stated that a manufacturer EOU, after debonding, cannot carry forward unutilized credit.

5. Learned Counsel submits that an identical issue come up before the Division Bench of the Tribunal in the case of *Tecumseh Products India P. Ltd. v Commissioner of Central Excise* [2016 (336) ELT 685 (Tri.Bang.)] and the bench held that the there being no law prohibiting carrying forward unutilized CENVAT credit it cannot be held against the assessee.

6. I find that the fact in the case is not disputed. The only issue is whether the unutilized CENVAT credit lying in balance in the books of accounts in the case of respondent EOU can be carried forward to the respondent unit on its debonding to be a DTA. There is no dispute as to the fact that the respondent is functioning under a Central Excise registration when they were an EOU and the same registration number

was continued as DTA unit. I find that there is also no dispute as to the eligibility to avail CENVAT credit by the EOU and the CENVAT credit remaining unutilized is also not challenged.

7. In the foregoing facts, I find that the Learned Counsel for the respondent was correct in relying on the *ratio* decided by Division Bench of the Tribunal in the case of *Tecumseh Products India P. Ltd. (supra)* wherein, in paragraph 2.2, the bench clearly recorded the issue and in paragraph No. 5.2 held that CENVAT credit lying unutilized can be transferred to the DTA unit. I reproduce below paragraph No. 2.2 and 5.2

> "2.2 The appellant points out that during the departmental audit, the objection was made saying that the appellant took irregular credit by way of transfer of credit from EOU unit on 27-12-2007 lying unutilized in the accounts of EOU unit at the time of de-bonding and exit from the EOU.
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> xxxxx
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> 5.2 The main case law cited by the appellant in support is *GTN Exports Ltd.* v. *CCE* (supra) decided by the CESTAT, Chennai. In this case CESTAT allowed an EOU to take the credit of its predecessor domestic tariff area unit (DTA unit) citing that Rule 10 of Cenvat Credit Rules did not prohibit availment of such credit at the time of conversion of DTA to EOU. By applying the same rational we are unable to understand how the department would prohibit an EOU, when it is converting itself to a DTA scheme, to take the credit of the balance credit lying with the predecessor EOU. There is

> no logic and rational in the department's contention that Rule 10 of Cenvat Credit Rules, 2004 does not cover such a situation. The CESTAT Chennai's decision in *GTN Exports* (supra) is very clear that Rule 10 of Cenvat Credit Rules did not prohibit availment of balance credit by an EOU at the time of its conversion to EOU from the DTA; by the same logic an EOU when it is converted to DTA unit would be entitled to take the balance credit lying in the Cenvat account of EOU at the time of its conversion to DTA unit. In other words a successor DTA unit can get the transfer credit of the unutilized credit lying with its predecessor unit, which is an EOU in the present case."

8. In view of identical issue being decided by the Division Bench, respectfully following the same, it is held that the impugned order is correct, well reasoned and does not require any interference.

9. Accordingly, the impugned order is upheld and the appeal stands rejected. Cross-Objection filed by the respondent, being in support of the order-in-appeal, also stands disposed off.

(Dictated in Court)

(M V Ravindran)
Member (Judicial)

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