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

APPEAL NOS: E/1004 & 1005/2010

[Arising out of Order-in-Original No: 16/BR-16/Th-I/2010 dated 10th March 2010 passed by Commissioner of Central Excise, Thane – I]

For approval and signature:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

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Technocraft Industries (India) Ltd … ***Appellant***

versus

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

Appearance:

Ms Padmavati Patil, Advocate for appellant

Shri Ajay Kumar, Additional Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing:	**12/07/2018**
Date of decision:	**06/11/2018**

ORDER NO: A/87960-87961/2018

Per: C J Mathew

M/s Technocraft Industries (India) Ltd operated two facilities under the '100% Export Oriented Unit' scheme in the Foreign Trade Policy notified by the Director General of Foreign Trade under the Foreign Trade (Development & Regulation) Act, 1992. Both units opted out of the scheme and, upon debonding on 29th September 2008 and 29th January 2009 respectively, had balances of Rs 93,64,988 and Rs 1,33,38,504 in their CENVAT credit account arising from inputs, capital goods and input services procured by them. Proceedings were initiated against them to deny them continuity of the credit and for recovery of Rs 8,31,031 that was utilized, between 30th September 2008 and 6th December 2008, by Unit I for discharge of duty liability on clearance of 'cotton yarn' valued at Rs 2,01,70,715.

2. Aggrieved by the confirmation in order-in-original no. 16/BR-16/Th-I/2010 dated 10th March 2010 of Commissioner of Central Excise, Thane – I of the denial of credit balance, recovery of duty,

along with interest as applicable, and imposition of penalties, appellant seeks relief. The findings of the adjudicating authority are that, consequent upon debonding of the two erstwhile units under the scheme in the Foreign Trade Policy, the new units registered under Central Excise Act, 1944 would be deemed to have commenced existence afresh and, that *sans* entitlement to the transfer provisions, in rule 10 of CENVAT Credit Rules, 2004, or transitional provisions, in rule 11 of CENVAT Credit Rules, 2004, as well as lack of any specific provision for retention by such de-bonded units, the accumulated credit lapses on date of debonding. On scrutiny of the records, it appears that the capital goods, both indigenous and imported, as well as finished goods had been assessed to appropriate duties on debonding and it also appears that these duties had not been subsumed in the accumulated credit.

3. Units operating under the scheme are entitled to exemption on procurement of inputs, consumables and capital goods from within, or from outside, India; the accumulation of CENVAT credit, despite the eligibility to such exemption, evidences procurement on payment of duty which is not barred by law. Likewise, such units, being exporters, can utilize accumulated CENVAT credit only in the event of, and upon, clearance of goods for domestic consumption. The exclusion from duty of central excise on the goods that are exported does not disentitle them from availment of CENVAT credit on duty,

or tax, liability suffered on procurement of goods or services. Hence, for all practical purposes, these are no different from the normal assessees registered under Central Excise Act, 1944.

4. According to Learned Counsel for appellant, the denial was based on narrow examination of applicability of rule 10 of CENVAT Credit Rules, 2004 without considering the eligibility in terms of the scheme of CENVAT and the fundamental premise that export value should not to be saddled with duties in the hands of either the overseas customer or of the exporter. According to her, the interpretation placed by the adjudicating authority loads such burden on the exporter. She places reliance on the decision in *Tecumseh Products India Pvt Ltd v. Commissioner of Customs, Central Excise & Service Tax, Hyderabad – IV [2015-TIOL-3066-CESTAT-BANG]*. Learned Authorized Representative reiterates the findings of the original authority and points out that it was only by amendment to rule 17 of Central Excise Rules, 2002, through notification no. 18/2004-CE (NT) dated 6th September 2004, that even goods removed for domestic consumption were permitted to utilize credit for discharge of duty liability. It was also argued that the existence of units till debonding was subject to special provisions and coverage as normal unit commences only on debonding.

5. Having considered the rival submissions, we find it necessary

to step back and scan the broad canvas for a satisfactory resolution of this dispute before us. Doubtlessly, the appellant operates under an export promotion scheme in the Foreign Trade Policy with certain attendant privileges of exemption from duties of excise and duties of customs on their procurement conferred in notifications issued under Central Excise Act, 1944 and Customs Act, 1962 which are in furtherance of the general principle of divesting duties and taxes from the value of exports. This principle is also brought to bear on other domestic manufacturers of export goods through other neutralization provisions. The scheme for which exemptions are notified under the tax laws is, thus, a facilitating measure that may, according to their commercial judgement, be accessed by the holders of 'letter of permission' under the scheme without any compulsion to avail the exemption. The alternative of other neutralization facilities are not, therefore, excluded to such holders.

6. Whether holding the title to those privileges or not, all manufacturers, other than those operating outside the 'customs territory', are registered under the Central Excise Act, 1944 and subject to the same excisability under Central Excise Act, 1944. The administration of the registration system does not, and cannot, create a separate class of coverage under the Central Excise Act, 1944 other than as envisaged in that statute. The sole difference, therefore, lies in duty structure that is applicable to them. Duty liability on domestic

clearances confers on both the access to CENVAT credit scheme. That is not disputed by Revenue. There any dispute on the factum of exports effected by the appellant from the two facilities operated as ‘100% export oriented units’ with resultant inevitable accumulation of credit.

7. The scheme of indirect taxation requires that the tax burden is borne by the ultimate consumer, *i.e.* non-assessee, and all assessees in the production chain merely collect the duty for remitting to the government. At the same time, excise duties are limited to the contribution made to the manufacture of any goods; this requires that, for the proper administration thereof, each stage in the manufacturing process should be entitled to disassociate itself from the duties discharged upto the immediately preceding for computation of excise liability. Thus the full burden of duty should, without the privilege of passing on, be borne by the first non-assessee in the chain of transactions. The input credit scheme is devised towards that end and embodied as the CENVAT Credit Rules, 2004. Denial of CENVAT credit accumulated from duties discharged on procurements employed in exported goods would, therefore, load the burden on the exporter which defeats the very premise that is contained in the CENVAT Credit Rules, 2004.

8. As pointed out in the impugned order, the provisions of rule 10

or rule 11 will not apply to debonding units. It is also patently clear that a similar provision has not been explicitly incorporated in the CENVAT Credit Rules, 2004 for such debonding units. At the same time, rule 5 of CENVAT Credit Rules, 2004 entitle exporting units, including ‘100% export oriented units’, to claim refund of such accumulated credit at periodic intervals. Non-recourse to this privilege does not exclude them from entitlement to such. It may also be worth noting that the eligibility for refund is contingent only upon inability to utilize the accumulated credit for discharge of duty liability on clearance of goods domestically. Unlike the limitation of periodic eligibility for recourse to the refund route, utilization is open-ended. This provision obviates the need for explicit provision that the adjudicating authority seeks.

9. The existence of the appellant as an assessee has not been erased, substituted or subsumed at any point in time. The continued existence of the manufacturing facility is not compromised by a hiccup that is rooted in administrative orderliness. The provenance of the accumulated credit is not questioned. The statutory entitlement to regular monetization of the accumulated credit cannot be alienated; the alternative of utilization is not restricted by any condition. Denial of such utilization would have the impact of taxing the exporter as ultimate consumer and burdening the appellant with an implied duty on exports that is not authorized by law. To do so is to act illegally.

Accordingly, we hold that denial of carry forward of accumulated CENVAT credit to assessees debonding from the ‘100% Exported Oriented Unit’ scheme to continue operations without the privileges is not correct in law and is set aside. Appeals are allowed.

(Pronounced in Court on 06/11/2018)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*