IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.10.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.33546 of 2016

Eaton Power Quality Pvt. Ltd.,
(Formerly known as Cooper Bussmann India Pvt. Ltd.,
rep. By its Financial Controller K. Venkataramana.
...Petitioner

Vs.

The Assistant Commissioner of Central Excise,
Pondicherry II Division,
No.14, Municipal Street,
Azeez Nagar, Reddiyarpalayam,
Pondicherry - 605 010.
...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records in C.No.IV/16/199/2012-Cx Pol, dated 04.09.2015, passed by the respondent and to quash the same as arbitrary.

For Petitioner : Mr. Joseph Prabakar
For Respondent : Mr. A.P. Srinivas
Senior Standing Counsel

O R D E R

Heard Mr. Joseph Prabakar, the learned counsel appearing for the petitioner and Mr. A.P. Srinivas, the learned Senior Standing Counsel for the respondent.

2. The petitioner is before this Court, challenging the communication issued by the respondent, dated 04.09.2015. By the said communication, the petitioner's request for transfer of un-utilized balance of Central Value Added Tax Credit (CENVAT credit) has been denied. The respondent has referred to Rule 10 of the CENVAT Credit Rules, 2004, to state that the petitioner is not entitled for transfer of the un-utilized balance of CENVAT credit.

3. The facts, which are necessary for disposal of this Writ Petition are that:-

i) The petitioner has established two manufacturing Units at Pondicherry. One of the Units was 100% Export Oriented Unit (EOU Unit), which had been granted Letter of Permission (LOP), vide proceedings, dated 25.11.2003, by the Development Commissioner. The other Unit, which is stated to be situate within the same compound, is Domestic Tariff Area Unit (DTA Unit). During 2011, the petitioner wanted to exit from EOU status in respect of one of the Units. In this regard, an Application was made on 14.09.2011. This Application was considered, and permission for exiting from 100% EOU status was issued on 27.09.2011. Subsequently, after due verification that the petitioner has discharged all Government liabilities, such as Customs and Central Excise Duties on all the imported and indigenous capital goods, raw materials, consumable, etc., including the finished goods in stock, the matter was taken up for consideration again, and the final exit from 100% EOU Status in respect of LOP dated 25.11.2003 was granted, by proceedings dated 12.07.2012. The copy of the said communication was forwarded by the Assistant Development Commissioner to the respondent herein.

ii) Thereafter, the petitioner made an Application to the respondent on 13.07.2012, requesting for permission to transfer un-utilized balance of CENVAT credit in the account of DTA Unit, and to allow them to take CENVAT Credit, and utilize the same on the invoices received at later stage addressed to 100% EOU Unit. This Application has been followed by a reminder, and finally, the respondent, by the impugned communication, has refused to accede to the petitioner's request. In this regard, referred to Rule 10 of the Cenvat Credit Rules, 2004.

4. The petitioner is not very definite about their case as regards the applicability or otherwise of Rule 10 of the said Rules. It is not clear as to whether 100 EOU Unit continues to function as a production Unit on its status being changed or not. If that be so, then, it is an independent establishment, having separate registration within the already existing DTA Unit. Therefore, the question would be as to what would happen to the un-utilized balance of CENVAT Credit.

5. Thus, for all practical purpose, the respondent, on receipt of the petitioner's Application for transfer should have adjudicated the case as in the nature of adjudication proceeding, rather to deal with the same summarily.

6. On instructions, the learned Senior Standing Counsel for the respondent would submit that the respondent would be ready and willing to adjudicate the case by adopting the adjudication procedure.

7. Thus, considering the complex factual situation, this Court is constrained to hold that the matter requires a thorough adjudication by the respondent by affording proper opportunity to the petitioner to putforth their case.

8. For all the above reasons, this Court is inclined to dispose of this Writ Petition with the following directions:-

i) Since the respondent has expressed his opinion by way of the impugned communication, dated 04.09.2015, the petitioner is directed to treat the impugned order as a show cause notice and submit their objections/reply within a period of 30 days from the date of receipt of a copy of this order, clearly setting out as to what relief, they seek from the respondent, and enclose documents in support of their claim.

ii) The petitioner is at liberty to refer to the legal position and also bring to the notice of the respondent, the Circular issued by Central Board of Excise and Customs, dated 30.08.2016.

iii) On receiving the objections, the respondent is directed to take up the adjudication and afford an opportunity of personal hearing to the authorized representative of the petitioner and pass orders on merits and in accordance with law.

9. This Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sd
To
The Assistant Commissioner of Central Excise,
Pondicherry II Division,
No.14, Municipal Street,
Azeez Nagar, Reddiyarpalayam,
Pondicherry - 605 010.

+1cc to Mr.Joseph Prabakar, Advocate SR.No.75007/17

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NRI(CO)
sm:24.11.2017