

2013 (291) E.L.T. 325 (Bom.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
J.P. Devadhar and M.S. Sanklecha, JJ.

COMMISSIONER OF CENTRAL EXCISE, BELAPUR
Versus
SANDOZ PVT. LTD.

Central Excise Appeal No. 141 of 2011, decided on 11-4-2012

Cenvat credit - Availment of - DTA unit converting to EOU - Balance CENVAT credit available in books of accounts on date of conversion can be utilized for clearances effected by EOU - Rule 10 of Cenvat Credit Rules, 2004. [para 2]

Appeal dismissed

CASES CITED

Commissioner v. Ashok Iron and Steel Fabricators — 2002 (140) E.L.T. 277 (Tribunal-LB) — *Relied on* [Para 2]
GTN Exports Ltd. v. Commissioner — 2009 (240) E.L.T. 53 (Tribunal) — *Relied on*..... [Para 2]
Sun Pharmaceuticals Industries Ltd. v. Commissioner — 2010 (251) E.L.T. 312 (Tribunal) — *Relied on* [Para 2]

REPRESENTED BY : S/Shri Pradeep S. Jetly with J.B. Mishra, for the Appellant.
Shri Prakash Shah i/b PDS Legal, for the Respondent.

[Judgment]. - P.C. : Whether the CESTAT was justified in holding that the respondent-assessee, a DTA unit converted into a 100% Export Oriented Unit with effect from 14-7-2004 was not required to reverse the balance CENVAT credit available in the books of accounts of the assessee on the date of conversion and utilize the said credit in respect of the clearances effected from the 100% Export Oriented Unit is the question of law in this appeal.

2. The Tribunal has held that the assessee is entitled to avail the credit in balance as on the date of conversion by relying upon the decisions by the Tribunal in *Sun Pharmaceuticals Industries Ltd. v. Commissioner of Central Excise, Pondicherry* - 2010 (251) 312 (Tri.-Chennai); *GTN Exports Ltd. v. Commissioner of Central Excise, Coimbatore* - 2009 (240) E.L.T. 53 (Tri.-Chennai) and *Commissioner of Central Excise, Rajkot v. Ashok Iron & Steel Fabricators* - 2002 (140) E.L.T. 277 (Tri.-LB). It is not in dispute that the decision of the Tribunal in the case of *Sun Pharmaceuticals Industries* (supra) and *GTN Exports Ltd.* (supra) have been accepted by the Revenue. It is also not in dispute that appeal filed by the Revenue against the decision of the CESTAT in the case of *Ashok Iron & Steel Fabricators* (supra) has been dismissed by the Apex Court. In this view of the matter, in our opinion, no fault can be found with the decision of the CESTAT. Hence, the appeal is dismissed with no order as to costs.
