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

COURT No. II

APPEAL No.E/87821/17

(Arising out of Order-in-Appeal No.PUN-EXCUS-001-APP-0268/2017-18 dated 24/08/2017 passed by Commissioner of Central Excise & Customs (Appeals), Pune)

For approval and signature:

Hon'ble Mr C J Mathew, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:No
2.	Whether it should be released under Rule 27 of the 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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Accutech Engineering Pvt. Ltd., **Appellant**

Vs.

Commissioner of Central Excise, Pune **Respondent**

Appearance:

Shri Brijesh Pathak, Advocate for appellant
Shri S . Sahu, Asst. Comm. (AR) for respondent

CORAM:

Hon'ble Mr C J Mathew, Member (Technical)

Date of Hearing : 11/04/2018
Date of Decision : 11/04/2018

ORDER NO.87081/2018

Per: C.J. Mathew

1. M/s Accutech Engineering Pvt Ltd., is in appeal against order-in-appeal no.PUN-EXCUS-001-APP-0268/2017-18 dated 24th August 2017 of Commissioner of Central Excise & Customs (Appeals), Pune, wherein the order of the original authority, requiring the appellant to discharge duty liability of Rs.5,93,812/-, along with interest thereon, and penalty of like amount for having cleared inputs, as such, to a 100% EOU under CT-3 certificate without reversing the CENVAT credit was confirmed.

2. Learned Counsel for appellant relies on the decision of the Tribunal in *Matrix Laboratories Ltd. [2015 (330) ELT 523 (Tri-Bang)]*, which in identical circumstances, have allowed the clearance of goods without reversal of correspondingly CENVAT credit which has been affirmed by the Hon'ble High Court of Karnataka. According to Learned Counsel, the entire exercise is revenue neutral as the consignee was entitled to exemption from duty under notification no.22/2003-CE dated 31st March 2003. It is further contended that the demand is barred by limitation as the notice was issued on 4th October 2010 for recovery of duty

on goods cleared against the invoices of the period from February 2007 to March 2008.

3. Learned Authorised Representative relies on the contents of the impugned order and, more particularly on the decision of Larger Bench of the Tribunal in *Lakshmi Automatic Loom Works Ltd. [2008 (232) ELT 428 (Tri-LB)]* to counter the reliance placed by the appellant on various other decisions including that of the Tribunal in the Matrix Laboratories Ltd.

4. Having considered the rival submissions. There is no doubt that the consignee of the goods is entitled to exemption from all duties in their procurement. Such exemption will arise only upon direct procurement from the factory of manufacture on crystallites of liability to excise duty. The appellant is a manufacturer, who is entitled to resort to the said exemption for clearance, under identical circumstances of goods manufactured by them but for any inputs cleared as such, including 100% EOU, reversal of credit is mandated by rule 3 (5) of CENVAT Credit Rules, 2004. The confront of duty exemption on a third party is beyond the scope of application except where manufactured goods is concerned. While the decision of the Tribunal as affirmed by the Hon’ble High Court of Karnataka, in *Matrix Laboratories Ltd.* relates to capital goods transferred within the group of companies, did not escape consideration by the Larger Bench of the Tribunal, its applicability in the present

dispute is questionable. The claim of the appellant fails and accordingly, the appeal is dismissed.

(Dictated in Court)

(C.J. Mathew)
Member (Technical)

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