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

**APPEAL NO: E/1092/2009**

[Arising out of Order-in-Original No: 12/COMMR(KAP)/LTU/2009 dated 26/06/2009 passed by the Commissioner of Central Excise & Service Tax, LTU, Mumbai.]

Maneesh Exports (EOU) … ***Appellant***

*versus*

Commissioner of Central Excise
Belapur …***Respondent***

*Appearance:*

Shri Prakash Shah with Shri Mihir Mehta, Advocates for appellant

Shri Ajay Kumar, Addl. Commissioner (AR) for respondent

**CORAM**

**Hon'ble Shri S K Mohanty, Member (Judicial)**
**Hon'ble Shri C J Mathew, Member (Technical)**

**Date of hearing: 07/08/2018**
**Date of decision: 07/08/2018**

**ORDER NO: A/88165/2018**

*Per: S K Mohanty:*

This appeal is directed against the impugned order dated 26/06/2009 passed by the Commissioner of Central Excise and

Service Tax, LTU, Mumbai.

2. Brief facts of the case are that the appellant is a 100% EOU, engaged in manufacturing of capsules/tablets of pharmaceutical formulations. The appellant avails CENVAT credit of Central Excise duty paid on the raw materials and capital goods used in, or in relation to the manufacture of the said final products. During the period from 01/02/2007 to 30/09/2007, the appellant had removed the raw materials, on which CENVAT credit was availed, to its job-worker for the purpose of further processing. The permission granted by the department for such removal of raw material was withdrawn by the Assistant Commissioner of Central Excise, Belapur Division – I, with effect from 29/01/2007. Since the specific permission granted earlier was withdrawn and the said goods were removed by the appellant from its factory for job-work purpose, the department initiated show cause proceedings for confirmation of the Central Excise duty demand on the appellant. The show cause notice has alleged that under sub-rule (5) of Rule 3 of the CENVAT Credit Rules, 2004, the appellant was liable to pay an amount equal to the credit availed in respect of such input and the removal shall be made under the cover of invoice as prescribed under Rule 11 of the rules. The show cause notice issued by the department was adjudicated *vide* the impugned order dated 26/06/2009, wherein Central Excise duty demand of ` 1,05,65,842/- was confirmed along with interest. The impugned order also imposed

redemption fine of ` 25 lakhs in lieu of confiscation of the raw materials cleared from the factory, without reversal of CENVAT credit or payment of duty. Besides, the said order also imposed equivalent amount of penalty of ` 1,05,65,842/- on the appellant.

3. Learned advocate appearing for the appellant submitted that, on sending the goods for job-work purpose by the principal-manufacturer, the provisions of sub-rule (5)(a) of rule 4 of the Rules are attracted, where under CENVAT credit on inputs is available. He further submitted that the provision of sub-rule 5 of Rule (3) of the Rules have no application to the case of the appellant inasmuch as such statutory provisions deal with the situation of payment of equal amount of credit availed, when the inputs are removed “as such” from the factory. Thus, he submitted that confirmation of the adjudged demand by the original authority is not legal and proper.

4. On the other hand, Learned Authorised Representative appearing for revenue reiterated the findings recorded in the impugned order and further submitted that since at the time of removal of the raw material input, no permission was obtained by the appellant and that the permission already granted by the department has been withdrawn, the appellant was required to pay an amount equal to the CENVAT credit availed in respect of the inputs and was also required to issue invoices for such removal of the goods. Thus, he

contended that original authority is justified in confirming the duty demand in terms of sub-rule (5) of Rule 3 of the Rules.

5. Heard both the sides and perused the case records.

6. Sub-rule (5) of Rule 3 deals with the situation of payment of equal amount of CENVAT credit availed in respect of inputs, when the same were removed 'as such' from the factory of the manufacturer. Sub-rule (5a) of Rule 4 allowed a manufacturer to retain the CENVAT credit in respect of inputs removed as such or after it partially processed, when the same are sent to a job-worker for further processing. The said sub-rule mandates that the inputs or the resultant product manufactured therefrom have to be received back by the manufacturer within 180 days of their being sent from the factory. In the present case, it is undisputed fact that the appellant had removed the raw materials from the bonded warehouse to its job-worker, namely, M/s. Svizera Labs Pvt Ltd for manufacture of finished excisable goods under sub-contracting basis. Since the raw material/inputs were removed by the appellant for further manufacture of the finished goods, the case of the appellant falls under the purview of sub-rule (5)(a) of Rule 4 of the Rules. The said rule does not provide for any permission to be obtained from the jurisdictional Central Excise officer for removal of the goods from the factory. Thus, we are of the view that permission letter for removal of raw

material withdrawn subsequently by the department with effect from 29/01/2007 cannot be the ground to deny the CENVAT benefit inasmuch as availment of CENVAT credit is permissible on the basis of receipt of inputs in the factory. Since in the present case, the goods were removed on job-work basis, the provisions of sub-rule (5) of Rule 3 will not be applicable for payment of equal amount of CENVAT credit availed on such inputs. Thus, we are of the considered view that the original authority is not justified in confirming the adjudged demand on the appellant.

7. Therefore, we do not find any merits in the impugned order. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

*(Pronounced in Court)*

**(C J Mathew)**
***Member (Technical)***

**(S K Mohanty)**
***Member (Judicial)***

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