CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 1434 of 2011

(Arising out of Order-in-Original No. Belapur/26/ BEL-I/R-IV/COMMR/SLM/11-12 dated 17.06.2011 passed by the Commissioner of Central Excise, Belapur)

M/s Svizera Labs Pvt. Ltd. **.... Appellant**
D-16/6, MIDC, Turbhe, Navi Mumbai

Versus

Commissioner of Central Excise **.... Respondent**
1st Floor, CGO Complex, CBD Belapur,
Navi Mumbai-400 614.

With

Excise Appeal No. 1913 of 2012

(Arising out of Order-in-Original No. Belapur/49/ BEL-I/R-IV/COMMR/KA/12-13 Dated 31.10.2012 passed by the Commissioner of Central Excise Belapur)

M/s Svizera Labs Pvt. Ltd. **.... Appellant**
D-16/6, MIDC, Turbhe,
Navi Mumbai-400705.

Versus

Commissioner of Central Excise **.... Respondent**
1st Floor, CGO Complex, CBD Belapur,
Navi Mumbai-400 614.

Appearance:

Shri Prasad Paranjpe, Advocate, for the Appellant

Shri Sanjay Hasija and Shri N.N. Prabhudesai, Superintendents (AR) for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87415-87416/2019

Date of Hearing: 27.09.2019

Date of Decision: 27.09.2019

Per: Dr. D.M. Misra

These appeals are filed against the respective Orders-in-Original, however, since the issues are inter-linked, hence taken up together for disposal.

2. Briefly stated the facts of the case (Appeal No. 1434/2011) are that the appellants are engaged in the manufacture of pharmaceutical products falling under chapter 3003.10 of Central Excise Tariff Act, 1985. During the relevant period May 2005 to March 2007, they have availed Cenvat Credit on inputs received at their factory against Annexure-II challans from M/s Maneesh Pharma Pvt Ltd for job work as per Rule 4(5)(a) of CENVAT Credit Rules, 2004. After undertaking the job work, they cleared the manufactured goods to M/s Maneesh Exports. Alleging that the CENVAT credit availed on the inputs received for job work is inadmissible, Show Cause Notice was issued to them for recovery of total Cenvat credit of Rs. 64,61,849/- with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. During the course of investigation, the appellant had deposited the Cenvat credit of Rs. 64,61,849/-. In appeal No. E/1913/2012 the facts are that the appellant had taken *suo motu* credit of Rs. 64,58,360/- on 13.04.2007 which they had reversed earlier on 31.03.2007, subject matter of dispute in Appeal No. E/1434/2011. Consequently, Show Cause Notice was issued to them for recovery of *suo motu* credit along with interest and penalty which, on adjudication, was confirmed with interest and penalty. Hence, these appeals.

3. At the outset, learned Advocate Shri Prasad Paranjape for the appellant has submitted that during the relevant period, the appellant had carried out manufacture of goods on job work basis for Maneesh Exports, an 100% EOU. Inputs were received by the appellants under Rule 4(5)(a) of Central Excise Act, 2004, against Annexure-II. The job worked goods were later exported by Maneesh Exports. Pursuant to the visit of the Preventive Officer to their

factory on 31.03.2007, they reversed the credit availed on inputs received from Manish Exports under Rule 4(5)(a) of CENVAT Credit Rules 2004. Later, on 03.04.2007, they have taken re-credit of the said amount.

4. On the issue of admissibility of Cenvat credit on inputs received for job work under Rule 4(5)(a) of Central Excise Act, 2004, it is his contention that the issue is covered by the judgment of the larger Bench of this Tribunal in the case of Sterlite Industries (India) Ltd Vs. Commissioner of Central Excise, Pune – 200 193 ELT 253 (Tri-LB) which was later upheld by the Hon'ble Bombay High Court. Further, learned Advocate for the appellant has submitted that they have taken *suo-moto* credit of the amount reversed on 31.03.2007 in their books of accounts before filing of necessary returns for the month, hence, it is a book adjustment. Therefore, the credit retention by them, is regular and in support, he has referred to the judgment of Hon'ble Rajasthan High Court in the case of Union of India Versus J.K. Laxmi Cement Ltd – 2018(8) G.S.T.L. 231 (Raj); Hon'ble High Court of Maharashtra in the case of ICMC Corporation Ltd. Versus CESTAT, Chennai – 2014(302) ELT 45 (Mad); and Krishna Engineering Ltd Versus CESTAT – 2016(331) ELT 391 (All.).

5. Learned AR for the Revenue reiterated the findings of the Learned Commissioner.

6. Heard both sides and perused the records.

7. The short issue involved in the present appeal for consideration is whether the appellants are entitled to credit of duty paid on inputs received under Rule 4(5)(a) of Cenvat Credit Rule, 2004. We find

that the issue has been considered at length by the Larger Bench of this Tribunal in Sterlite Industries case (Supra) in the context of old provisions which was later upheld by the Hon'ble Bombay High Court. No contrary decision has been placed by the Revenue. The proviso to Rule 4(5)(a) is in *pari materia* with the provision discussed in the said judgment, hence, the ratio laid down there-under is squarely applicable to the present case. Another argument advanced on behalf of the Revenue is that, in the present case, the goods cleared by the appellants to M/s Maneesh Pharma Pvt.Ltd. were ultimately exported and therefore the principle of law settled in Sterlite Industries (I) Ltd's case is not applicable. We do not find merit in the said contention inasmuch as the ratio laid down by the Larger Bench of the Tribunal is applicable to the present case also even if the goods were ultimately exported, when one takes into consideration the provisions contained in Rule 6(6) of CENVAT Credit Rules,2004. In the result, the Appellants are eligible to the CENVAT credit amount availed. Consequently, the appeals are allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

(Dr. D.M. Misra)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Sidharth