CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86787 OF 2014

[Arising out of Order-in-Original No: Belapur/142/Belapur I/R-IV/COMMR/KA/ 2013-14 dated 19th February 2014 passed by the Commissioner of Central Excise, Belapur.]

Maneesh Exports
Plot No. D-16/7 TTC Industrial Area, Turbhe
Navi Mumbai … ***Appellant***

versus

Commissioner of Central Excise
Belapur
CGO Complex, CBD Belapur, Navi Mumbai - 400614 ***…Respondent***

WITH

EXCISE APPEAL NO: 86788 OF 2014

[Arising out of Order-in-Original No: Belapur/142/Belapur I/R-IV/COMMR/KA/ 2013-14 dated 19th February 2014 passed by the Commissioner of Central Excise, Belapur.]

Maneesh Exports
Plot No. D-16/7 TTC Industrial Area, Turbhe
Navi Mumbai … ***Appellant***

versus

Commissioner of Central Excise
Belapur
CGO Complex, CBD Belapur, Navi Mumbai - 400614 ***…Respondent***

APPEARANCE:

Shri Mihir Mehta and Shri Suyog Bhave, Advocates for the appellant

Shri Deepak Sharma, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86718-86719/2025

DATE OF HEARING: 23/04/2025
DATE OF DECISION: 22/10/2025

PER: C J MATHEW

These appeals of M/s Maneesh Exports, an ‘export oriented unit (EOU)’ operating under the eponymous scheme of the Foreign Trade Policy (FTP), lie against determination in order[1] of Commissioner of Central Excise, Belapur fastening duty liability of ₹ 16,81,626 under section 28 of Customs Act, 1962 and ₹ 44,76,723 under section 11A of Central Excise, along with interest as applicable in the relevant statutes, and penalties of like amount under section 114A of Customs Act, 1962 and under section 11AC of Central Excise respectively on raw materials removed, as such, without being deployed in manufacturing process.

2. The appellant is a manufacturer of ‘P&P medicaments’ and had been procuring ‘Rifampicin IP/BP/USP’ against notifications[2] permitting exemption from duties. It would appear that the appellant, not being in a position to utilize the said raw material valued at ₹ 9,21,80,393 between June 2008 and March 2012, transferred these to

[1] [order-in-original no: Belapur/142/Belapur I/R-IV/COMMR/KA/2013-14 dated 19th February 2014]
[2] [no. 52/2003-Cus dated 31st March 2003 and no. 22/2003-CE dated 31st March 2003]

other units and on discharge of duty liability thereon by recourse to accumulated CENVAT credit which was objected to with proceedings initiated thereon.

3. According to Learned Counsel for the appellant there is no bar on utilization of credit in terms of rule 3(4) of CENVAT Credit Rules, 2004 and that rule 17 of Central Excise Rules, 2002 permitted option in the event of removal of goods from '100% export oriented unit (EOU)' to the domestic tariff area. Reliance was placed on the decisions of the Tribunal in *Commissioner of Central Excise & Customs, Visakhapatnam v. Matrix Laboratories Ltd [2012 (281) ELT 569 (Tri.-Bang.)]*, in *Commissioner of Customs & Central Excise, Hyderabad – IV v. Hetero Labs Ltd [2017 (5) TMI 1338 – CESTAT HYDERABAD]*, in *Divis Laboratories Ltd v. Commissioner of Central Excise & Customs, Visakhapatnam [2019 (370) ELT 457 (Tri.-Hyd.)]*, in *MyLan Laboratories v. Commissioner of Customs, Nagpur [2024 (6) TMI 234 –CESTAT MUMBAI]* and in *Cipla Limited v. Commissioner of CGST & Central Excise, Raigad [2024 (11) TMI 4 – CESTAT MUMBAI]*.

4. We have heard Learned Authorized Representative.

5. There is no doubt that 'Rifampicin IP/BP/USP' procured without payment of duty were not utilized for the manufacture and export of finished goods but cleared as such to other units and on payment of duties of central excise, as applicable, by debit of CENVAT credit

account. Of these, ₹ 44,76,7213 pertains to duty foregone on domestic procurement of the said raw material. The appellant had foregone duties of central excise on such payment and, in terms of the exempting notification[3], the appellant was required to make good the benefit so received. As a consequence of the availment, the supplier has been enabled clearance without discharge of duties of central excise, as applicable and, as consequence of non-utilization, the burden for payment shifted to the appellant even as leviability remained fastened on the taxable event of clearance. The appellant did discharge the burden and by recourse to CENVAT credit available as entitlement. That the shifted burden could be discharged in the same manner that the original liability could be is the claim of the appellant herein.

6. The appellant could have discharged the burden through account current and against invoice which would have entitled them to credit to that extent. Had the goods been procured on payment of duty, the same could have been taken as credit and, on removal as such, Central Excise Rules, 2002 enabled reversal thereof to facilitate passing on of credit. That the appellant had chosen to utilize CENVAT credit for discharge of burden deprived them of accumulated credit to that extent, and therefore, the clearance thereof is tantamount to discharge of duty liability foregone at the time of procurement.

---

[3] [no. 22/2003-CE dated 31st March 2003]

7. Insofar as the imported goods are concerned, failure to utilize the said raw material does not draw consequence of anything other than liability to make good the duty foregone at the time of import. Such duties were foregone by customs authorities at the time of assessment and it is but natural that due discharge of the obligation to remit the duty foregone should also be in terms of Customs Act, 1962. It is on record that appellant has not discharged such duty liability and, therefore, the recovery effected under section 28 of Customs Act, 1962 is but in order.

8. The decision of the Tribunal, in *re Matrix Laboratories Ltd*, revolves around the eligibility to discharge duty liability on the facts of the demand therein and it was held that the clearance of goods, in accordance with section 3 of Central Excise Act, 1944, had not been objected to by the jurisdictional central excise authorities. In *re Hetero Labs Ltd*, the clearance of the disputed goods had taken place with the permission of jurisdictional authorities and the demand was limited to duties of central excise. In *re Divis Laboratories Ltd*, the issue pertains to leviability of duty on inputs used in the manufacture of finished products which could not, in law, would be segregated from the finished product on which duty liability was discharged under section 3 of Central Excise Act, 1944. These several decisions pertain to the peculiar facts and circumstances of those disputes case which are not replicated herein and do not offer themselves as binding precedent.

9. Accordingly, the impugned order is set aside to the extent of central excise duties demanded while affirming the liability insofar as duties of customs are concerned.

(Order pronounced in the open court on 22/10/2025)

(AJAY SHARMA)	**(C J MATHEW)**
Member (Judicial)	***Member (Technical)***

**/as*