IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/781/2012-EX[DB]

(Arising out of Order-in-Appeal No. 251-CE/LKO/2010 dated 13/09/2010 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Lucknow)

M/s JBM Auto Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Shri Rajesh Chhibber (Advocate) for Appellant
Shri Pawan Kumar Singh (Supdt.) AR for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 17/09/2018
Date of Decision : 17/09/2018

FINAL ORDER NO **72245 / 2018**

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by Shri Rajesh Chhibber, Learned Counsel for the appellant and Shri Pawan Kumar Singh, Learned Superintended, AR for the Revenue, we note that there are three issues involved in the present appeal. One issue is whether the refund claim under Rule 5 of Cenvat Credit Rules for the quarter of January to March, 2008 is time barred since the claim of refund was filed on 30th March, 2009. Another issue is whether refund claim in respect of consignment with let export order given on

02.04.2008 is admissible for the quarter from January to March, 2008 and third is whether the formula provided under Notification No. 5/2006 issued under Rule 5 of Cenvat Credit Rules is satisfied by the appellant. We note that in respect of appellant's own case this Tribunal has decided through Final Order No. 71210-71214/2017 dated 29.03.2017 that when the claim has been filed quarterly the date of filing was to be computed from the last date of quarter. We find that last date of quarter in the present case is 31.03.2008 and the refund claim was filed on 30th March, 2009 and, therefore we hold that the refund claim is not time barred. We further note that in respect of one consignment where let export order was issued on 02.04.2008 the refund can be considered under the present appeal because the provision of filing quarterly refund is not substantial provision of law but it is provided for administrative convenience of claiming and granting of refund. Therefore, it is a very minor deviation and for such minor deviation substantive benefit cannot be denied. In so far as finding by Lower Authorities that the refund is hit by formula provided under the said Notification No. 5/2006 we note that the learned counsel for the appellant has submitted that the figure taken by Revenue to decide the same was not provided by them. Therefore, for that purpose we remand the matter to the Original Authority. We give freedom to both the sides to reconcile the figures from the record of the appellant and direct the Original Authority to decide the matter afresh in respect of the issue of eligibility of appellant to the said refund in so far as the formula provided in the said Notification No.5/2006 is concerned. In above terms the matter is remanded to Original Authority by setting aside the impugned order. The appeal is allowed by way of remand.

(Dictated & Pronouncement in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Anil Choudhary)**
Member (Technical)	**Member (Judicial)**

Ankit