FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 06/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70936/2016-SM[BR] dated 23/09/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/53024/2014	JRK AUTO PARTS P LTD NOW KNOWN AS SUMMIT AUTO SEATS INDUSTRY DELHI COMPANY PVT LTD, 1, UDYOG VIHAR, GREATER NOIDA UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To

3 Advocate(s) / Consultant(s):

Pramod Kumar Rai & Athena Law Associates
808, L&T FLATS, (SHREE AWAS) SEC-18-B, DWARKA, NEW DELHI-110078

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38
12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No.E/53024/2014-EX[SM]

(Arising out of Order-in-Appeal No. 251/NOI/EXCUS/000/APPL/2013-14 dated 23/12/2013 passed by Commissioner of Central Excise & Customs (Appeals), Noida.)

For approval and signature:

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would 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 Department Authorities?	Yes

M/s JRK Auto Parts (P) Ltd. **Appellant**

Vs.

Commissioner of Customs, Central Excise & Service Tax, Noida **Respondent**

<u>Appearance:</u>

Shri Time Petition, for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

<u>CORAM:</u>

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

Date of Hearing & Date of Decision : 23/09/2016

final ORDER NO....70936/2016.....

Per: Anil G. Shakkarwar

The present appeal filed by the appellant, M/s JRK Auto Parts (P) Ltd., is against Order-in-Appeal No. 251/NOI/EXCUS/000/APPL/2013-14 dated 23/12/2013 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. The brief facts of the case are that during the Year 2007-08 and 2008-09, appellant took Cenvat credit of Rs.6,10,073/- on the basis of seven Bill of Entries. During the course of audit the assessee could not produce the original copies of said Bill of Entries to the Officers conducting Audit. Therefore, the appellant was issued with a Show Cause Notice dated 11-01-2012 wherein it was stated that the appellant could not produce copies of Bill of Entries and produced photo copies of said Bill of Entries on the basis of which the said Cenvat credit was availed. It appeared to Revenue that the said Cenvat credit was inadmissible to them in terms of Rule 9 of Cenvat Credit Rules, 2004. Therefore, in said Show Cause Notice there was a proposal to disallow Cenvat credit of Rs. 6,10,073/-. The appellant contended before the Original Authority that their case is that the Cenvat credit was taken on the basis of original copies of bill of entries. Subsequently, the said copies of Bill of Entries were sent to statutory auditors and statutory auditors misplaced them. At the time Cenvat credit was availed they were having original copies of said Bills of Entry. The Original Authority could not

appreciate the submissions and confirmed the demand through Order-in-Original No. 19/Additional Commissioner/2013-14 dated 22-07-2013. The appellant preferred an appeal against said Order-in-Original which was decided through Order-in-Appeal No. 251/NOI/EXCUS/000/APPL/2013-14 dated 23/12/2013, wherein the ld. Commissioner (Appeals) dismissed appeal. Aggrieved by the said Order-in-Appeal the appellant preferred appeal before this Tribunal.

3. Heard the ld. Counsel who has stated that it is not the case of the Revenue the credit was taken on the basis of the photo copies of the Bill of Entries. When the Cenvat credit was taken, the original copies of bills were available and when the audit visited photo copies of the said original copies were produced. Therefore, they have not violated provisions of Rule 9 of Cenvat Credit Rules, 2004. They have further relied on the Final Order No. 363/2004-NB(B), dated 20-02-2004 issued by this Tribunal in the case of Matsushita Television & Audio India Ltd. *Vesus* Commissioner of Central Excise, Noida reported at 2004 (177) E.L.T. 496 (Tri. – Delhi), wherein it was contended that the said final order is a precedent order and is squarely applicable in the present case. He has further submitted that the photo states copies of the said Bills of Entry and other connected documents related to import of the said goods is available at page No. 92 to 156 of the Appeal

Paper Book and all of them established the import of the goods and payment of duty on the said goods.

4. The ld. D.R. supports both the Order-in-Original & Order-in-Appeal.

5. Having considered the rival contentions, I find that it is an admitted fact that at the time of visit of Audit Officers photo copies of Bill of Entries were produced. There are no allegations in the Show Cause Notice that at the time of availment of Cenvat credit the appellants did not have the original copies of Bills of Entry. I find that this Tribunal in the above stated, case law has held that when the receipt of the goods in the factory and their use for the intended purpose and duty paid nature is not doubted then the Cenvat credit is admissible. I find from the allegations in the Show Cause Notice that there are no allegations that the inputs were not received in the factory that the inputs were not used in the manufacture that the inputs did not suffer duty. There were no allegations that at the time of availing credit the appellants did not have original copy of Bill of Entries. I, therefore, allow the appeal with consequential relief to the appellants, if any, as per law.

(Dictated and pronounced in Court)

Sd/-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Ansari

प्रमाणित प्रति / Certified True Copy

25.10.16

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001