CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 15/2/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70065-70066/2016 dated 09/02/2016

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
	E/1573/2010 E/2074/2011	CCE, MEERTU II OPP SAHEED PARK NEAR ASHOK KI LAT DELHI ROAD, MEERUT(UP)

Name and Address of Respondent	GANGESHWAR SPINNING MILLS,GAJRAULA, DISTT- J.P.NAGAR UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s BIMAL JAIN,CA
650, POCKET-V, MAYUR VIHAR
PHASE-1, DELHI-91.

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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

In The Customs, Excise & Service Tax Appellate Tribunal
Regional Bench (Allahbad)

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Appeal No : E/1573/2010, E/2074/2011

(Arising out of OIA-83/CE/MRT-II/2010 Dated 26.02.2010 and OIA/168/CE/MRT-II/2011 Dated 31.05.2011 passed by Commissioner (Appeals), Central Excise, Meerut-II)

1. **CCE, Meerut-II** : **Appellant in Appeal No. E/1573/2011**
2. **Gangeshwar Shipping Mills** : **Appellant in Appeal No. E/2074/2011**

Vs

1. **Gangeshwar Shipping Mills**
2.
3. **CCE, Meerut-II** : **Respondent (s)**

Represented by:
For Assessee : Shri Bimal Jain (CA)
For Commissioner : Shri D.K. Deb (AR)

For approval and signature:

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

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should 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 Departmental authorities?	Yes

CORAM:
MR. ANIL CHOUDHARY, HON'BLE MEMBER (JUDICIAL)

Date of Hearing/Decision: 09.02.2016

Final Order No. 70065-70066/2016

Per: ANIL CHAUDHRY

1. Both the appellant assessee and Revenue are appeal against order in appeal passed by the Commissioner (Appeals) Customs and Central Excise, Meerut-II.

2. Heard the parties.

3. The issue in this appeal is whether the assessee had rightly paid the duty at the time of debonding from hundred percent EOU to EPCG Scheme and had debited an amount of Rs. 28, 97, 553/- towards payment of duty on indigenous capital goods and raw materials lying in the stock on the date of debonding and partly by way of the challan ER 7 rightly under the provisions of rule 11 (3) of Cenvat Credit Rules, 2004. Of the 4th and on subsequent insistence by revenue deposited the said amount and again by cash and thereafter applied for refund. In the circumstances is whether the appellant is entitled for refund.

4. In the appeal filed by the Revenue, the issue is in view of the categorical findings recorded by the Commissioner (Appeals) that the appellant enable to pay the duty under rule 11 (3) to the Cenvat Credit is whether the Learned Commissioner justified in remanding for the verification of calculation of the refund of an amount of paragraph 5 of Notification number 5/6 – CE.

5. The brief facts are that the appellant was 100% EOU engaged in the manufacture and export of cotton yarn. The assessee was availing Cenvat credit of duties/taxes paid on inputs and input services and capital goods. The assessee was also availing the facility of duty free procurement of inputs and capital goods under Notification number 22/2003 - CE. On 18/10/2007 the appellant applied for debonding, that is, to shift from the 100% EOU scheme to EPCG scheme. In the process of opting out of the 100% EOU scheme the assessee calculated duty liability on imported capital goods and indigenous capital goods and raw materials and part of the duty so payable amounting to Rs. 28, 97, 553/- was paid through Cenvat credit and balance was paid in cash. In his report dated 19/12/2007 the Range Superintendent stated that no dues are pending against the assessee and further indemnity Bond submitted for any other dues, if found in future. The Deputy Commissioner issued letter dated 24/12/2007 directing the assessee to pay the said amount of Rs. 28,97,553/- in cash instead of RG-23 A/C, and submit the deposit particulars to office for taking further necessary action in the matter of conversion of the unit from 100% EOU to EPCG, scheme the de-bonding request. In their anxiousness to shift to the EPCG scheme the appellant paid the said amount by challan dated 26/12/2007 and thereafter vide letter dated 28/12/2007 the Deputy Commissioner issued 'no dues certificate' to the competent authority of Noida Special Economic Zone with respect to the de-bonding.

6. The appellant on being so advised filed an application for refund of the said amount of Rs. 28, 97, 553/- vide the letter dated 15 February 2008. Pursuant there to defect memo dated 27/2/2008 was issued in response there to the appellant resubmitted the refund claim the documents as directed on 25/4/2008. The SCN dated 30/03/2009 was issued ~~it~~ alleging that the Cenvat credit lying in the account on the date of debonding lapsed under rule 11 (3) of CCR and further refund appeared to be limited to Rs. 25,38,551/-, ~~also~~ it also appeared to Revenue that the refund was time barred and Cenvat credit not available on some input services. The appellant assessee contested the SCN and also relied upon the ruling of Honourable Gujarat High Court in the case of Dishman pharmaceuticals and chemicals private Ltd vs. Union of India wherein by way of interim order in the writ petition Honourable High Court have permitted to pay Excise duty from the legally available Cenvat Credit account with the direction to the Authority to issue appropriate certificate for the debonding from 100% EOU Scheme. vide the OIO dated 30/10/2009 rejected refund on the ground that the Cenvat credit lapsed upon debonding under the provisions of rule 11 (3) of CCR and the appellant was not eligible for Cenvat credit in respect of credit availed on capital goods and other services utilized for export/clearance of finished goods under Notification No. 5/2006-CE. Being aggrieved the appellant preferred appeal before Commissioner (Appeals) Wherein vide order in appeal dated 26/2/2010 it was held that the assessee have rightly utilized Cenvat credit for paying duty at the time of de-bonding under rule 11 (3) of the CCR. It also held that the date of refund filing will be 15.02.2008

and not the date of re-submission being 25/4/2008. However, the Commissioner (Appeals) remanded on the issue of determining the exact amount of refund in terms of the formula given in Para 5 of Notification No. 5/2006. Against the direction of remand in part the Revenue preferred present appeal number E/1573/2010. The assessee appeared before the Adjudicating Authority for compliance of the remand direction and in pursuance thereto vide OIO dated 24.02.2011, the refund was rejected in view of the revenue appeal pending before the before this Tribunal. Being aggrieved the assessee again preferred appeal before Commissioner (Appeals) who have vide the impugned order dated 31/05/11 rejected the appeal upholding the order of rejection.

7. Being aggrieved the appellant assessee filed present appeal number E/2074/2011.

8. Having considered the rival contentions I find that the revenue have not disputed the finding of the Learned Commissioner (Appeals) upholding the contention that the appellant was entitled to utilize Cenvat credit for payment of duty at the time of de-bonding. In this view of the matter there was no requirement of consideration of the refund claim under the provisions of notification 5/2006-CE. Accordingly I set aside the direction/remand order of the Commissioner (Appeals) as contained in paragraph 5.5 of the order-in-appeal dated 26/2/2010. I further hold that the appellant is entitled to refund of the amount of Rs. 28,97,553/- ~~28,72,247~~/- which was rightly paid at the

time of debonding by debit to Cenvat and the appellant was subsequently made to deposit the same again in cash and for which a refund claim was filed within the period of 12 months from the date of payment being 24/12/2007. Accordingly the appellant assessee is entitled to refund of the said amount and I direct the Adjudicating Authority to grant the refund within a period of 45 days from the receipt of a copy of this order along with interest as per rules.

9. Thus, the appeal of the assessee being appeal number E/2074/11 is allowed. The appeal of revenue E/1573/2010 stands allowed for statistical purposes only.

(Operative portion of the order pronounced in Court)

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G.Y.

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)