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: 22/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70854/2016-EX[DB] dated 18/08/2016

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/MISC/70321/2016	E/70585/2016	INDO SOLAR LTD 3C/1, ECOTECH-II, 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):

KRISHNA KANT
704, NILGIRI APARTMENTS, 9,
BARAKHAMBA ROAD,
NEW DELHI,110001

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 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

15 C.D.R. 16 Office Copy 17 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. I

APPEAL No. E/70585/2016-EX[DB] With
MISC. Application No. E/MISC/70321/2016

(Arising out of Order-in-Appeal No. NOI-EXCUS-002-APP-0042-16-17 dated 16/05/2016 passed by Commissioner of Central Excise & Customs (Appeals), Noida.)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
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 Indo Solar Ltd. **Appellant**

Vs.

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

Appearance:

Shri A.P. Mathur, Advocate, for Appellant
Shri Rajeev Ranjan, Joint Commissioner, (AR), for Respondent

CORAM:

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

Date of Hearing : 18/08/2016
Date of Pronouncement: 15/09/2016

FINAL ORDER NO. 70854/2016

Per: Anil G. Shakkarwar

The present appeal is filed by the appellant challenging the impugned Order-in-Appeal No. NOI-EXCUS-002-APP-0042-16-17 dated 16/05/2016 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II, Noida.

2. The brief facts of the case are that the appellant are 100% export oriented unit and engaged in the manufacture of Photovoltaic Solar modules, panels and Photovoltaic Cells falling under tariff Item No. 85414011 of first schedule to Central Excise Tariff Act, 1985. The appellants are registered with Central Excise Department and the appellants are availing Cenvat credit facility. Appellants are also exporting the goods under bond. The appellants filed a claim for Refund of Rs.2,66,28,814/- for the period from July, 2012 to September, 2012 and October, 2012 to December, 2012 under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No. 27/2012-CE(NT) dated 18-06-2012. The said claim for refund was rejected by the Assistant Commissioner vide Order-in-Original No. 375-376/R/AC/N-IV/2013-14 dated 30-07-2013. The appellant preferred an appeal before Commissioner (Appeals), Noida on the grounds of principles of natural justice. The ld. Commissioner (Appeals), Noida vide Order-in-Appeal No. NOI/EXCUS/000/APPL/91/14 dated 30-04-2014 remanded the matter back to Original Authority

for fresh adjudication. For observing the principles of natural justice the Original Authority offered the personal hearing on 17-08-2015. During the personal hearing the appellants submitted that they were eligible to take Cenvat credit of Excise duty and Service Tax paid under Rule 3 of the Cenvat Credit Rules, 2004. The Original Authority decided the said claim for refund through Order-in-Original No. R-62/AC/N-II/2015-16 dated 24-08-2015. The Original Authority has held that the appellants were manufacturing Photovoltaic Solar modules, panels and Photovoltaic Cells falling under tariff Item No. 85414011 of first schedule to Central Excise Tariff Act, 1985 and they were exporting their goods more than 90% under bond in accordance with the provisions of Central Excise Rules, 2002 and they have filed the said refund applications for refund of Cenvat credit under Rule 5 of Cenvat Credit Rules, 2004. The Original Authority has further held that Photovoltaic Solar modules, panels and cells were exempted under Notification No. 06/2006-CE dated 01-03-2006 as amended by Notification No. 12/2012-CE dated 17-03-2012. He has further held that when the goods manufactured by the appellants were being cleared in DTA, the appellants were required to pay duty foregone on inputs procured under Notification No. 52/2003-Cus & 22/2003-CE both dated 31-03-2010, used in the manufacture of finished goods in terms of proviso to Section 3(1) of Central Excise Act, 1944 and further as per second proviso to para 6 of

Notification No. 22/2003-Cex dated 31-03-2003 which provides that when the goods are not excisable, duty foregone equal in amount to that leviable on the inputs obtained under said notification and used for the purpose of manufacturing of such goods, which would have been paid but for the exemption under this notification was payable at the time of clearance of such articles. The Original Authority has further held that when the finished goods were cleared in DTA the duty foregone on the inputs equal in amount to that leviable on the inputs used in the manufacture of such goods cleared in DTA was payable at the time of clearance of said goods and he has further held that the goods manufactured were exempted under Notification No. 12/2012-CE dated 17-03-2012 and as provided under Rule 6(1) of Cenvat Credit Rules, the appellants were not entitled for Cenvat credit of duty paid on inputs, capital goods and Service Tax paid on inputs services and therefore he rejected the application for refund.

3. Aggrieved by the said Order-in-Original, the appellant preferred an appeal before ld. Commissioner (Appeals), Meerut-II, Noida wherein the grounds of appeal were that the appellants cleared the goods for export under bond and provisions of Rule 6(1) of Cenvat Credit Rules were not applicable to them in view of Rules 6(6) of the said Rule since the goods were exported under bond and Rules 6 (6) of Cenvat Credit Rules under Clause (v) provides that if the excisable goods are cleared for export under bond then provisions of

Sub-rule (1) of Rules 6 of Cenvat Credit Rules will not be applicable. They have also submitted before the First Appellate Authority that the Original Authority has admitted in the impugned Order-in-Original that the goods manufactured by them were exported under bond. The ld. Commissioner (Appeals) has held that the exception created in Sub-rule (6)(v) relates to export of goods without payment of Excise duty under bond and in other words such goods will attract Excise duty when cleared for home consumption and that the goods in question were wholly exempt from Excise duty and therefore they were not eligible for admissibility of Cenvat credit and he rejected the appeal.

4. Aggrieved by the said Order-in-Appeal No. NOI-EXCUS-002-APP-0042-16-17 dated 16/05/2016 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II, Noida the appellant is before this Tribunal. The grounds of appeal inter-alia, are that they have exported goods under bond and Clause (v) of Sub-rule (6) of Rule 6 of Cenvat Credit Rules,2004 provides that provisions of Sub-rule (1) of Rule 6 of Cenvat Credit Rules, is not operational in their case and they have relied on various pronouncement decided by Hon'ble High Court and this Tribunal on various aspects of refund under Rule 5 of Cenvat Credit Rules, 2004.

5. Heard the ld. Counsel for the appellant who has submitted that the Original Authority has held that the goods were exported under bond, the Original Authority also has

held that when the goods were cleared in domestic tariff area the duty forgone on the inputs equal in amount of that leviable on the inputs used in the manufacture of such goods was payable at the time of clearance of said goods. He has further brought the provision of said Rule 6 to our notice that said Rule 6 states that the provisions of Sub-rule (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either cleared for export under bond in terms of provisions of Central Excise Rules, 2002 and argued that the Original Authority has held that the goods in their case were exported under bond and on clearance to domestic tariff area duty was to be discharged and, therefore, Cenvat Credit under Rule 3 of Cenvat Credit Rules was admissible to them and provisions of Sub-rule (1) of Rule 6 were not applicable to them, in view of provisions of Clause (v) of Sub-rule (6) of Rule 6 of Cenvat Credit Rules, 2004. He has further argued that Rule 14 of Cenvat Credit Rules, 2004 provides for recovery of Cenvat credit wrongly taken and Revenue has not initiated any proceeding to recover Cenvat credit under said Rule 14 of Cenvat Credit Rules, 2004 which establishes that the Cenvat credit availed by them was admissible to them. It is established also for the reason that the goods were exported under bond and the Original Authority has held that on clearance of the goods in domestic tariff area duty was payable. He, therefore, pleaded to allow the refund.

6. Heard the ld. D.R. who has supported the impugned Order-in-Original & Order-in-Appeal.

7. We have taken rival submissions into consideration. We find that in view of the finding by the Original Authority that at the time of clearance of the goods in domestic tariff area duty foregone on the inputs equal in amount to that leviable on inputs used in the manufacture of such goods cleared in DTA is payable at the time of clearance of said goods. Therefore it cannot be held that the goods manufactured by the appellants are exempted when they are cleared in domestic tariff area. Therefore, we hold that they were entitled to avail the Cenvat credit and since the Cenvat credit is also not recovered under Rule 14 of Cenvat Credit Rules and is available in balance in the books of accounts the same is admissible to be refunded under Rule 5 of Cenvat Credit Rules, 2004. We direct the Original Authority to refund Rs. 2,66,28,814/- to the appellant within 60 days of submission of copy of this order in his office. In above terms the appeal is allowed. Misc. application also stands disposed of.

(Pronounced in the open court on 15/09/2016)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
24.10.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपीलीय अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001