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/70842-70843/2016-SM[BR] dated 12/02/2016

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
1	E/3105-3106/2009	JBM AUTO LIMITED (FORMERLY JBM AUTO COMPONENTS LTD.) PLOT NO. 5, SECTOR-31, KASNA INDUSTRIAL AREA, GREATER NOIDA-201306 DISTT. GAUTAM BUDH NAGAR (U.P.)
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s): SH V.L.KUMARAN,ADV
5, JANGPURA EXTENSION
LINK ROAD, NEW DELHI

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/3105 & 3106/2009 (SM)

(Arising out of Order-in-Appeal No. 229-230-CE/APPL/NOIDA/2009 dated 28/08/2009 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

For approval and signature:

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

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. JBM Auto Ltd. — **Appellant**

Vs.

Commissioner of Central Excise, Noida — **Respondent**

A.C.

Appearance:

Shri Karan Sachdev, Advocate — for Appellant
Shri D.K. Sinha, Assistant Commissioner (AR), — for Respondent

CORAM:

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

Date of Hearing : 12/02/2016
Date of Decision : 12/02/2016

FINAL ORDER NO. 70842-70843/2016

Per: Anil Choudhary

These two appeals are filed by appellant against Order-in-Appeal No. 229-230-CE/APPL/NOIDA/2009 dated 28/08/2009.

2. The brief facts of the case are that the appellants are engaged in the manufacture of various auto components viz., Bracket Assembly, Bracket Assembly mounting, Stab bar, Seat Spring etc. falling under Tariff Entry No.87089900 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant clears the goods manufactured by them on payment of appropriate duty of excise leviable thereon. The appellant avails credit of duty paid on various inputs used by them in or in relation to the manufacture of various final products.

3. During the period July, 2006 to September, 2006, the appellants inter alia supplied goods to M/s. Delphi Automotive Systems Pvt. Ltd., a 100% EOU, without payment of duty in terms of Notification No. 22/2003-CE dated 31.03.2003 against CT3 certificates. The appellant being unable to utilize Cenvat credit, due to export, accordingly filed refund claim on 23.05.2007 with the jurisdictional excise authorities under Notification No. 5/2006, read with Rule 5 of CCR for the quarter July 2006 to September 2006 for an amount of Rs.33,34,247/-. The appellant had filed another refund claims with jurisdictional excise authorities for the quarter October, 2005 to December, 2005 for a total amount of Rs.43,34,192/-.

4. The above claims were rejected by the Ld. Commissioner (Appeals), Central Excise, Noida vide impugned order dated 27.02.2009 observing that goods have been cleared to 100% EOU under CT-3 certificate, without payment of duty. Such goods after further processing were subsequently exported by the EOU (M/S Delphi). The meaning of export as derived from the Central Excise Act & Customs Act, read together means- taking goods out of India, the clearance in the facts is deemed export and not actual export. Supportings in case of actual export like shipping bill, bill of loading duly certified by Customs Department is not filed. Only CT-3 certificate and re-warehousing certificates have been filed, which do not prove actual export. Aggrieved by the said order dated 27.02.2009 appellant is before this Tribunal.

5. The Ld. Counsel for appellant Mr. Karan Sachdev urges that Notification No. 22/03-CE provides for exemption for Central Excise Duty when goods specified in Annex to the notification, are brought in connection with manufacture or packing of articles for export of goods or services, into EOU (user industry) from the whole of the duty of excise under Section 3 of Central Excise Act, subject to the condition that i) the user industry brings goods directly from the factory of manufacture or warehouse, ii) goods are used by the user industry, iii) the user industry disposes of the said goods or articles produced, in the manner as provided, iv) the user industry executes a bond with the D.C./A.C. of Central Excise, in the prescribed form, for

appropriate sum for proper accountable and to achieve net Foreign Exchange Earning. Further the user industry follows the procedure contained in Central Excise (Removal of goods at concessional rate off duty for manufacture of Excisable goods) Rules, 2001, with the modification that certificate in form CT-3, annexed to the Notification shall be used by the Central Excise Officer, in charge of the user industry. Further, Ann- 1 to the notification describes goods as raw materials and components at serial No. 7 & 8 respectively. It is further stated that form CT-3 is the prescribed certificate for removal of excisable goods under bond, issued by the Central Excise officer in charge of the EOU, specifying the quantity of excisable goods which can be purchased from a specified manufacturer for the EOU.

6. Ld. Counsel further relies on the ruling of Hon'ble Gujarat High Court in case of Commissioner of Central Excise & Customs v/s NBM Industries, 2012 (276) E.L.T. 9 where it have been held, Refund of Cenvat credit was available on inputs used in manufacture of goods cleared by DTA unit to 100% EOU. Refund could not be denied on ground that it was a case of deemed expert, under Rule 5 of CCR, 2004.

7. Ld. A.R. for Revenue relies on the impugned order.

8. Having considered the rival contentions, I find that the issue is settled in favour of the appellant by Hon'ble Gujarat High Court in the case of NBM Industries (supra). Accordingly, I hold, the

Commissioner (Appeals) have erred in rejecting the refund claim. Thus, the appeal is allowed and the impugned order is set aside. The appellant to be granted refund by the Adjudicating Authority with 30 days, with interest as per Rules, on receipt of this order.

(Pronounced in Court)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

akp

सत्यापित प्रति / Certified True Copy
.24.10
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001