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

Dated: 16/5/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70202-70203/2016 DB dated 19/11/2015

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/3296/2006 E/791/2007	BHARAT PUMPS&COMPRESSORS LTD P.O-T.S.L NAINI ALLAHABAD

Name and Address of Respondent: CCE, ALLAHABAD
38 M.G.MARG, CIVIL LINES
ALLAHABAD

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH V.L.KUMARAN,ADV
5, JANGPURA EXTENSION
LINK ROAD, N 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 C.D.R. 15 Office Copy 16 Guard File.
17.M.S KNOWLEDGE PROCESSING PVT LTD(TAMMANAGEMENTINDIDA.COM)

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT ALLAHABAD

APPEALS NOS: E/3296/2006 & E/791/2007

[Arising out of Orders-in-Appeal No: 70/CE/ALLD/2006 dated 14th June 2006 and 140-CE/ALLD/2006 dated 21st December 2006 passed by the Commissioner of Central Excise & Customs (Appeals), Allahabad.]

For approval and signature:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
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

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Bharat Pumps & Compressors Ltd. ...*Appellant*

versus

Commissioner of Central Excise
Allahabad ...*Respondent*

Appearance:

Shri B. L. Narasimhan, Advocate for the appellant

Shri Ajay Kumar, Jt. Commissioner (AR) with Shri Prabhudesai, Superintendent (AR) for the respondent

CORAM:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: **19/11/2015**
Date of decision: **19/11/2015**

Final **ORDER NO:** 70202-70203/2016

Per: C J Mathew:

These appeals are directed against orders-in-Appeal No: 70/CE/ALLD/2006 dated 14th June 2006 and 140-CE/ALLD/2006 dated 21st December 2006 of the Commissioner of Central Excise & Customs (Appeals), Allahabad confirming a demands of ₹10,42,819/- ₹ 13,18,880/- and ₹ 8,40,469/- on charges collected by the appellant M/s Bharat Pumps & Compressors Ltd for erection and commissioning, disallowing credit of ₹ 29,184/-, imposition of penalty of ₹10,42,819/-, ₹ 13,18,880/- and ₹ 10,000/- and further penalty of ₹20,000/-, ₹ 50,000/- and ₹ 3,50,000/- under rule 25/173Q of the Central Excise Rules, 2002/1944.

2. The contention of the appellant is that the goods are cleared in

a dismantled condition for subsequent erection at the site of the customer. The appellant further contends that the findings of the learned Commissioner (Appeals) is incorrect and not based on the facts of the case inasmuch as there was no allegation in the show cause notice that the appellant had cleared the parts of the compressor from their factory without manufacturing a compressor. There is no dispute regarding short-payment of duty by the appellant when the said compressor was cleared from their factory. In the show cause notice it was only stated that appellant have not included the charges realized on account of the erection commissioning, etc. against sale of their product.

3. As far as the findings that the prescribed procedure for clearing the goods in knocked down condition, as given in para 10 of Chapter 4 for 'invoicing system' of CBE&C Manual of Supplementary Instructions, is concerned, it is submitted that neither did show cause notice contain any such allegation nor it was required to be followed by the appellant for the reason that the CBE&C Manual of Supplementary Instructions, 2005 was issued on 17th May 2005 i.e., long after the period under dispute.

4. The appellant points out that the learned Commissioner (Appeals) has also neither discussed anything nor recorded his findings relating to the contentions in para (A) of the memorandum of

cross-objection filed by the appellant. Therefore, the impugned order is beyond jurisdiction and does not merit sustaining as per settled position of law.

5. The appellant has contested the disallowance of credit of ₹ 29,184/- taken on the basis of carbon copy of the bill of entry. We do not find any justification for the Commissioner (Appeals) to have come to a conclusion that the document against which the credit was taken was a carbon copy. It would appear that the first appellate authority refers to copy of the bill of entry in which the entries are found to have been imprinted using carbon interleaves that was the practice in the customs during the period referred to. The original and duplicate copies of the bill of entry are retained in the Customs House for its own closure transactions and the importer is in custody of the triplicate and quadruplicate copies. Since these were, by nature, carbon imprints and the original remains with the Customs House, there is no reason to deny the credit taken on a triplicate copy of the bill of entry when the connected provision in the MODVAT rules refers merely to 'bill of entry'. Thus, disallowance is without any basis and is set aside.

6. Appellant has paid the amount of duties held as liable on account of erection, commissioning and installation charges. These were paid before issuance of the show cause notice. Accordingly, we

find no reason for invoking the penal provisions and imposition thereof. We therefore, modify the impugned order to the extent of dropping the penalties and setting aside the disallowance of MODVAT credit.

7. Appeals are disposed of as above.

(Pronounced in Court)

Sd

(Anil Choudhary)
Member (Judicial)

Sd

(C J Mathew)
Member(Technical)

प्रमाणित प्रति / Certified True Copy

9.6.16

सहायक पंजीकार / Asstt. Registrar