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: 13/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71123/2016-SM[BR] dated 11/11/2016

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/CROSS/78/2007	E/537/2007	CCE NOIDA C-56/42, SECTOR-62, NOIDA-201307
			Name and Address of Respondent
2			JBM AUTO COMPONENTS LTD 5 PLOT NO 5, SECTOR 31, KASNA INDL. AREA, GREATER NOIDA,,

Copy To

3Advocate(s) / Consultant(s): SH RAJESH CHIBBER,ADV
FA-9 KAVI NAGAR
GHAZIABAD

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

8Taxmann 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

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

Appeal No.E/537/2007-EX[SM]
AND
CROSS Application No.E/78/2007

Arising out of Order-in-Appeal No.146-CE/NOIDA/2006 dated 29.11.2006 passed by Commissioner (Appeals) Customs & Central Excise, Noida.

For approval and signature:

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

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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 His Lordship wishes 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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Commissioner of Central Excise, Noida ...APPELLANT(S)

VERSUS

M/s JBM Auto Components Ltd. ...RESPONDENT (S)

APPEARANCE

Shri P.K. Singh, Supdt. (A.R.) for the Department (s)
Shri Rajesh Chhibber, Advocate for the Respondent (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 11.11.2016

FINAL ORDER NO.- 71123/2016

Per Mr. Anil Choudhary :

This appeal is filed by the Revenue against Order-in-Appeal No.146-CE/NOIDA/2006 dated 29.11.2006.

2. The brief facts of the case are that the respondents 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 respondent clears the goods manufactured by them on payment of appropriate duty of excise leviable thereon. The respondent 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 June 2004 to December 2004, the respondent 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 CT-3 certificates. The respondent being unable to utilize Cenvat credit, due to export, accordingly filed refund claims on different dates i.e. 29.06.2005, 09.06.2005, 28.04.2005 with the jurisdictional excise authorities under Notification No.5/2006, read with Rule 5 of CCR for the period June, 2005 to December, 2005 for an amount of Rs.45,08,112/-.

4. Pursuant to SCN, the above claims were rejected vide O-I-O dated 31.05.2016 by the Deputy Commissioner Central Excise, Noida 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, respondent-assessee filed appeal before Commissioner (Appeals) who was pleased to allow vide O-I-A dated 29.11.2006. Being aggrieved, the Revenue is in appeal before this Tribunal.

5. The Ld. Counsel for the respondent urges that Notification No.22/03-CE provides for exemption for Central Excise Duty when goods specified in Annexure 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 issued 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 for respondent 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 export, under Rule 5 of CCR, 2004.

7. Heard the Ld. A.R. for Revenue, who relies on the Order-in-Original and perused the grounds of Appeal.

8. Having considered the rival contentions, I find that the issue is settled in favour of the respondent, by Hon'ble Gujarat High Court in the case of NBM Industries (supra). Thus, the appeal is dismissed and Cross Application is allowed.

(Dictated and Pronounced in the open Court)

Sd/-

(Anil Choudhary)
MEMBER (Judicial)

Mishra

प्रमाणित प्रति / Certified True Copy

22.12

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, [illegible] 211001
38, M. G. MARG, [illegible]ABAD-211001