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: 24/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70678/2016-SM[BR] dated 12/08/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/53511/2014	**JUBILANT INDUSTRIES LTD** C - 2 & C - 3, SITE I V, INDUSTRIAL AREA SAHIBABAD GHAZIABAD
		Name and Address of Respondent
2		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Copy To

3 Advocate(s) / Consultant(s):

Devinder Sharma,
J-185, SECTOR-25,
JALVAYU VIHAR,
NOIDA,UTTAR PRADESH
201301

4 Additional Party's Name & Address :

5 Bar Association, CESTAT, Allahabad
6 Director Publications, Customs, Excise, I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

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

Appeal No. ST/53511/2014-ST[SM]

Arising out of Order-in-Appeal No. GZB-EXCUS-000-APP-268-13-14 dated 31.01.2014 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Ghaziabad.

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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Jubilant Industries Ltd. ...APPELLANT

VERSUS

C.C.E. & S.T-Ghaziabad ...RESPONDENT

APPEARANCE

Shri Devinder Sharma, Advocate for the Appellant
Shri Pawan Kumar Singh, (Supdt.) (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 12/08/2016

ORDER NO. 70678/2016

Per Mr. Anil Choudhary :

The issue in this appeal by the assessee is, whether the appellant is required to pay service tax on the amount of export commission appearing in their trial balance on the debit side (expenditure) for the Financial Years 2006-07, 2007-08 and 2008-09 respectively.

2. Heard the parties.

3. The admitted facts are that, pursuant to audit by A.G. U.P., it appears to revenue that the appellant have shown in their books of accounts as 'commission, for export' Rs.2,84,017/- Financial Year 2006-07, Rs.2,88,787 for Financial Year 2007-08 and Rs.13,269/- for Financial Year 2008-09. Accordingly, SCN dated 17/8/2010 was issued invoking the extended period proposing to demand service tax of Rs.73,182+1464+731 totaling Rs.75,377/- being service tax on the total value of Rs.6,09,844/- of the aforementioned three amounts and further penalty was also proposed. In reply, the appellant stated that these amount in question appearing in the trial balance and final accounts are not amounts which have been paid to any external party that is outside India in foreign exchange, but are merely allocation of expenses incurred by the export section of the company. It is relevant to mention here that the appellant have got several manufacturing units, spread over different parts of the country and for the sake of convenience they make all payments in foreign exchange from their office located at Noida. Similarly, all export transactions are controlled

from their Noida office which incurred the expenses related to export like Packing and Forwarding, CHA Services, Port Handling Charges etc. etc. Such expenses are allocated to the relevant manufacturing units for the sake of determining the unit-wise profitability. The appellant also produced their certificate from their Chartered Accountant who was also the Statutory Auditor, who have certified as follows: –

> *"We have examined the books of accounts and other records (including the ledger accounts) of Jubilant Organosys Ltd. [holding Central Excise Registration for Works at C-2 & C-3, Site IV, Industrial Area, Sahibabad-201010, the business of which has been demerged from Jubilant Life Sciences Ltd. and transferred into Jubilant Industries Ltd. w.e.f. 01/04/2010 and scheme made effective from 15/11/2010] for the financial years 2007-08 and 2008-09.*
>
> *We certify and confirm that Jubilant Organosys Limited (presently Jubilant Life Sciences Ltd.), having its head office located at Plot No. 1A, Sector 16A, Industrial Area, Noida-201301 (UP) has allocated common expenses amounting to Rs. 3,07,330/- (for the financial year 2007-08) and Rs. 3,02,056/- (for the financial year 2008-09) pertaining to the 'Export Department' of the said Company to the above business. We thus certify that the above amounts featuring in the Trial Balance of the said Jubilant Organosys Limited, C-2 & C-3, Site-IV, Industrial Area, Sahibabad, Ghaziabad for the financial years 2007-08 and 2008-09 are not amounts which have been paid to any external party but are merely allocation of expenses incurred by the Export Section of the said Company.*
>
> *We further certify that no foreign payments equivalent to the above amounts have been made by the said Jubilant Organosys Limited, C-2 & C-3, Site-IV, Industrial Area, Sahibabad, Ghaziabad or any other office (including head office located at Noida) through any of the banks during the financial years 2007-08 and 2008-09."*

4. It was also contended by the appellant that they have not made any payments in foreign exchange relating to the amount of 'export commission' appearing in their books and final accounts. The SCN was adjudicated on contest and the proposed demand confirmed. This is the second round of litigation. In the earlier round the learned

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Commissioner (Appeals) vide an Order-in-Appeal dated 14/7/2011 observed the appellant have got their Corporate/Head Office at Noida having centralized accounting system in respect of business of all the units/manufacturing units, has been discharging the service tax liability on such payments including payments to foreign parties. Further, taking notice of the certificate of Associate Vice President, Divisional Accounts of the appellant, and certificate of the Chartered Accountant wherein they have certified that the amounts in question are not the amounts which have been paid by them to any external party (foreign party) but are merely allocation of expenses incurred by the export section of the company. These certificates also point out that the appellant's Head Office at Noida has also located expenses being the aforesaid amounts. Further, observing that from these certificates there is nothing on record to show that payment of service tax on the said transactions have been made by the said Noida office and, therefore, the matter deserves necessary verification to this effect by the Adjudicating Authority as the same is not feasible at the appellate stage. Accordingly, he remanded the matter for verification and passing the re-adjudication order as directed.

5. From the perusal of Order-in-Original, pursuant to remand, it is noticed that the Adjudicating Authority after taking note of the facts and going through the records have observed that from the documents submitted by the appellant, it could not conclusively be established that the said payments were not related to commission paid on export to foreign agents. It is further observed that how allocation of expenses were transferred but the arguments are bereft of any

categorical submission that tax liability under Service Tax Statutes have been complied with in respect of the entire amount so incurred. The allocation of expenses incurred by the export division could not be proved by the documentary evidences. It is further observed in the fact of the matter, that on receiving of the taxable services, were channeled through the corporate office of the party, from where the payments were made and sequential accounting entries were transferred in respect of the amount incurred on such services on behalf of the appellant by the corporate office and this tantamount to have incurred the expenses for buying the services. No conclusive evidence have been furnished with regard to having paid the service tax of this amount of taxable services or otherwise, and accordingly confirmed the demand along with equal amount of penalty under Section 78 and also penalty of Rs.5000/- under Section 77.

6. Being aggrieved the appellant had preferred appeal before learned Commissioner (Appeals) who was pleased to reject the appeal.

7. Being aggrieved the appellant is before this Tribunal. Heard both the learned counsel for the appellant and learned counsel for the Revenue.

8. Having considered the rival contentions, I find that the Adjudicating Authority have not recorded any categorical finding as to what documents he required to see, which were not produced by the appellant. He has simply alleged that the appellant could not prove to his satisfaction, which appears to be only surmises and conjectures for confirming the demand. It is not his case that he found the books of accounts to be unreliable or the certificate of the Chartered Accountant

to be unreliable. Thus, brushing aside evidence produced without any cogent reason is undesirable and against the principles of natural justice. Accordingly, I hold that the appellant has sufficiently explained that the amounts appearing in their books of account, trial balance and final accounts are not expenditure made by them in foreign exchange and the whole demand has been confirmed only on presumptions and assumptions which have got no legs to stand. Accordingly, I allow the appeal and set aside the impugned order. The appellant will be entitled to consequential benefits, if any, in accordance with law.

(Order was dictated in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Patel/-

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