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: 21/02/2017

To
Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70195-70197/2017-EX[DB] dated 20/02/2017

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/55510/2013	**Barco Electronics Systems Pvtltd** A-38, B&c, Sector 64 NOIDA, UP
2	E/55511/2013	**Rakesh Kumar Vohra** C/o Barco Electronics Sysytem Private Ltd,a-38 B& C,sector-64 NOIDA UP
3	E/55512/2013	**Manish Gaur** C/o Barco Electronics Sysytem Private Ltd,a-38 B& C,sector-64 NOIDA UP

	Name and Address of Respondent
4	C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307
5	C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307
6	C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(s) / Consultant(s):

NITYA TAX ASSOCIATES
B-3/58, 3RD FLOOR,
SAFDARJUNG ENCLAVE,
NEW DELHI-110029

8 Bar Association, CESTAT, Allahabad

9 Director Publications, Customs, Excise. I.P. Estate, Delhi

10 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

11 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

12 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

16 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

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

18 C.D.R. 19 Office Copy 20 Guard File

Asstt. Registrar

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

Appeal No.E/55510-55512/2013-EX[DB]

Arising out of Order-in-Original No.36/COMMR/NOIDA/2012-13 dated 26.10.2012 passed by Commr.(Appeals) of Customs, Central Excise & Service Tax, Noida.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, 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 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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(i) M/s Barco Electronics Systems Pvt. Ltd.
(ii) Rakesh Kumar Vohra
(iii) Manish Gaur

...APPELLANT(S)

VERSUS

Commissioner of Custom, Central Excise & S. Tax, Noida ...RESPONDENT (S)

APPEARANCE:

Shri Puneet Bansal & Shri Prateek Jain, Advocates for the Appellant (s)
Shri V.R. Reddy, Asstt. Commissioner (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 07.06.2016

FINAL ORDER NO. 70195 - 70197/2017

Per Mr. Anil Choudhary :

The issue in these appeals, filed by the manufacturers-appellants manufacturing parts of Data Projector, PU, Interface, Populated PCB etc., a 100% EOU, relates to leviability of SAD under Section 3(5) of the Customs Tariff Act, 1975 in respect of goods cleared to 100% EOU in DTA in terms of Section 3(1) of the Central Excise Act, 1944 read with serial No.2 of Notification No.23/2003–CE dated 31.03.2003.

2. The brief facts of the case are that the appellant clears the goods in DTA on payment of concessional rate of duty in terms of Notification No.23/2003 – CE dated 31.03.2003. Approximately, 15% clearances are to the Service Division of the appellants and around 85% sales are directly to the customers at factory gate on payment of Central Excise duty as well as Sales Tax/VAT. The clearances to the service Division are for the purpose of catering AMC (maintenance) to the customers for which the appellants have a non-bonded area within the premises. Thus, the Appellants are stock-transferring the goods to the non-bonded area from where the appellants are undertaking service activity to cater to AMC customers. Infact, there is no sale of goods from the non-bonded area, yet the appellants are discharging Sales Tax/VAT liability on full value even though zero value invoice is raised on the AMC customers. An internal audit of the unit of the appellants was conducted during the months of September and October, 2010 by the Internal Audit Party of the Department. The audit party was of

the view that the SAD portion of duty is payable on the goods cleared to service Division, since the clearance of goods is sufficient for payment of SAD.

3. In response to the audit objection, the appellants submitted that all the supplies, after stock transfer from their 100% EOU, were made after charging applicable Sales Tax/VAT and the appellants are not liable to SAD, as the applicable Sales Tax/VAT have been fully discharged from service division itself before the supplies were made to end customers from there. The SCN dated 23.12.2011 was issued for the extended period from December, 2006 to August, 2011 demanding duty of Rs.59,71,294/- with further proposal to levy penalty under Section 11 AC of the Act. The SCN was adjudicated on contest and reduced the amount of Rs.32,16,453 was confirmed with interest along with equal amount of penalty under Section 11 AC of the Act. Further, a penalty of Rs.10 lakh each under Rule 26 of Central Excise Rules, 2002 was imposed on Mr. Rakesh Kumar Vohra, Managing Director and Mr. Manish Gaur, Manager Commercial of Barco Electronics Systems (P) Ltd.

4. Being aggrieved, the appellants are in appeal before this Tribunal, stating that levy of SAD under Section 3(5) of the Customs Tariff Act, 1975 becomes applicable when goods are cleared in DTA, are exempt from Sales Tax. Admittedly, under the facts and circumstances, the goods are not exempt from payment of Sales Tax/VAT and accordingly the Ld. Commissioner

have erred in confirming the demand. It is further urged that SAD is levied in lieu of Sales Tax and under the facts and circumstances, there being no sale as the appellant is transferring to self that is from the manufacturing unit to their service department, no SAD is payable under the Customs Tariff Act.

4.1 The learned counsel further states that the issue is no longer res-integra and it have been decided in their favour by coordinate Bench of this Tribunal, being Final Order No.53815 – 53817/2014 dated 09.09.2014 in Appeal No.59749-59751/2013 – EX [DB], wherein considering the same issue for the period January, 2011 to October, 2011. It has been held that whenever there is inter unit transfer, it is not a sales transaction and hence sales tax/CST/VAT does not get attracted. It does not mean ipso facto that an exemption from Sales Tax/VAT/CST is granted by the State Government. In the absence of any notification granting exemption by the State Government from levy of Sales Tax on the finished goods, which were cleared from the 100% EOU, it would be incorrect to hold that the goods were exempted from sales tax. For the purpose of taking the benefit of Notification No.23/2003-CE as amended, the one and only condition specified in respect of the goods being clear ed into DTA, is that the goods are not exempted by the State Government from payment of sales tax/VAT.

5. The Learned AR for Revenue relies on the impugned order.

6. Having considered the rival contentions, we hold that SAD which is in lieu of Sales Tax is not attracted in the facts and circumstances of the appellant, there being no sale. As the transfer is to self or to their Service Department from the 100% EOU. We find that a similar view was taken by another coordinate Bench of this Tribunal (of which one of myself was also a member) in M/s VVF LTD. Vs. CCE reported at 2014 (2) TMI 922 – CESTAT (Mumbai). Accordingly, the appeals are allowed with consequential benefits and the impugned order is set aside.

(Operative part of the order pronounced in the open Court)

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

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy
22/02/17
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