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: 19/05/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70493-70494/2017-SM[BR] dated 09/03/2017

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/136/2010	**DELPHI AUTOMOTIVE SYSTEMS PVT. LTD.** PLOT NO. 3, SECTOR-41, GREATER NOIDA INDUSTRIAL AREA, DISTT. GAUTAM BUDH NAGAR. (U.P.)
2	ST/137/2010	**DELPHI AUTOMOTIVE SYSTEMS PVT. LTD.** PLOT NO. 3, SECTOR-41, GREATER NOIDA INDUSTRIAL AREA, DISTT. GAUTAM BUDH NAGAR.(U.P.)
		Name and Address of Respondent
3		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
4		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

ATUL GUPTA, (ADV.) ALD
3/1A/3 OPP AUTO SALES,Above the Office Of
Blue Dart/DHL Courier, COLVIN ROAD,
LOHIA MARG ALLAHABAD-211001

6 Bar Association, CESTAT, Allahabad

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

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

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

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

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 & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/136-137/2010-ST[SM]

(Arising out of Order-in-Appeal No.310-311/CE/APPL/NOIDA/09 dated 30/10/2009 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 Delphi Automotive Systems Pvt. Ltd., **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri Atul Gupta, Advocate for Appellant
Shri D.K. Deb, Assistant Commissioner (AR). for Respondent

CORAM:

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

Date of Hearing : 09/03/2017
Date of Decision : 09/03/2017

FINAL ORDER NO.-70493-70494/2017

Per: Anil Choudhary

These two appeals have been preferred by M/s Delphi Automotive Systems Pvt. Ltd for disallowance in part of the refund claim of Cenvat credit under Rule 5 of CENVAT Credit Rules, 2004 read with Notification No.5/2006-CE.

2. The brief facts are that the appellant is a 100% EOU engaged in manufacture of various auto mobile components namely bracket assembly, bracket assembly mounting, stab-bar, seat spring etc and have availed Cenvat credit of service tax paid in respect of different services received/utilized in or in relation to the manufacture of the final products. They have exported their final products under bond and thus, they were unable to utilise the Cenvat credit taken. The appellant filed refund claims for the period September 2005 on 29/09/2006 for an amount of Rs.02,22,978/- and also filed another refund claim for the period January, 2006 on 31st of January, 2007 for Rs.4,25,932/-. For the refund claim of September, 2005, SCN dated 19/10/2007 was issued, putting the appellant to show cause why the refund claim amounting to Rs.92,583/- should not be disallowed as the clearances with respect to some of the ARE-1, totaling at Rs.2,56,03,345/- would not be eligible for consideration for the purpose of computation of refund claim as such export was made on or before 30/09/2005 and hence would not be eligible for consideration. Another objection was raised that Cenvat credit taken Rs.44 against bill of the Central Warehousing Corporation as

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mentioned in Annexure-02 of the claim appear to be not admissible as the bill was not in the name of the appellant.

3. Similarly, in respect of the claim for the period January, 2006, vide show cause notice dated 31st March, 2008 it was proposed to reject refund claim of Rs.2,72,221/- out of the total claim of Rs.4,35,932/-, as it appeared to the revenue that Notification No.5/2006-CE was issued on 14th of March, 2006 and as per para-05 of the said Notification refund of service tax is allowable only in proportion to the value of export made and the time limit for filing of refund appear to be one year from the date of export. The refund was filed on 04/01/2007 and hence the goods exported on or after first February, 2006 shall only be eligible for computation as provided under Clause 6 of the Notification read with Section 11B of the Central excise Act. Again vide second show cause notices dated 29th May, 2008 issued in respect of both the refund claims, it was proposed to reject the total refund claims of Rs.1,13,506/- & Rs.04,35,932/-, as it appeared to revenue that Notification No.5/2006-CE was issued on 14th March, 2006, where as the refunds pertain to the periods Sept, 2005 & January, 2006.

4. Heard the parties.

5. Having considered the rival contentions, so far the first issue of limitation for eligibility of refund in terms of Clause 6 of the said Notification read with section 11 B of the Act is concerned, I find that the said issue stands settled by the decision of Hon'ble Gujarat High Court in the case of CCE Vs Balkrishna Textiles Mills Pvt. Ltd 2016

(340) ELT 55 (Guj.), wherein it has been held that when the statute does not provide limitation, no limitation can be read therein. I, further find that a similar issue wherein no limitation is prescribed in the statute came up before the Hon'ble Delhi High Court in the case of Sony India Ltd in the matter of refund of SAD under Notification No.102/2006. It was held by the Hon'ble High Court that where the statue does not provide a limitation, the same cannot be provided or inserted by the subordinate legislation by way of Circulars/Notifications. Further, I find that it have already been held by the Hon'ble Karnataka High Court in the case of mPortal India wireless Solutions Pvt. Ltd. Vs CST, Mangalore reported at 2012 (27) S.T.R. 134 (Kar.) that the limitation under Section 11B does not apply for refund of accumulated Cenvat credit.

6. Accordingly, I hold that the amount of Cenvat credit disallowed, is bad and beyond the scope of show cause notice. Thus, the appeals are allowed with consequential benefits. Further, the adjudicating authority is directed to disburse the balance part of the refund within a period of 45 days from the receipt of a copy of this order, along with interest, as per Rules.

(Dictated in Court)

-Sd/-

(ANIL CHOUDHARY)

Member (JUDICIAL)

akp

प्रमाणित प्रति/Certified True Copy

24/05/2017

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