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: 12/10/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71210-71214/2017-SM[BR] dated 29/03/2017

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/1460/2009	**JBM AUTO LIMITED** (FORMERLY JBM AUTO COMPONENTS LTD) PLOT NO 5,SECTOR 31 KASNA INDUSTRIAL AREA GREATER NIODA DITT. GAUTAM BUDH NAGAR UP
2	E/1461/2009	**JBM AUTO LIMITED** (FORMERLY JBM AUTO COMPONENTS LTD.)PLOT NO. 5, SECTOR 31, KASNA INDUSTRIAL AREA, GREATER NOIDA
3	E/1462/2009	**JBM AUTO LIMITED** (FORMERLY JBM AUTO COMPONENTS LTD.)PLOT NO. 5, SECTOR 31, KASNA INDUSTRIAL AREA, GREATER NOIDA
4	E/1463/2009	**JBM AUTO LIMITED** (FORMERLY JBM AUTO COMPONENTS LTD.)PLOT NO. 5, SECTOR 31, KASNA INDUSTRIAL AREA, GREATER NOIDA
5	E/1464/2009	**JBM AUTO LIMITED** (FORMERLY JBM AUTO COMPONENTS LTD.)PLOT NO. 5, SECTOR 31, KASNA INDUSTRIAL AREA, GREATER NOIDA
		Name and Address of Respondent
6		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
7		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
8		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

9 -C.C.E. NOIDA
C-56/42, Sector-62, Noida-
201307

10 -C.C.E. NOIDA
C-56/42, Sector-62, Noida-
201307

Other Appellants and Respondents as per Annexure

Copy To

11 Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

12 Bar Association, CESTAT, Allahabad

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

14 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

15 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Valthyaram Sueet, T. Nagar, Chennai-17

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

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

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

19 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad ~ 38

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

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

22 C.D.R. 23 Office Copy 24 Second Folder Copy 25 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.E/1460-1464/2009-EX[SM]

(Arising out of Order-in-Appeal No. 49-53/CE/APPL/NOIDA/09 dated 27/02/2009 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s JBM Auto Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate for Appellant
Shri D.K. Deb, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 29/03/2017
Date of Decision : 29/03/2017

FINAL ORDER NOs-71210-71214/2017.

Per: Anil Choudhary

The present appeals are filed by the appellants-assessee against Order-in-Appeal No. 49-53/CE/APPL/NOIDA/09 dated 27/02/2009 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. The brief facts of the case are that the appellants 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 appellant clears the goods manufactured by them on payment of appropriate duty of excise leviable thereon. The appellant 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 January, 2006 to June, 2006, October, 2006 to December, 2006, and January, 2007 to June, 2007 the appellant 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 appellant being unable to utilize Cenvat credit, due to export, accordingly filed refund claims on different dates i.e. 28.03.2007, 16.04.2007, 21.06.2007, 04.07.2007 and 20.09.2007, as mentioned in common Order-in-Appeal, with the jurisdictional Excise authorities under Notification No.5/2006, read with Rule 5 of CCR for the period June, 2006 to December, 2007 for an aggregate amount of Rs.1,41,35,947/-.

4. Pursuant to SCNs, the above claims were rejected vide 5 separate O-I-O, all dated 25.08.2008 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 lading 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. One of the refund claim filed on 28.03.2007 for quarter January to March, 2006 was rejected on time-bar. Aggrieved by the said order, appellant-assessee filed appeals before Commissioner (Appeals) who upheld the orders of original authority O-I-A dated 27.02.2009. Being aggrieved, the appellant is in appeal before this Tribunal.

5. The Ld. Counsel for the appellant urges that Notification No.22/03-CE provides for exemption from Central Excise Duty when goods specified in Annexure to the notification, are bought 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 buyer EOU, specifying the quantity of excisable goods, which can be purchased from a specified manufacturer, for the EOU.

6. Ld. Counsel for appellant 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 that Refund could not be denied on ground that it was a case of deemed export, under Rule 5 of CCR, 2004. The learned Counsel further relies upon the Final Order of this Tribunal No.A/71123/2016-SM(BR) dated 11.11.2016 passed in the case of appellant itself, on same issue, whereby the appeal has been allowed. As regard the rejection of refund claim for the quarter

ending March, 2006, it has been submitted by the Counsel that since the claim for one quarter was to be filed once, the last date for filing of claim for quarter ending March, 2006 was to be considered as 31.03.2007. Since the claim was filed on 28.03.2007, the same was within time.

7. Heard the Ld. A.R. for Revenue, who relies on the Order-in-Original.

8. Having considered the rival contentions, I find that the issue on merits is settled in favour of the appellant, by Hon'ble Gujarat High Court in the case of NBM Industries (supra) and the decision of this Tribunal in case of appellant itself (supra). As regard rejection of claim on time-bar, when the claim was to be filed quarterly, the date of filing was to be computed from the last date of quarters. Thus, all the appeals are allowed, with consequential relief.

9. I further direct the Adjudicating authority to grant the refund within a period of 45 days, with interest as provided in Section 11BB of the Act, on receipt/service of a copy of this order.

(Dictated in Court)

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

akp

प्रमाणित प्रति/Certified True Copy
26/10/17
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