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: 05/12/2017

To

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

Final Order No. A/71811/2017-SM[BR] dated 27/10/2017

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/70294/2017	**Automotive Diagnistics** H-19,site-v,upside,surajpur Industrial Area Kasna GREATER NOIDA UP
		Name and Address of Respondent
2		C E & ST-Noida Ii OFFICE OF THE COMMISSIONER CENTRAL EXCISEHOTEL FORMULE 1, WEGMANS BUSINESS PARK, KP-III, GREATER NOIDA GOTAM BUDH NAGAR U.P.-

Copy To
3Advocate(s) / Consultant(s):

LAKSHHMIKUMARAN & SRIDHARAN,ALLD
3/1A/3(OPPOSITE AUTO SALES)COLVIN ROAD,(LOHIA MARG)ALLAHABAD-211001

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, Opp ICICI Bank of Defence Colony New Delhi-3

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

8 Taxmann 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 Second Folder Copy 17 Guard File

Asstt. Registrar

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

APPEAL No. E/70294/2017-EX[SM]

(Arising out of Order-in-Appeal No. NOI-EXCUS-002-APP-980-16-17 dated 18/01/2017 passed by Commissioner of Customs & Central Excise (Appeals-II), Noida)

M/s Automotive Diagnostic — **Appellant**

Vs.

Commissioner of Central Excise – Noida-II — **Respondent**

<u>Appearance:</u>

Shri Utkarsh Malviya, Advocate, for Appellant
Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR), for Respondent

<u>CORAM:</u>

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 27/10/2017

FINAL ORDER NO. 71811/2017

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. NOI-EXCUS-002-APP-980-16-17 dated 18/01/2017 passed by Commissioner of Customs & Central Excise (Appeals-II), Noida.

2. The brief facts of the case are that the appellant was engaged in the manufacture of various machines. The appellant availed Cenvat credit of duty paid on inputs and capital goods. The appellant imported various components from various exporters located outside India. The said components were imported through courier. The imported

goods were cleared on payment of Customs duty by the Courier Agency by filing consolidated Bill of Entry on behalf of a number of importers. The Courier Agency gave photocopy of the Bill of Entry to the appellant along with imported goods. The appellant took Cenvat credit of CVD paid on the strength of said photocopy of the Bill of Entry. It appeared to Revenue that photocopy of the Bill of Entry is not document admissible as provided under Rule 9 of Cenvat Credit Rules, 2004. Therefore, through a Show Cause Notice dated 15/04/2015 appellant was called upon to show cause as to why Cenvat credit amounting to Rs.8,19,655/- should not be recovered from them. On contest the issue was adjudicated through Order-in-Original No. 24/ADC/N-II/2015-16 dated 30/12/2015, wherein the Original Authority confirmed the demand. Being aggrieved by the said order, the appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the said issue through impugned Order-in-Appeal No. NOI-EXCUS-002-APP-980-16-17 dated 18/01/2017, wherein the ld. Commissioner (Appeals) rejected the appeal filed by the appellant. Being aggrieved by the said order, the appellant preferred appeal before this Tribunal.

3. Heard the ld. Counsel for the appellant, who has submitted that the period involved in the dispute is Financial Year 2011-12 to 2014-15. He has further submitted that through Notification No. 27/2015/CE(NT) dated 31/12/2015

words were added in Clause (d) in Sub-rule (1) of Rule 9 of Cenvat Credit Rules, 2004, which covered a certificate issued by an authorizer of Custom in respect of goods imported by authorized courier registered with Commissioner of Customs. He has also submitted that under similar circumstances this Tribunal has held that Cenvat credit was admissible to the manufacturer when there was no dispute on receipt of inputs and capital goods on being received and utilized in the manufacture of their final product even when the importer were constrained to use photocopy of the Bill of Entry for the purpose of taking Cenvat credit in view of the fact that the original document could not be available to each importer as held in the case of Controls & Drives Coimbatore (P) Ltd. *Versus* Commissioner of Central Excise, Coimbatore reported at 2008 (222) E.L.T. 470 (Tri. – Chennai). He has submitted that this Tribunal in the case of Commissioner of Central Excise, Lucknow *Versus* Fusion Electronics (P) Ltd. reported at 2011 (264) E.L.T. 513 (Tri. – Delhi) has held that production of photocopies of Bill of Entry by the respondents cannot be held against them.

4. Heard the ld. A. R. for Revenue, who has supported the impugned Order-in-Appeal dated 18/01/2017.

5. Having considered the rival considered and on perusal of the facts on record, I find that the only issue to be decided in the present case is whether under the facts and circumstances of the case Cenvat credit was admissible to the

appellant. The admitted fact is that the goods were imported on payment of appropriate duty of Customs, the goods were received in the factory and they were used in the manufacture of final product and Cenvat credit of CVD paid on the input was availed as Cenvat credit. Only dispute was whether the photocopies of the Bill of Entry for availing Cenvat credit were admissible document in view of Rule 9 of Cenvat Credit Rules, 2004. I find that this Tribunal has decided this issue in the above stated case of Commissioner of Central Excise, Lucknow *Versus* Fusion Electronics (P) Ltd. The finding of this Tribunal in the above stated case is as follows:-

> "When the goods are imported through courier, it is not in dispute that the courier agency are permitted to file the Bill of Entry on behalf of the importer-consignee and clear the consignment. When the courier agency has been permitted to file common Bill of Entry on behalf of several importers, obviously all such importers cannot be given original documents. Production of photocopies of Bill of Entry by the respondents cannot be held against them."

It was further held as follows:-

> "Considering the special category of imports and considering that the Customs have prescribed a different procedure, the grounds on which the credit are sought to be denied cannot be sustainable."

In view of the findings of the precedent decision of this Tribunal in above stated two cases, I hold that under the facts and circumstance of the case Cenvat credit of Rs.8,19,655/- was admissible to the appellant. I, therefore, allow the appeal filed by appellant by setting aside the impugned Order-in-Appeal dated 18/01/2017.

(Dictated & Pronounced in Court)

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

Ansari

प्रमाणित प्रति/Certified True Copy
15/12/2017
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