

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

**APPEAL No.ST/71133/2016-CU[DB]**

(Arising out of Order-in-Original  
No.04/COMMISSIONER/ST/NOIDA/2016-17 dated 31/08/2016 passed by  
Commissioner, Customs, Service Tax, Noida)

**M/s Moser Bear Photovoltaic Ltd. (SEZ Unit) Appellants**

Vs.

**Commissioner (Appeals), Noida**

**Respondents**

Appearance:

Ms. Pooja Agarwal,

for Appellant

Shri Mohd. Altaf, Assistant Commissioner (AR),

for Respondent

**CORAM:**

**Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**

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

Date of Hearing/ Decision : 12/12/2018

**FINAL ORDER NO.72858 / 2018**

**Per: Archana Wadhwa**

The appeal stands filed against the order of the Commissioner, Central Excise and Service Tax, Noida vide which he has confirmed the demand against the assesseees by upholding the show cause notice issued to them to recover erroneously granted refund, in terms of Section 11A of the Central Excise Act, 1944.

2. It is seen that an identical issue of demand of erroneously granted refund in the same assessee's case, was

the subject matter of Tribunal decision reported as Commissioner of Central Excise, Customs & Service Tax, Noida V/s M/s Moser Baer Photovoltaic Ltd. & M/s Moser Baer Solar Ltd. reported at 2018 (1) TMI 113- CESTAT Allahabad laying down that the assessee was entitled to refund of service tax in terms of Notification No.40/12-ST dated 20.06.2012.

3. Inasmuch as the issue stands decided in favour of the assessee, the impugned order is set aside and appeal is allowed with consequential relief to the appellants.

(Pronounced & Dictated in Court)

Sd/-  
**(Anil G. Shakkarwar)**  
**Member (Technical)**

Sd/-  
**(Archana Wadhwa)**  
**Member (Judicial)**

*Nihal*