

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

**APPEAL No.ST/53766,53767,54326,54555,54556,54557,54558,54559/2014-
CU[DB]**

S. No	APPEAL NO.	APPELLANTS	RESPONDENTS	IMPUGNED ORDER NO.
1	ST/53766/2014 -CU[DB]	M/s Moser Bear Photovoltaic Ltd. (SEZ Units)	Commissioner (Appeals), Noida	O-I-A No. NOI-EXCUS- 000-APPL- 40-2014 dated 21.02.2014 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Noida
2.	ST/53767/2014 -CU[DB]	M/s Moser Bear Photovoltaic Ltd. (SEZ Units)	Commissioner (Appeals), Noida	O-I-A No. NOI-EXCUS- 000-APPL- 47-2014 dated 26.02.2014 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Noida
3.	ST/54326/2014 -CU[DB]	M/s Moser Bear Photovoltaic Ltd. (SEZ Units)	Commissioner (Appeals), Noida	O-I-A No. NOI-EXCUS- 000-APPL- 68-2014 dated 25.03.2014 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Noida

4.	ST/54555/2014 -CU[DB]	M/s Moser Bear Solar Ltd. (SEZ Units)	Commissioner (Appeals), Noida	O-I-A No. NOI-EXCUS- 000-APPL- 70-2014 dated 25.03.2014 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Noida
5.	ST/54556/2014 -CU[DB]	M/s Moser Bear Solar Ltd. (SEZ Units)	Commissioner (Appeals), Noida	O-I-A No. NOI-EXCUS- 000-APPL- 71-2014 dated 25.03.2014 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Noida
6.	ST/54557/2014 -CU[DB]	M/s Moser Bear Photovoltaic Ltd. (SEZ Units)	Commissioner (Appeals), Noida	O-I-A No. NOI-EXCUS- 000-APPL- 77-2014 dated 28.04.2014 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Noida
7.	ST/54558/2014 -CU[DB]	M/s Moser Bear Photovoltaic Ltd. (SEZ Units)	Commissioner (Appeals), Noida	O-I-A No. NOI-EXCUS- 000-APPL- 78-2014 dated 28.04.2014 passed by Commissioner (Appeals),

				Customs, Central Excise & Service Tax, Noida
8.	ST/54559/2014 -CU[DB]	M/s Moser Bear Photovoltaic Ltd. (SEZ Units)	Commissioner (Appeals), Noida	O-I-A No. NOI-EXCUS- 000-APPL- 69-2014 dated 25.03.2014 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Noida

Appearance:

Ms. Pooja Agarwal, (Proxy Counsel)

Shri Mohd. Altaf, Assistant Commissioner (AR),

for Appellant

for Respondent

CORAM:

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

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

Date of Hearing/ Decision : 12/12/2018

FINAL ORDER NO. **72877-72884 / 2018**

Per: Archana Wadhwa

All the appeals are being disposed of by a common order as the issue involved in all of them is identical. Accordingly, we have heard Ms. Pooja Agarwal, appearing for the appellants and learned Assistant Commissioner, Mohammad Altaf for the Revenue.

2. As per facts on record, the appellant is a Unit located in SEZ and is engaged in export of their final products. They claimed refund of duty paid on the input services in terms of Notification No.40/12-ST dated 20.06.2012.

3. It is seen that the said refund claims were allowed by the Original Adjudicating Authority. However, on appeal filed by the Revenue, Commissioner (Appeals) reversed the order of the Original Adjudicating Authority and allowed the Revenue's appeal by denying the said refund claim on the ground that the invoices in question did not satisfy the requisition of Rule 4A of the Service Tax Rules, 1994. The said orders of Commissioner (Appeals) are impugned before us.

4. In the meanwhile, based upon the orders of the Commissioner (Appeals) denying the refund claim, Revenue also initiated proceedings for recovery of the granted refund in terms of Section 11A of the Central Excise Act, 1944. The said show cause notice was confirmed by the Original Adjudicating Authority. When the same were challenged before Commissioner (Appeals), he set aside the original order and allowed the assessee's appeal by holding that the refunds were properly granted. The said order of Commissioner (Appeals) was challenged by the Revenue before the Tribunal and vide its 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, the appeals filed by the Revenue were rejected, thus, approving the views of Commissioner (Appeals).

5. In view of the above background, we find that the issue in the same set of proceedings stand decided in favour of the assessee. Inasmuch as the present impugned orders are by way of appeal proceedings against the denial of refund and inasmuch as in subsequent proceedings, such refund has been held to be admissible to the appellants, we find no merits in the impugned order of the Commissioner (Appeals). Accordingly, the same are set aside and all the appeals are allowed with consequential relief to the appellants.

(Pronounced & Dictated in Court)

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

Sd/-
(Archana Wadhwa)
Member (Judicial)