FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

To

Dated: 14/02/2017

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70164/2017-SM[BR] dated 13/02/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar/SPS

Application	Appeal	Name and Address of Appellant
1	C/54116/2014	**Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida** C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH 201307
		Name and Address of Respondent
2		Stargold International A-23, Wazirpur Industrial Area,,, DELHI, ,DELHI.

Copy To:-

3 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

10 Mark Professional Services Pvt. Ltd., 302, Everest Block, Aditya Enclave, Hyderabad – 38

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

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

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar/SPS

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No.C/54116/2014-[SM]

Arising out of Order-in-Appeal No.NOI/EXCUS/000/APPL/156/14 dated 14.03.2014 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3.	Whether His Lordship wishes to see the fair copy of the Order?	: Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	: Yes

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Commissioner of Customs, Central Excise & Service Tax, Noida. ...APPELLANT(S)

VERSUS

M/s Stargold International ...RESPONDENT (S)

APPEARANCE

Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department (s)
None for the Respondent (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT: 29.11.2016

FINAL ORDER NO.- 70164/2017

सीमा शुल्क एवं सेवा कर अपीलीय अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

The issue in this appeal is, whether the claim of refund of SAD which regard to 22 Bills of Entry which have been filed during the period 29.01.2010 to 20.09.2010 is barred by limitation or not?

2. The admitted facts are that the respondent-assessee imported various types of scrap and filed 22 Bills of Entry during the period 29.01.2010 to 20.09.2010. There was a search and seizure by DRI at the various premises of the respondent-assessee on 30.09.2010 and seized all records including the Original Bill of Entry, TR-6 Challans, and also the subsequent invoices for resale and challans for VAT payment etc. The assessee, on 20.10.2010, informed the ADC/ICD about the search and seizure by DRI and also informed that they are entitled to refund of SAD, as they have resold the imported goods and deposited Sales Tax/VAT, but as the said documents relevant for processing of refund claim are lying in the custody of DRI, time be extended for filing the formal claim. After several correspondences with the DRI, appellant could get only the photocopies and on that basis, they filed the refund claim and thereafter, SCN was issued as to why the refund claim should not be rejected for not filing Original Bill of entry and TR-6 challans. Thereafter, the assessee preferred Writ Petition in the High Court in December, 2012 and subsequently in February, 2013, the said documents were released. The assessee filed their formal claim for refund of SAD on 07th May, 2013 and the same is held as time barred by the Adjudicating Authority – Deputy Commissioner vide Memorandum Order dated 29.11.2013, observing that the refund claim should have been preferred within a period of 12 months from

the date of deposit of duty/SAD particularly in view of Circular No.16/2008 – CUS, which prescribed a period of 12 months from the date of payment of duty as the limitation period. Being aggrieved, the appellant preferred appeal before Ld. Commissioner (Appeals) who have been pleased to allow the appeal observing that the prescribed period of limitation of one year as mentioned in the Notification No.102/2007 – CUS as amended should be calculated, excluding the period during which the relevant documents were lying with the DRI. Accordingly, he found that on exclusion of such period, the refund claim have been filed within 12 months. Accordingly, the Order-in-Original was set aside, directing the Adjudicating Authority to process the refund claim after verifying the relevant documents.

3. Being aggrieved, the Revenue is in appeal on the ground that the Ld. Commissioner (Appeals) have erred in excluding the period when the relevant documents were not in the possession of the assessee for claiming the refund.

4. The respondent-assessee is absent in spite of notice. As the issue lies in a narrow compass, the appeal is taken up for final disposal with the assistance of Ld. AR for Revenue, and perusal of records.

5. Having heard the Ld. AR and on perusal of records, I find that the respondent-assessee had filed the refund claim, first of all on 20.10.2010, when it had informed the ADC/ICD in writing that they are entitled to refund claim of SAD but the formal claim cannot be filed immediately, as the documents are lying in the custody of DRI, pursuant to search and seizure which took place on 30.09.2010.

Accordingly, I hold that the refund claim had been made on 20.10.2010, which was well within time. Secondly, I find that there is no error in the order of the Commissioner (Appeals), wherein he has directed to exclude the time for calculation of limitation, when the documents were lying in the custody of DRI. The same is in agreement with the legal principles and the provisions of the Limitation Act. Accordingly, I hold that there is no error in the impugned order. Hence, the appeal of Revenue is dismissed. The respondent-assessee is entitled to refund of their SAD. The adjudicating Authority is directed to grant the refund within a period of 60 days with interest as per Rules, if not granted so far.

(Dictated & Pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy
21/02/17
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