FAX : 0532-2400149 REGISTERED / AD

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

Dated: 28/06/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70291-70292/2016-EX[DB] dated 27/06/2016

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/1872/2006 E/1873/2006	PNC CONSTRUCTIOIN CO. LTD. D-51, KAMLA NAGAR, AGRA
		Name and Address of Respondent
2		-C.C.E. LUCKNOW 7-A, ASHOK MARG, LUCKNOW.

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

SURESH AGGARWAL
1324, SECTOR-28,
FARIDABAD,HARYANA

4 Bar Association, CESTAT, Delhi

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham Pitamah Marg, 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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxindiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Single Member Bench

Appeal No. E/1872/2006 and E/1873/2006 (SM)

[Arising out of Order-in-Appeal No.23-CE/2006 dated 27/02/2006 passed by Commissioner of Central Excise, Lucknow]

For approval and signature:

Hon'ble Shri Anil Choudhary, Judicial Member

1.	Whether Press Reporter may be allowed to s Order for publication as per Rule 27 of the C (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 CESTAT (Procedure) Rules, 1982 for publication authoritative report or not?	
3.	Whether their Lordships wish to see the fair c the order?	
4.	Whether order is to be circulated to the Depa Authorities?	

M/s PNC Construction Co. Ltd. Appellant

Vs.

C.C.E., Lucknow Respondent

Appearance:

Present for the Appellant: None
Present for the Respondent: Shri Ashutosh Nath, (AR)

Coram: **Hon'ble Shri Anil Choudhary, Judicial Member**

Date of Hearing/Decision: 21/12/2015

Final **ORDER NO.** 70291-70292/2016

Per: Anil Choudhary

The appellant is in appeal against Orders-in-Appeal dated 27/2/2006 passed by the Commissioner (Appeals) where in the refund claims of the appellant have been rejected.

2. The brief facts are that the appellant was allotted a contract for Highway project under the World Bank Loan Assistance, approved by Government of India for implementation by U.P. Public Works Department. For the said work the appellant was entitled for the benefit of Notification number 108/95 dated 28/8/95 wherein it is provided that where the goods are supplied to project that had been approved by Govt. of India and financed by an International organisation, a certificate from competent officer not below the rank of the Deputy Secretary to the Govt. of India in the Ministry of Finance, "that the said goods are required for the completion of the said project and the said project are been duly approved by the Government of India." The appellant were entitled to purchase/procured the goods duty-free under the provisions of Central Excise. The appellant applied for the necessary certificate from the concerned authority on 12.3.2003 but as the grant of certificate was delayed (issued on 25.2.2004), and due to time bound nature of the work, the appellant purchased the CRMB (bitumen) during the period 11/6/2003 to 9/7/03 in Appeal Number 1873/2006

and during the period 1/4/03 to 20/10/03 in Appeal Number 1872/2006 on payment of Excise duty from IOC Ltd, Mathura. Subsequently the appellant received certificate as required under Notification Number 108/95 and applied for refund of the duty paid. The said refund claim was rejected by the Assistant Commissioner holding that the same is time barred. As the appellant filed refund claim on 25/1/2005 which is more than the period of 12 months from the last date of purchased that is 20/10/2003 and accordingly the refund claims are time barred under section 11 B clause 5(e). The relevant date is defined as, in the case of a person, other than the Manufacturer, the date of purchase of the goods by such person. Being aggrieved the appellant had preferred appeal before the Commissioner (Appeals), who was pleased to reject the appeal upholding the findings of the Assistant Commissioner. Being aggrieved the appellant is before this Tribunal. The appellant is absent in spite of notice. It is seen that the appellant was absent on earlier dates also being 7/7/15, 14/10/15, 20/11/15. Accordingly as the appeal is taken up for disposal with the assistance of learned A.R. for Revenue.

3. Heard ld. DR and perused the records.

4. The ld. DR for the revenue states that in appellant's own case in Appeal Number E2718/2006 - SM under similar facts and

circumstances it was held vide the Final Order dated 29/4/2009, that relevant date for refund is not the date of grant of eligibility certificate under Notification Number 108/95, but it is the date of purchase as provided under Section 11 B of the Act, reported at 2009 (247) E.L.T. 345 (Tri.-Del.). The issue in this appeal is what is the relevant date for calculation of limitation for the refund. It is admitted case of the revenue that the eligibility certificate to purchase duty free was granted to the appellant under covering letter dated 25/2/2004. As the appellant had purchased the goods for the project assisted by World Bank loan during the period 1/4/03 to 20/10/03, although the appellant had applied for the eligibility certificate as required under Notification Number 108/95, but the same was delayed by the authority and accordingly the appellant had to purchase the necessary goods for completion of the project on payment of duty. It is further admitted fact that the appellant became entitled to refund only on receiving the eligibility certificate issued on 25/2/2004. Now the issue is, whether limitation will apply from the last date of purchase for the project, or from the date of grant of eligibility certificate by virtue of which the appellant became entitled to refund.

5. The issue have been decided by Hon'ble Delhi High Court in the case of Sony India Ltd 2014(304)ELT 660 wherein the Hon'ble High Court have held that limitation cannot start to run before the right to claim the benefit of

refund crystallises. In the facts of the present case the right to claim refund crystallised only on receipt of the eligibility certificate which was issued to the appellant vide covering letter dated 25/2/2004. Following the ruling of the Hon'ble High Court I hold that the period of limitation of one year starts only from 26/2/2004 and not prior to that or the date of purchase earlier. I also hold the order of Single Member Bench, reported at 2009 (247) E.L.T. 345 ~~as~~ is per in curium. Thus I allow the appeal and set aside the impugned order. The concerned authority is directed to grant refund within a period of 60 days from the date of receipt of copy of this order along with interest as per Rules.

(Dictated and pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(K. Gupta)

प्रमाणित प्रति / Certified True Copy

12.7

सहायक रजिस्ट्रार / Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M.G. MARG, ALLAHABAD-211001