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

Dated: 07/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70953/2016-EX[DB] dated 28/09/2016

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
	E/672/2008	BHARAT PETROLEUM CORPORATION LTD. D-1, UPSIDC, INDUSTRIAL AREA, SITE-B, MATHURA (U.P.)
		2. MR. AMIT JAISWAL M/S BPCL (A. GOVT. OF INDIA UNDERTAKING) BHARAT BHAVAN-II, 3rd FLOOR, BALLARD ESTATE, MUMBAI-400001.

Name and Address of Respondent

3 -C.C.E. LUCKNOW
7-A, ASHOK MARG,
LUCKNOW.

Copy To

4Advocate(s) / Consultant(s):

SH V.L.KUMARAN,ADV
5, JANGPURA EXTENSION
LINK ROAD, NEW DELHI

5 Bar Association, CESTAT, Allahabad
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham Pitamah Marg, New Delhi 3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
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

27/10/16
ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38,M. G. MARG, ALLAHABAD-211001.

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

Appeal No.E/672/2008-EX[DB]

Arising out of Order-in-Appeal No.194-CE/LKO/2007 dated 31.12.2007 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow.

For approval and signature:

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

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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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M/s Bharat Petroleum Corporation Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Lucknow

...RESPONDENT (S)

APPEARANCE:

Shri Atul Gupta & Shri Hrishikesh, Advocates for the Appellant (s)
Shri Pawan Kumar Singh (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 28.09.2016

FINAL ORDER NO.- 70953/2016

Per Mr. Anil G. Shakkarwar:

The present appeal is preferred against Order-in-Appeal No.194-CE/LKO/2007 dated 31.12.2007 passed by Commissioner (Appeals).

2. The brief facts of the case are that the appellants are manufacturer of Petroleum Products. During the period from 10.07.2002 to 25.07.2002, they supplied 2564.414 MT of Naphtha to National Thermal Power Corporation Ltd. Anta by paying Central Excise duty of Rs.56,14,755.40/-. Notification No.6/2002-CE dated 01.03.2002 read with Notification No.32/2002-CE dated 18.06.2002 exempts Naphtha supplied to NTPC with a condition that assessee to produce a certificate issued by NTPC, confirming that LNG terminal supplying LNG to NTPC has not been commissioned. Since, the goods were eligible for supply at Nil rate of duty in view of said notification and since the duty was paid appellant filed claim of refund of Rs.56,14,755.40/- on 08.07.2003. The Original Authority through Order-in-Original No.V(18)Refd/BPCL-ANTA/43/04/5082 dated 29.10.2004 rejected the said claim on two grounds. One is that the refund is hit by time bar; and another is proper original documents like invoices (under Rule 11 & PLA) were not submitted.

3. The appellant preferred appeal before Ld. Commissioner (Appeals), who decided the Appeal through Order-in-Appeal No.463-CE/2005 dated 11.11.2005. The Ld. Commissioner (Appeal) held that the date of filing of refund claim was 8.07.2003 and the refund claim

was within time. He also found the refund to be eligible and he set aside the order dated 29.10.2004 and allowed the Appeal and directed the appellant to produce assessee's copy of PLA, TR-6 Challan and invoices for endorsement. The appellant produced assessee's copy of PLA & TR-6 Challan. Subsequently, the Original Authority issued Order-in-Original No.6/Refund/2007 dated 31.01.2007, rejecting the refund, stating that the appellant failed to submit important relevant documents in original as ordered by Commissioner (Appeals) in this order dated 11.11.2005. In Para 2 of the said order dated 31.01.2007, the Original Authority has mentioned that original copies of PLA and TR-6 Challan were made available but the appellant have failed to produce assessee's copy in original of the invoices. The appellant preferred an appeal before Ld. Commissioner (Appeal) which is decided through Order-in-Appeal No.194-CE/LKO/2007 dated 31.12.2007, wherein the Ld. Commissioner (Appeals) has held that since the original copies of invoice were not produced by the appellant, the rejection of refund by original Authority is in Order. Aggrieved by the said Order-in-Appeal dated 31.12.2007, the appellant is before this Tribunal. The main ground of the appeal is that the substantial provision has been complied by them, the admissibility of refund is established, the required copies of TR-6 Challan and PLA have been submitted, the requirement of original copies of invoices is not a substantial requirement for admissibility of refund and therefore, they requested to allow the refund.

4. Heard the Ld. Counsel, who has reiterated the grounds of Appeal.

5. Heard the Ld. DR for Revenue, who has supported the impugned Order-in-Appeal.

6. We have taken into consideration the rival contentions. We find that the substantial provisions of Law which is to be eligible for refund has been complied with by the appellant. The endorsement of refund on original copies of invoices is not a substantial requirement to be eligible for refund. We, therefore, allow the appeal. We direct the appellant to produce copy of this order to the Office of Original Authority and we direct the Original Authority to grant refund to the appellant within 60 days of receipt of copy of this order in his office. We also direct the Original Authority to examine the provisions related to interest to be paid on delayed refund and pass order as per Law. In the above terms, the appeal is allowed.

(Dictated and pronounced in the open Court)

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy
25.10.16
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