CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg.CIVIL LINES, ALLAHABAD

Dated: 30/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70116/2015 dated 08/12/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(I) of the **Central Excise and Salt Act, 1944.**

30/12/15

Asstt. Registrar/SPS

Application	Appeal	Name and Address of Appellant
	ST/1797/2010	CCE, KANUR 117/7,SARVODAYA ENCLAVE KANPUR(UP)
	Name and Address of Respondent	PACIFIC LEATHER FINISHERS 197/189, RAMRAI SARAI JAJMAU, KANPUR(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

4 Bar Association, CESTAT, Delhi

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm 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 C.D.R. 15 Office Copy 16 Guard File

30/12/15

Asstt. Registrar/SPS

Regional Bench, Allahabad

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

S.T. Appeal No.1797/10

Arising out of O/A No.467/ST/APPL/KNP/2010 dated 13.09.2010 passed by Commr. Customs & C.Ex., Kanpur

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. B. RAVICHANDRAN, 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? :
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether His Lordship wishes to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental Authorities? :

Commissioner of Central Excise & S. Tax, Kanpur
...APPELLANT(S)

VERSUS

M/s Pacific Leather Finishers
RESPONDENT (S)

APPEARANCE

Shri S. L. Karoliya, Asstt.Commr. (A.R.) for the Department
None for the Respondent (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 08. 12. 2015

FINAL ORDER No 70116 /2015 dt- 8/12/15

Per Mr. Anil Choudhary :

The Revenue is in Appeal against Order-in-Appeal No. 467/ST/APPL/KNP/2010 dated 13.09.2010 passed by Commr. Customs & C.Ex., Kanpur.

2. The respondent-assessee is an exporter and availed service of commission agent for procuring export order, which is payable to such agent at the rate of 2.7% of FOB value. For the export made between the dates (let export order) between 19th April, 2008 to 2nd July, 2008, the appellant filed refund claim under Notification 41/2007 on 30.03.2009. A show-cause notice dated 04.05.2009, was issued as it appeared to Revenue that the refund claims are time barred. The appellant-assessee contested the show-cause notice, but the same was confirmed observing that the period of refund claim is six months from end of the quarter, in which export was made and accordingly, the appellants claims being were time barred and also for the reason of claiming drawback in few instances. Being aggrieved, the assessee preferred an appeal before the ld.Commissioner (Appeals), who in the impugned order, allowed the appeal on the ground that the adjudicating authority have travelled beyond the show-cause notice, as their claiming drawback was not the issue in show-cause notice. So far as the time bar is concerned, he decided the same in favour of the assessee observing that since it is un-disputed fact that the appellants had paid commission during quarter from July to September, 2008 and the service tax involved therein was paid on October, 2008, the refund claim cannot be held to be time barred, before the right to claim arose.

3. Being aggrieved, the Revenue is in appeal on the ground that under the condition of Notification, the time limit prescribed is six months from the quarter, exports took place.

4. The respondent assessee is absent today in spite of notice. We find that the respondent was also absent on the previous date i.e. 18.09.2015 without any representation for time. Under these circumstances, the appeal is taken up for hearing with the assistance of the ld.A.R. for the Revenue.

5. Heard the ld.A.R. for the Revenue and perused the records.

6. Having considered the rival contentions, we find that the issue of time bar in this appeal is no longer res-integra, and is decided by the Hon'ble Delhi High Court in the case of Sony India Ltd. 2014 (304) ELT 660 (Del.), wherein the Hon'ble High Court has held that the limitation cannot start to run unless right to receive a claim or refund crystallized. In the present case, the right to claim/refund under Notification No.41/2007-Service Tax crystallized only when the service tax was deposited in October, 2008. Thus, the refund claim was filed within six months on 30.03.2009. Accordingly, we hold that the refund claim is within time. In view of the above findings, we dismiss the appeal of the Revenue and confirm the order-in-appeal. The respondent assessee will be entitled to consequential benefit, if any, in accordance with law.

(Dictated and pronounced in the open Court)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(A.CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
19.1.16
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