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

Dated: 28/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70907/2016-SM[BR] dated 23/09/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/55902/2013	SPARK ENGG P LTD 40/1,SITE-IV,INDL.AREA,SAHIBABAD GHAZIABAD U.P
		Name and Address of Respondent
2		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Copy To

3Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

4 Bar Association, CESTAT, Allahabad

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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
14 C.D.R. ~~15~~ Office Copy ~~16~~ Guard File

Asstt. Registrar

27/10/16

ISSUED ON

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

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

SINGLE MEMBER BENCH

ST/55902/2013-ST(SM)

Dated of Hearing/decision: 23/9/2016

[Arising out of Order-in-Appeal No. 190-ST/GZB/2012 dated 29.10.2012 passed by Commissioner (Appeals), Central Excise, Ghaziabad]

For approval and signature:

Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Spark Engg. P. Ltd. — Appellant

Vs.

C.C.E. & S.T.- Ghaziabad — Respondent

Appearance:
Present for the Appellant: Shri Rajesh Chibber, Advocate
Present for the Respondent: Shri Rajeev Ranjan (Joint Commissioner), A.R.

Coram: Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Final Order No. 70907/2016

Per: Anil G. Shakkarwar

The brief facts of the case are that the appellant paid commission for sales promotion and commission on sales of goods exported. The said payment of service tax was made on 29.11.2011 for the services rendered for the goods exported during the period from 01.8.2006 to 31.3.2009. Appellant filed refund claim of Rs.2,26,150/- on 05/3/2012 in respect of service tax paid on 29.11.2011 whereas the goods were exported during 01.8.2006 to 31.3.2009. The claim of refund was made under Notification No. 17/2009-ST dated 07.07.2009. The original authority passed order dated 29.6.2012 and held that as per the condition of said notification, the refund of service tax paid on the goods export is to be claimed within six months from the date of export and therefore, the claim was time barred and the same was rejected. The appellant preferred appeal before the Commissioner (Appeals) who dismissed appeal vide Order-in-Appeal No. 190-ST/GZB/2012 dated 29/10/2012. Aggrieved by the said Order-in-Appeal dated 29/10/2012 the Appellant preferred appeal before this Tribunal.

2. Heard the ld. Counsel who has produced a copy of Final Order issued by this Tribunal in the case of Commissioner of Central Excise and Service Tax, Kanpur Vs. Pacific Leather Finishers reported at 2016 (43) S.T.R. 273 (Tri.-All.). He has argued that this Tribunal has relied on ruling by Hon'ble Delhi High Court in the case of Sony India Ltd. reported in 2014 (304) E.L.T. 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. Relying on said ruling by Hon'ble High Court, this Tribunal has held that the limitation to claim/refund under Notification No. 41-2007 - S.T. crystallized only when the service tax was deposited in October, 2008 and refund claim was filed, within six months and accordingly the claim was held within the time. He has further argued that the said final order is squarely applicable to the facts of the present case.

3. The ld. D.R. is supported the Impugned Order in Appeal.

4. Having considered the rival contentions I find that said final order issued by Tribunal is squarely applicable in the present case. In present case the service tax was paid on 29.11.2011 and the claim for refund under Notification No. 17/2009-CE was filed on 5/3/2012 i.e. within six months. The date of payment of service tax is the date on which the claim was crystallized. I therefore, hold that the present claim is within the time limitation. Therefore, I remand the matter back to Original Authority ~~and~~ to pass appropriate order ~~as~~ on other aspects of the case treating this case to be within time.

5. The appeal is allowed in above terms by way of remand.

(Dictated and pronounced in the open Court)

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

(K. Gupta)

सत्यापित 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
... ALLAHABAD-211001