REGISTERED / AD

FAX : 0532-2400149

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

Dated: 07/06/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70524/2017-SM[BR] dated 19/05/2017

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

Application	Appeal	Name and Address of Appellant
1	C/2/2012	**UNITED CHEMICALS INDUSTRIES** BHAU KA NAGLA, AGRA ROAD FIROZABAD, (U.P.)
		Name and Address of Respondent
2		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

Copy To
3 Advocate(s) / Consultant(s):

Abhishek Jaju,Advocate
472, Delhi Apartments, Plot No - 15-C, Sector-22, Dwarka
NEW DELHI,
DELHI
110077

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

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. C/2/2012-CU[SM]

(Arising out of Order-in-Appeal No. 227-CUS/APPL/KNP/2011dated 30/09/2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Kanpur)

M/s United Chemicals Industries **Appellant**

Vs.

Commissioner of Central Excise, Kanpur **Respondent**

Appearance:

Shri Abhishek Jaju, Advocate, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision: 19/05/2017

FINAL ORDER NO. 70524/2017

Per: Anil Choudhary

The issue in this appeal is, whether the refund claim of SAD for Rs.59,449/- have been rightly rejected by the ld. Commissioner (Appeals) on the ground of limitation.

2. The admitted facts are that the appellant imported the goods vide Bill of Entry dated 04/11/2009 and the goods were thereafter cleared provisionally. Further facts are that the appellant resold the imported goods, vide the said Bill of Entry No. 00093, during the period 29/09/2010 to 21/11/2010. Thereafter, the appellants filed refund claim on 04/03/2011 for refund of SAD alongwith the supporting. The said refund claim was rejected vide Order-in-Original dated

30/06/2011, observing that the appellant have fulfilled all the conditions laid down in Notification No. 102/2007 dated 14/09/2007 under which the claimant been filed on the basis of CA certificate regarding justification of having borne the concerned additional duty for which the refund is claimed. The Assistant Commissioner further found that the claim is not hit by the clause of unjust enrichment. Further observed that the appellant has filed a claim for refund on 04/03/2011 which also including the refund for Rs.59,449/- corresponding to Bill of Entry No. 93 dated 04/11/2009 and the refund of this amount appeared time barred under the provisions of Section 27 of the Customs Act, 1962. Further, as per para 7.3 of Circular No. 06/2008-Cus. dated 28/04/2008, in case of 04% SAD having been paid through DEPB Scrips, the amount eligible for refund should be re credited on the relevant DEPB/FPS Scrips. As in all the cases as detailed above duty have been paid through DEPB Scrips also refund in such cases to be given solely through the credit in respect of DEPB/FPS Scripts. Allowing, refund of the other amount rejected the refund of Rs.59,449/-corresponding to Bill of Entry No. 93 dated 04/11/2009 finding that the same is time barred under Section 27 of the Customs Act, 1962.

3. Being aggrieved by the said order appellant preferred appeal before ld. Commissioner (Appeals) who have been

pleased to reject the appeal and uphold the rejection of refund in part on the ground of limitation.

4. Being aggrieved the appellant is in appeal before this Tribunal. The learned counsel for the appellant have urged that the finding of ld. Commissioner regarding time barred is directly in the teeth of the findings of Hon'ble Delhi High Court in Sony India Pvt. Ltd. *Versus* Commissioner of Central Excise reported at 2014 (304) E.L.T. 660 (Delhi), wherein the Hon'ble High Court upheld that limitation cannot start to run before the right to claim benefit arises or created. In the facts of the present case, admittedly, refund is allowable on resale of the imported goods subject to payment of Sales Tax. As admittedly the goods ~~only~~ of the import consignment was sold during the period September, 2010 to November, 2010 the limitation cannot start to run prior to 30/11/2010 and from such date, the claim made on 04/03/2011, is within the limitation of one year. Accordingly, he prays for allowing the appeal with consequential benefits to the appellant.

5. Heard the ld. A. R. for Revenue, who relied on the impugned order.

6. Having considered the rival contentions and on perusal of the facts on record, I hold that the ld. Commissioner (Appeals) have erred in rejecting the refund claim on the ground of limitation relying on the Circular No. 06/2008-Cus. dated 28/04/2008 under Section 27 of the Customs Act, 1962. I further hold that limitation has to be computed on or

after 30/11/2010, being the month of November, when the goods were finally sold under the concerned Bill of Entry No. 93 dated 04/11/2009. Accordingly, the impugned order is set aside and the appeal is allowed. I further direct the Adjudicating Authority to grant the refund of the amount of Rs.59,449/- with interest as per rules within a period of 60 days from the date of receipt of a copy of this order.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Ansari

प्रमाणित प्रति/Certified True Copy
14/06/2017
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)