

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

Dated: 29/03/2017

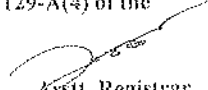
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70310/2017-SM[BR] dated 23/03/2017

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/50307/2015	Honda Siel Power Products Ltd Plot No.5, Sector-41(kasna) Greater Noida Industrial Development Area GAUTAM BUDH NAGAR UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To

3 Advocate(s) / Consultant(s):

S. Vyas Associates Advocates &
Solicitors
P-13, SECTOR-12,
NOIDA,
UTTAR PRADESH
201301

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 Taxnam 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

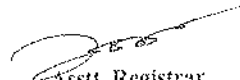
12 The ICAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. Ltd.(taxinamagementindia.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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD**

Appeal No. C/50307/2015-CU[SM]

Arising out of Order-in-Appeal No. NOI/EXCUS/000/APPL/194/14 dated 31.10.2014 passed by Commissioner (Appeals) Meerut-II, Customs, Central Excise & Service Tax, Noida.

M/s. Honda Siel Power Products Ltd.

...APPELLANT

VERSUS

Commissioner of Customs & Central Excise, Noida

...RESPONDENT

APPEARANCE

Shri Arun Pathak, Advocate for the appellant.
Shri Sadeep Kumar Singh, Dy. Commr. (A.R.) for the Department.

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 23. 03. 2017

FINAL ORDER NO. 70310/2017

Per Mr. Anil Choudhary :



The issue in this appeal by the appellant is whether the refund claim of S.A.D. (Special Additional Duty in lieu of Sales Tax) paid at the time of import have been rightly refused on the ground that bill of entry belonged to the year 2011-12 but the refund claim has been filed in the year 2013 which is beyond the stipulated period of one year as per Circular No. 06/2006-Cus.

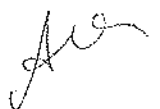
2. The appellant who are engaged in the manufacture of Portable Generating Sets, Water Pumps, IC Engines etc. falling under Chapter

Heading No. 85022010, 85022090, 84137010 & 84079010 respectively of the Central Excise Tariff Act, 1985. He had imported Engines, Tillers & Brush Cutters under several bill of entry numbers on various dates and on re-sale paid appropriate VAT/CST and thereafter filed refund claim amounting to Rs.9,26,396/-. The Assistant Commissioner vide Order-in-Original dated 03.02.2014 rejected the claim on the ground that the bill of entries were beyond the stipulated period of one year and rejected the refund claim without giving personal hearing to the appellant. The Adjudicating Authority neither issued a deficiency memo nor issued show cause notice, thereby denied any opportunity of hearing. Being aggrieved appellant preferred appeal before learned Commissioner (Appeals) who was pleased to uphold the Order-in-Original.

3. Being aggrieved, the appellant is in appeal before this Tribunal.

4. Having considered the rival contentions and on perusal of records I find that the impugned order is in the teeth of ruling in the case of Sony India Pvt. Ltd. Vs. Commissioner of Customs, New Delhi reported at 2014(304) E.L.T. 660 (Del.) Hon'ble Delhi High Court has held that :-

".....16. Section 27(1) of the Customs Act prescribes a time limit of expiry of "one year, from the date of payment of such duty or interest.....". Section 27(1B) lists out three contingencies when the one year limit applies with modified effect. That provision has the effect of shifting the date from which the refund claim is to be reckoned. All that can be inferred from the term "so far as may be" would be that specific provisions relating to the mechanism applicable for refund, in the Customs Act,



applied; not the period of limitation. The Customs authorities had never understood Section 27(1) as to mean that a one year period of limitation was applicable. Audioplus (supra) and United Chemicals Industries (supra) are both testimony to this. It is the circulars/notifications of 2008 and No. 16/2009 which for the first time harped on the one year period of limitation. Circular No. 6/2008, dated 28.04.2008 issued by the C.B.E. & C. stated that :

"4. Time-Limit:

"4.1 In the Notification No. 102/2007-Cus., dated 14-9-2007, no specific time-limit has been prescribed for filing a refund application. Under the circumstances, a doubt has been expressed that whether the normal time-limit of six months prescribed in Section 27 of the Customs Act, would apply. In the absence of specific provision of Section 27 being made applicable in the said notification, the time-limit prescribed in this section would not be automatically application to refunds under the notification. Further, it was also represented that the goods imported may have to be dispatched for sale to different parts of the country and that the importer may find it difficult to dispose of the imported goods and complete the requisite documentation within the normal period of six months. Taking into account various factors, it has been decided to permit importers to file claims under the above exemption upto a period of one year from the date of payment of duty. Necessary change in the notification is being made so as to incorporate a specific provision prescribing maximum time-limit of one year from the date of payment of duty, within which the refund could be filed by any person. It is also clarified that the importers would be entitled to refund of duties only in respect of quantities for which the prescribed documents are made available and the claims submitted within the maximum prescribed time of one year. Unsold stocks would not be eligible for refunds."

Notification No. 93/2008, dated 1-8-2008 was issued prescribing the period of limitation as one year from the date of payment of additional duty of Customs.

17. Plainly, therefore, Section 27 was understood as not applying to SAD cases, even though it was in the statute book for many years. Yet, with the introduction of the circular and then the notification (No. 93/2008), the Customs authorities started insisting that such limitation period which was prescribed with effect from 1-8-2008 (by



notification) became applicable. There is a body of law that essential legislative policy aspects (period of limitation being one such aspect) cannot be formulated or prescribed by subordinate legislation. *Khemka and Co. (Agencies) Private Ltd. v. State of Maharashtra*, (1975) 35 STC 571 and other decisions are authority on the question that in matters which deal with substantive rights, such as imposition of penalties and other provisions that adversely affect statutory rights, the parent enactment must clearly impose such obligations; subordinate legislation or rules cannot prevail or be made, in such cases. The imposition of a period of limitation for the first time, without statutory amendment, through a notification, therefore could not prevail".....

5. Accordingly, I direct the Adjudicating Authority to complete the verification process within a period of 60 days from the date of receipt of copy of this order, if not done so far, and to disburse the refund immediately thereafter with interest as per Rules.

6. Thus, appeal is allowed. The appellant is entitled for consequential benefits in accordance with law.

(Order was dictated in the open Court)

-Sd/-

(ANIL CHOUDHARY)
Member(JUDICIAL)

patel/-

प्रमाणित प्रति / Certified True Copy

63/04/17
सहायक पंजीकार / 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

