FAX : 0532-2400149 REGISTERED / AD

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

Dated: 01/12/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71793-71802/2017-SM[BR] dated 24/11/2017

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/70032/2017	**Sharp Calchem Pvt Ltd** 6, Jagriti Enclave,vikas Marg Extension DELHI - 110092
2	C/70033/2017	**Sharp Calchem Pvt Ltd** 6, Jagriti Enclave,vikas Marg Extension DELHI - 110092
3	C/70034/2017	**Sharp Calchem Pvt Ltd** 6, Jagriti Enclave,vikas Marg Extension DELHI - 110092
4	C/70035/2017	**Sharp Calchem Pvt Ltd** 6, Jagriti Enclave,vikas Marg Extension DELHI - 110092
5	C/70036/2017	**Sharp Calchem Pvt Ltd** 6, Jagriti Enclave,vikas Marg Extension DELHI -110092

6 C/70037/2017 **Sharp Calchem Pvt Ltd**
6, Jagriti Enclave,vikas Marg
Extension
DELHI -110092

7 C/70038/2017 **Sharp Calchem Pvt Ltd**
6, Jagriti Enclave,vikas Marg
Extension
DELHI -110092

8 C/70039/2017 **Sharp Calchem Pvt Ltd**
6, Jagriti Enclave,vikas Marg
Extension
DELHI -110092

9 C/70040/2017 **Sharp Calchem Pvt Ltd**
6, Jagriti Enclave,vikas Marg
Extension
DELHI - 110092

10 C/70041/2017 **Sharp Calchem Pvt Ltd**
6, Jagriti Enclave,vikas Marg
Extension
DELHI -110092

Name and Address of
Respondent

11 C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA, (UP) -201307

12 C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA, (UP)- 201307

Contd - P/3

13 C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA,
UTTAR PRADESH-201307

14 C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA,
UTTAR PRADESH-201307

15 C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA,
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16 C.C. & C.E. & S.T.-Noida
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NOIDA,
UTTAR PRADESH-201307

Other Appellants and Respondents as per Annexure

Copy To

21 Advocate(s) / Consultant(s):

AMIT AWASTHI ADVOCATE
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RADHEY APARTMENT,
SWAROOP NAGAR,
KANPUR- 208002

Contd - 4.

22 Bar Association, CESTAT, Allahabad

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

24 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

25 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

26 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

27 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

28 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

29 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

30 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

31 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

32 C.D.R. 33 Office Copy 34 Second Folder Copy 35 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No. C/70032-70041/2017-CU[SM]

(Arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-432-441-16-17 dated 30/09/2016 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s Sharp Calchem Pvt. Ltd. **Appellant**

Vs.

Commissioner of Customs, Noida **Respondent**

Appearance:

Shri Vaibhav Dixit, (Advocate), for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing & Date of Decision : 24/11/2017

FINAL ORDER NO.71793-71802/2017

Per: Archana Wadhwa

All the appeals are being disposed of by a common order, as they are arising out of same impugned order passed by the Commissioner (Appeals).

2. After hearing both the sides, it is seen that the Appellate Authority has rejected the appeals on the point of time bar by observing that there was a delay of more than 300 days in filing the appeal before him and he has no jurisdiction to condone such a huge delay.

3. The issue is no more *res-integra* and stands settled by the Supreme Court's decision in the case of M/s. Singh Enterprises *Versus* Commissioner of Central Excise, Jamshedpur reported at 2008 (221) E.L.T. 163 (SC) laying down that the Commissioner (Appeals), being a creature of the Statute, has no power to act beyond the power confirmed

by the Act. As Section 35B empowers the Commissioner (Appeals) only to condone the delay of 30 days, he cannot condone the delay beyond the said period.

4. However, in the instant case, I find that the dispute relates to date of the Final Assessment Order and receipt of the same by the appellant. The appellants have contented that the Final Assessment Order was passed on 05/10/2015, whereas, Commissioner (Appeals) held otherwise. I find that the said issue relates to the factual position and was easily verifiable by the Commissioner (Appeals) from the concerned authorities. As such, instead of dismissing the assessee's claim of the Final Assessment Order having been passed on 05/10/2015, he could have verified the same fact from the concerned authorities. In as much as, the date of receipt has to be reconsidered by commissioner (Appeals), for which purpose the same is remanded to him. Needless to say that the appellant would be provided an opportunity to put forth their case.

5. Accordingly, all the appeals are allowed by way of remand.

(Dictated & Pronounced in Court)

Sd/-
(Archana Wadhawa)
Member(Judicial)

प्रमाणित प्रति/Certified True Copy
04/01/18
Asstt. Register
C.E.S.T.A.T.
38, M.G. MARG, ALLAHABAD-211001

Ansari