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

Dated: 27/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71148/2017-SM[BR] dated 03/04/2017

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/988/2010	**CENTURY PULP & PAPER** THE GENERAL MANAGER, LALKUAN, DISTT. NAINITAL.
		Name and Address of Respondent
2		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

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

KAPIL VAISH
2ND FLOOR, PART-A KRISHNA
JANKI PALACE, 35-C, RAMPUR
GARDEN, CIVIL LINES, **Bareilly, 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

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

Appeal No. ST/988/2010-ST[SM]

Arising out of Order-in-Appeal No. 123-ST/MRT-II/2010 dated 31.03.2010 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Kanpur.

M/s. Century Pulp & Paper ...APPELLANT

VERSUS

Commissioner, Central Excise, Meerut-II (now Hapur) ...RESPONDENT

APPEARANCE

Shri Kapil Vaish, C.A. for the assessee-appellant.
Shri Sandeep Kumar Singh, Dy. Commr. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 03. 04. 2017
FINAL ORDER NO.– 71148/2017

Per Mr. Anil Choudhary :

The issue in this appeal is as to which is the date of filing refund claim whether the initial date being 28/11/2007 or the date of re-filing i.e. 22/02/2008.

2. The brief facts as per the Order-in-Original are that the appellant is a manufacturer of paper. The appellant filed refund claim for an amount of Rs.1,38,301/- vide his letter in the prescribed form under

Notification No. 41/2007-ST, giving the prescribed details. In the Column 8 in the form, description of taxable services received by the exporter for use in export of goods, it is mentioned as per statement attached. In the attached statement; details of the service provider, the buyer in the foreign country with the country of export, invoice number, bill of lading number with date, railway freight paid to CONCOR along with Service Tax and details of terminal handling charges paid to shipping lines along with Service Tax paid are given showing total Service Tax paid Rs. 1,38,301/- during the period September, 2007. The said refund claim, as stated in the Order-in-Original, passed by the Assistant Commissioner, states that initially the claim was filed by way of a letter/form in their divisional office, without mentioning the name of office, authority to whom it is submitted. As the said form/letter does not bear any subject nor was any amount mentioned in the said letter/form which the party is claiming as refund, the Revenue was in dark as to what action is to be taken and accordingly vide their letter C. No.V(18)50/Rebate/CPP/2468-2469 dated 05.05.2008 returned to the appellant with directions to resubmit to the proper authority with full details so that necessary action can be taken. Accordingly, appellant resubmitted the refund claim under Notification No. 40/2007-ST for Rs. 1,38,301/- on 22nd February, 2008. The Assistant Commissioner observing that the refund claim is actually filed on 22nd February, 2008 and Notification No. 41/2007 dated 06/10/2007 was not in force during the period September, 2007 and the earlier Notification No. 40/2007 provided 60 days time for filing the refund claim at the end of the month and as such the same was held to be time barred. So far on the merits, the Assistant Commissioner in the discussions and findings portion has found the refund claim to be otherwise in order. Being aggrieved, the appellant preferred appeal before learned Commissioner (Appeals), who was pleased to reject the appeal observing that the appellant has not submitted any proof of the disputed letter as a claim for refund purportedly having been filed by him on 28/11/2007 as contrary to the finding of the Adjudicating Authority.

3. Being aggrieved the appellant is before this Tribunal.

4. Heard the parties.

5. Having considered the rival contentions I find that the learned counsel for the appellant has drawn my attention towards the copy of refund claim filed on 28/11/2007 which bears the seal of the receiving counter of the divisional office at Haldwani. I find that on the issue of limitation whether the original date or the re-filing date, it has been held by Hon'ble Delhi High Court in the case of Commissioner of Central Excise vs. Arya Exports and Industries 2005 (192) E.L.T. 89 (Del.) that refund claim is not to be denied merely on ground that the same was not filed in the prescribed form. If refund claim is not filed in the proper form or without necessary documents, Department can direct appellant or the assessee to file the same in proper form along with supporting documents. The date of filing claim is the date on which the claim was filed initially in the form not prescribed or without documents. Accordingly, I hold that the date of refund filing is 28/11/2007 and accordingly the refund has been filed within time. I also take notice of the fact that the Assistant Commissioner has held in

the Order-in-Original that the refund claim is otherwise admissible on merits. In this view of the matter, the appeal is allowed and the impugned order is set aside. I further direct the Adjudicating Authority to grant the refund within a period of 45 days from the date of receipt of a copy of this order along with interest as per Rules.

(Order was dictated in the open Court)

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

patel/-