FAX : 0532-2400149

REGISTERED / AD

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

To

Dated: 10/10/2017

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

Final Order No. A/71202/2017-SM[BR] dated 29/09/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/70725/2016	**Pepsico India Holdings Pvt Ltd** General Manager (legal), Level 6, Pioneer Square, Sector 62, Near Golf Course Extension Road, GURUGRAM HARYANA 211001
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

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

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO SALES,Above
the Office Of Blue Dart/DHL
Courier, COLVIN ROAD, LOHIA
MARG ALLAHABAD-211001

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, Opp ICICI Bank of Defence Colony 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. 2

APPEAL No. E/70725/2016-EX[SM]

(Arising out of Order-in-Appeal No. 93-CE/APPL-ALLD/LKO/2016 dated 03/02/2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Allahabad)

M/s Pepsico India Holdings Pvt. Ltd. **Appellant**

Vs.

C.C. & C.E. & S.T., Allahabad **Respondent**

Appearance:

Shri Atul Gupta, Advocate &
Shri Hrishikesh, Advocate, for Appellant
Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR),
for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 29/09/2017

FINAL ORDER NO. 71202/2017........

Per: Anil G. Shakkarwar

The issue to be decided in the present appeal is, whether the appellant was served with Order-in-Original No. MP (Dem-49/2008) 25 of 2010 dated 12/02/2010 passed by Additional Commissioner, Central Excise, Allahabad on 27/02/2012 or earlier than that.

2. Heard the ld. Counsel for the appellant, who has submitted that the ld. Commissioner (Appeals) passed Order-in-Appeal dated 23/07/2013 holding that the appeal filed by appellant against Order-in-Original dated

12/02/2010 was time barred. Being aggrieved by the said order, appellant preferred appeal before this Tribunal. This Tribunal decided the said appeal through Final Order No. A/50488/2014-SM[BR] dated 07/02/2014, wherein this Tribunal remanded the matter back to the ld. Commissioner (Appeals) finding that Principles of Natural Justice were not adhered ~~advised~~ to by the ld. Commissioner (Appeals). Through the said final order dated 07/02/2014 this Tribunal directed the ld. Commissioner (Appeals) to provide a copy of the relied upon report to the appellant and afford a reasonable opportunity of hearing to them. The ld. Counsel has submitted that the copy of letter dated 17/07/2013 submitted by Superintendent (Adjudication), Central Excise, Allahabad to Superintendent (Appeal), Central Excise & Service Tax, Allahabad was provided to them through letter dated 26/11/2015. Subsequently, the impugned Order-in-Appeal No. 93-CE/APPL-ALLD/LKO/2016 dated 03/02/2016 was passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Allahabad, wherein the ld. Commissioner (Appeals) has held that opportunity of hearing was given to the appellant on15/12/2015, 13/01/2016 & 29/01/2016 which was neither attended by the appellant nor there was any request for adjournment and that it was presumed that the appellants did not have to make any submissions on the issue. The ld. Commissioner (Appeals) through his Order-in-Appeal dated 03/02/2016 dismissed the appeal as time barred. The ld. Counsel has submitted that the wordings of the letter dated 17/07/2013 are as follows:-

> *"Please refer to your letter C. No. 27/CE/Appl/Alld/2012 dated 16/07/2013 on the above subject.*
>
> *On going through the case file and OIO No. MP (Dem-49/2008) 25 of 2010 dated 12/02/2010, it appears that the said OIO passed by the Additional Commissioner, Central Excise, Allahabad was dispatched on 16/02/2010 vide dispatch No. 3026-3031 dated 16/02/2010. Copy of the above OIO is enclosed for information please. The dispatched copy of the aforesaid OIO is not received back, as per record."*

He, further, submitted that that said communication does not establish that the said Order-in-Original 12/02/2010 was served on the appellant as provided by Section 37C of Central Excise Act, 1944 and that there was no evidence forthcoming ~~forthwith~~ establishing that copy of said Order-in-Original dated 12/02/2010 was acknowledged to have been received by the appellant. He, further, pleaded that they have received a copy of said Order-in-Original on 27/02/2012 and therefore the appeal filed by them before ld. Commissioner (Appeals) on 27/04/2012 was within the time of limitation.

3. Heard the ld. A. R. for Revenue, who has supported the impugned Order-in-Appeal dated 03/02/2016.

4. Having considered the rival contentions and on perusal of the communication dated 17/07/2013, I find that the said communication dated 17/07/2013 does not establish that the said Order-in-Original dated 12/02/2010 was served on the appellant as provided by provisions of Section 37C of the Central Excise Act, 1944 before 27/02/2017. I, therefore, hold that the said Order-in-Original dated 12/02/2010 was served on the appellant on 27/02/22012 and therefore appeal filed by appellant before ld. Commissioner (Appeals) on 27/04/2012 was within the time of limitation. I, therefore, set aside the impugned Order-in-Appeal dated 03/02/2016 and remand the matter back to the file of ld. Commissioner (Appeals) with a direction to decide appeal on merits. The appeal is allowed.

(Dictated & Pronounced in Court)

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

Ansari