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: 11/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70892-70893/2017-SM[BR] dated 04/09/2017

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/70080/2015	**Kribhco Shyam Fertilizers Ltd** Vill & Post Pipraula SHAHJAHANPUR UP
2	E/52618/2015	**Commissioner of CUSTOMS-Meerut-ii** OPPOSITE SHAHEED SMARAK, DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH
		Name and Address of Respondent
3		C.C.E. & S.T-Agra COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX113/4, SANJAY PLACE, AGRA U.P.-282002
4		Indian Farmers Cooperative Ltd Aoula Unit , Paul Poteu Nagar, P.o. Iffco Townehip,, BAREILY ,U.P243403

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

K.VAISH &CO
KRISHNA JANKI
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GARDEN,BAREILLY
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201301

6 Bar Association, CESTAT, Allahabad

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

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

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

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

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

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

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

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

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

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad – 211 001

COURT NO. II

DATE OF HEARING : 04/09/2017.
DATE OF DECISION : 04/09/2017.

Excise Appeal No. 52618 of 2015 (SM)

[Arising out of the Order-in-Appeal No. HPU/EXCUS/000/APPEALS-I/196/2014-15 dated 19/03/2015 passed by The Commissioner (Appeals), Central Excise Commissionerate, Hapur.]

CCE, Meerut – II Appellant

Versus

M/s Indian Farmers Cooperative Ltd. Respondent

Appearance

Shri Pradeep Kumar Dubey, Authorized Representative (DR) – for the Appellant.

Shri Kapil Vaish, C.A. – for the Respondent.

Service Tax Appeal No. 70080 of 2015 (SM)

[Arising out of the Order-in-Appeal No. 289/ST/APPL-AGRA/LKO/2015 dated 30/07/2015 passed by The Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow.]

M/s Kribhco Shyam Fertilizers Ltd. Appellant

Versus

CCE, Agra Respondent

Appearance

Shri Kapil Vaish, C.A. – for the Appellant.

Shri Pradeep Kumar Dubey, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No. 70892-70893/2017 Dated : 04/09/2017

Per. Ashok Jindal :-

As the issue involved in both the appeals are common, therefore, both the appeals are taken up together for disposal.

2. The brief facts of the case are that the assessee are manufacturer of fertilizer and to manufacture fertilizer they received natural gas from Gas Authority of India Ltd. (GAIL). The said gas is transported through pipeline and on the transportation of the gas through pipeline, GAIL is charging transportation charges from the assessee. As per the agreement between the parties, minimum transportation charges are to be paid on if the certain quantity of gas has not been transported. The charges were paid. Later on, the charges of transportation were reduced and charges of transportation post clearance were also credited in the account of assessee by GAIL but the service tax paid by the assessee was not returned to the assessee, therefore, the assessee filed refund claim of service tax borne by them. The refund claims were rejected by the Adjudicating Authority. On the appeal, in the case of Indian Farmers, the refund claim was allowed by the learned Commissioner (Appeals) but in the case of M/s Kribhco Shyam Fertilizers Ltd. the learned Commissioner held that the relevant date for refund claim in the date of payment of service tax initially by the assessee therefore, the refund claim

was rejected. Aggrieved from the impugned order, all the parties are in appeal.

3. Heard the parties.

4. After hearing the parties, the issue arose before me in the facts and circumstances of the case what is the relevant date in Section 11 (B) of Central Excise Act, 1994? Admittedly the refund claim were arose on price reduction by GAIL and the date on which charges of transportation post clearance were reduced is the relevant date, from the said date, the issue of refund of service tax arose. It is an admitted fact that all the refund claims have been filed by the assessee within one year from the date of reduction of transportation charge by GAIL. As the refund claims have been filed by the assessee within one year from the date of reduction of transportation charges by GAIL, therefore, I hold that refund claims were filed by the assessee's were within time in terms of Section 11B of the Central Excise Act, 1944. Therefore, I do not find any infirmity in the impugned order in the case of M/s Indian Farmers Cooperative Ltd., therefore appeal filed by the Revenue is dismissed.

5. In the case of M/s Kribhco Shyam Fertilizers Ltd. I find that as relevant date is the date of reduction of price by GAIL of transportation of gas and the refund claim was filed by the appellant within time, therefore, impugned order deserves no merit, hence, the same is set aside. The appeal filed by the assessee is allowed.

Ashok Jindal

6. In these terms, the appeal filed by the Revenue is dismissed and the appeal filed by the appellant is allowed.

(Dictated and pronounced in open court.)

Sd/-

(Ashok Jindal)

PK **Member(Judicial)**