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

Dated: 02/01/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70024/2018-SM[BR] dated 01/01/2018

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/70124/2017	**Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida** C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH 201307
		Name and Address of Respondent
2		Kiwi Technologies India Pvt Ltd B-9,Sector-3,, NOIDA ,UP

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

Kartikeya Narain
C/O S.C.Kamra & Co,Advocates & Solicitors,21 b/1/17,tashkand Marg,Civil Lines,Allahabad,U.P.

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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. ST/70124/2017-ST[SM]

(Arising out of Order-in-Appeal No. NOI/SVTAX/000/APPL-I/237/2016-17 dated 24/11/2016 passed by Commissioner of Central Excise (Appeals-I), Meerut)

Commissioner of Service Tax, Noida **Appellant**

Vs.

M/s Kiwi Technologies India Pvt. Ltd. **Respondent**

Appearance:

Shri Pawan Kumar Singh, Superintendent (AR), for Appellant
Shri Kartikeya Narain, Advocate, for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 10/11/2017

FINAL ORDER NO. 70024/2018

Per: Anil G. Shakkarwar

The present appeal is field by Revenue is arising out of Order-in-Appeal No. NOI/SVTAX/000/APPL-I/237/2016-17 dated 24/11/2016 passed by Commissioner of Central Excise (Appeals-I), Meerut.

2. The brief facts of the case are that respondent filed a claim for refund amounting to Rs.2,62,907/- on 26/08/2015 under Rule 5 of the Cenvat Credit Rules, 2004. The provisions of Notification No. 27/2012-CE(NT) dated 18/06/2012 required to debit the amount of refund on the date of filing

the refund, however, respondent debited the said amount on 10/09/2015 before the Original Authority ordered sanction of refund to them where the respondent were sanctioned the refund of Rs.6,948/- through Order-in-Original dated 12/10/2015. Feeling aggrieved by the said order, the Revenue preferred appeal before Commissioner (Appeals), the ld. Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal dated 24/11/2016, wherein ld. Commissioner (Appeals) has held that the respondent complied with the requirements of said Notification No. 27/2012-CE(NT) dated 18/06/2012 *suo-motu* before processing of the refund claim and therefore relying on precedent ruling by Hon'ble High Court of Madras in the case of Ford India Pvt. *Versus* Commissioner of Central Excise reported at 2011 (272) E.L.T. 353 (Madras), Commissioner (Appeals) dismissed the appeal filed by Revenue. Feeling aggrieved by the said order, the Revenue preferred present appeal before this Tribunal.

3. Heard the contentions of both the parties and perused the facts on record.

4. Having gone through the facts on record, I find that the short question to be decided is, whether refund can be granted to the respondent, when they have debited the amount not on the dated of filing of refund claim but on a later date. It is seen that the condition prescribed in the said notification having met, although on a later date the failure to

to debit on the date of filing the refund is not such a lapse that it would debar the respondent from the refund. This issue was decided by precedent decision of this Tribunal in the case of Sandoz Pvt. Ltd. *Versus* Commissioner of Central Excise, Belapur reported at 2015 (325) E.L.T. 387 (Tri. – Mumbai). Following the said precedent decision of this Tribunal, I dismiss the appeal filed by Revenue.

(Dictated & Pronounced in Court)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

प्रमाणित प्रतिलिपि/Certified True Copy
01/02/18
सहायक पंजीकार/Asstt. Registrar
सी.ई.एस.टी.ए.टी.
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001

Ansari