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: 22/11/2017

To

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

Final Order No. A/71544/2017-SM[BR] dated 14/11/2017

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/70183/2016	**Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida** C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH 201307
		Name and Address of Respondent
2		Moser Baer Solar Ltd 66b,udyog Vihar,, GREATER NOIDA ,UP

Copy To

3 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

10 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

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

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

13 C.D.R. 14 Office Copy 15 Second Folder Copy 16 Guard File

Asstt. Registrar

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

APPEAL No.ST/70183/2016-ST[SM]

(Arising out of Order-in-Appeal No.NOI/SVTAX/000/APPEALS-I/298/2015-16 dated 21/10/2015 passed by Commissioner of Central Excise & Service Tax, Noida)

C.C. & C.E. & S.T.- Noida — **Appellant**

Vs.

Moser Baer Solar Ltd. — **Respondent**

Appearance:

Shri Pawan Kumar Singh — for Appellant
Absent — for Respondent

CORAM:

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

प्रमाणित प्रति/Certified True Copy

Date of Hearing : 14/11/2017
Date of Decision : 14/11/2017

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण/C.E.S.T.A.T.
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M.G. MARG, ALLAHABAD-211001

FINAL ORDER NO-71544/2017.....

Per: Mrs. Archana Wadhwa:

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal. I have heard Shri Pawan Kumar Singh learned AR for the Revenue. Nobody appeared for the respondent.

2. After going through the impugned order I find that respondent is a unit located in SEZ and engaged in the manufacture of Solar Modules and Parts thereof. The issue relates to the refund claim filed by them in terms of Rule 5 of Canvet Credit Rules. Revenue sought to deny the said refund claim on the ground that ~~envisage~~ invoices AP on the basis of which the credit has been availed by the appellant are not proper inasmuch as various particulars are missing.

Accordingly, after issuance of show cause notice, refund stands rejected by the original Adjudicating Authority. On appeal against the above order Commissioner (Appeals) held in favour of the assessee by observing as under:-

> *"I find that in the instant case, there is no dispute about appellant being located in Special Economic Zone. Neither is there any dispute about receipt of specified services in the appellant's SEZ unit, their use in authorized operations, payment of service tax and non-taking of canvat cridt of the service tax paid by the appellant. Thus, the conditions stipulated in para 2 of the said notification no. 40/2012-ST have been satisfied by the appellant. It is seen that para 3 of the said notification pertains to procedural aspect and as already discussed above, information contained in invoices of the foreign service providers along with that of the challans and bank debit/remittance advices satisfy the requirement of para 3 (f) (ii) of the said notification no. 20/2012-ST read with Rule 4A of Service Tax Rules, 1994. Therefore, once it is satisfied primarily that the clamant squarely falls within the exemption zone, rejection of refund claim on procedural ground does not appear to be proper. It is more so when it is observed that granting incentives like refund/rebate to the exporters is a benefit provided by the government to encourage exports with the objective that goods/services which are exported from India should be relieved of domestic taxes/duties in order to promote export of domestic products and to make them internationally competitive. In essence, taxes should not be exported and hence substantive benefit should not be denied."*

3. Revenue in their memo of appeal have not rebutted the above findings of Commissioner (Appeals). The ~~appellant~~ appellate authority has rightly observed that if the credit was otherwise available to the assessee

with consequent refund, the procedural violations should not be adopted as ground for denial of the substantive benefit. As such I find no infirmity in the above views of Commissioner (Appeals). Accordingly, Revenue's appeal is rejected.

(Dictated and pronounced in Court)

Sd/-
(Archana Wadhawa)
Member(Judicial)

GS

प्रमाणित प्रति/Certified True Copy
07/12/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/C.E.S.T.A.T.
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG,ALLAHABAD-211001