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: 02/01/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70023/2018-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/70875/2016	**Kiwi Technologies India Pvt Ltd** B-9,sector-3 NOIDA UP 201301
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH-250005

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

Kartikeya Narain
21B/1/17, Ground Floor, Thashkand Marg, Civil Lines, 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 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/70875/2016-ST[SM]

(Arising out of Order-in-Appeal No. NOI/SVTAX/000/APPEALS-I/34/2015-16 dated 25/04/2016 passed by Commissioner of Central Excise (Appeals-I), Meerut)

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

Vs.

Commissioner of Central Excise & Service Tax, Meerut-I **Respondent**

Appearance:

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

CORAM:

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

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

FINAL ORDER NO. 70023/2018

Per: Anil G. Shakkarwar

The present appeal is arising out of Order-in-Appeal No. NOI/SVTAX/000/APPEALS-I/34/2015-16 dated 25/04/2016 passed by Commissioner of Central Excise (Appeals-I), Meerut.

2. The brief facts of the case are that the appellants on 27/11/2014 file a refund claim amounting to Rs.2,89,060/- in respect of unutilized Cenvat credit availed during the period from October, 2013 to December, 2013 under Rule 5 of the Cenvat Credit Rules, 2004, read as the Notification No. 27/2012-CE(NT) dated 18/06/2012. On scrutiny of the said

claim, certain discrepancies were noticed. Therefore, the appellant were issued with a Show Cause Notice dated 12/05/2015. The said Show Cause Notice was adjudicated through Order-in-Original No. 41/R/STD-I/2015-16 dated 09/06/2015 wherein at Sub-para (i) of Para 6 of the said Order-in-Original, the Original Authority has held that the said claim was filed on 27/11/2014 and the same was well within the time limit of one year from the end of the relevant quarter as prescribed in the said notification read with Section 11B of the Central Excise Act, 1944. Further, on account of other discrepancies, the refund was rejected. Feeling aggrieved by the said order, the appellant preferred appeal against the said order, Order-in-Original dated 09/06/2015, which was decided through impugned Order-in-Appeal dated 25/04/2016, wherein ld. Commissioner (Appeals) in Para 5.6 gave a direction to the Original Authority to see data and documents from the appellant and decide the quantum of refund in accordance with provision of law. Further, in Para 5.7, the ld. Commissioner (Appeals) has decided and directed how time bar should be examined. Feeling aggrieved by the said order, the appellant preferred present appeal before this Tribunal.

3. Heard the ld. Counsel for the appellant, who has submitted that they had filed appeal before ld. Commissioner (Appeals) and that the Original Authority had found that the instant application for refund was within limitation of time

and the question of limitation was not raised before the ld. Commissioner (Appeals). Further, the directions of Commissioner (Appeals) in Para 5.7 are against the appellant and in violation of proviso to Sub-section (4) of Section 85 of the Finance Act, 1994 since the he said order against the interest of appellant was passed without giving them a reasonable opportunity of showing cause. He has, therefore, requested/prayed for setting aside the said part of the impugned Order-in-Appeal.

4. Heard the ld. A. R. for Revenue, who has supported the impugned Order-in-Appeal dated 25/04/2016.

5. Having considered the rival contentions and on perusal of the facts on record, I find that it is provided under Sub-section (5) of Section 85 of the Finance Act, 1994, that Commissioner (Appeals) has to follow same procedure as provided under Section ~~35(A)~~ 35A of Central Excise, 1944. I also find that proviso to Sub-section (3) of Section ~~35(A)~~ 35A of the Central Excise Act, 1944 provides that if the amount of refund get reduced by any order passed by Commissioner (Appeals), which is against the interest of appellant then appellant has to be given opportunity to present his case against proposed order. I find that said provisions were not followed by ld. Commissioner (Appeals) while passing order in Para 5.7 of impugned Order-in-Appeal dated 25/04/2016. I, therefore, without interfering with any other aspect of impugned Order-in-Appeal remand the matter back to the file

of ld. Commissioner (Appeals) with a direction to give an opportunity to the appellant to present their case, in respect of the proposal which is dealt with in said Para 5.7 of impugned Order-in-Appeal. With these directions, I remand the matter back to the file of ld. Commissioner (Appeals) by setting aside the impugned Order-in-Appeal. In above terms, the appeal is allowed by way of remand.

(Dictated & Pronounced in Court)

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

Ansari

प्रमाणित प्रति/Certified True Copy
01/02/18
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