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: 15/02/2018

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

Final Order No. ST/A/70296-70298/2018-CU[DB] dated 01/02/2018

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/1682/2010	**ISGEC JOHN THOMPSON** (A Unit Of the The Saraswati Industrial Syndicate Ltd) A-4, Sector-24, Noida.
2	ST/1683/2010	**ISGEC JOHN THOMPSON** (A Unit of The Saraswati Industrial Syndicate Ltd) A-4, Sector-24, Noida.
3	ST/1823/2010	**JSGEC JOHN THOMPSON** (A Unit of the Saraswati Industrial Syndicate Ltd) A-4, Sector-24, Noida.
		Name and Address of Respondent
4		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
5		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
6		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Other Appellants and Respondents as per Annexure

Copy To

7Advocate(s) / Consultant(s):

Atul Gupta, (Advocate) ALD
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier, COLVIN ROAD, LOHIA MARG ALLAHABAD-211001

8 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

18 C.D.R. 19 Office Copy 20 Second Folder Copy 21 Guard File

Asstt. Registrar

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH: ALLAHABAD**

DIVISION BENCH

**Appeal No. ST/1682/2010-CU(DB),
ST/1683/2010-CU(DB),
ST/1823/2010-CU(DB)**

Dated of Hearing/decision: 17.4.2017

[Arising out of Order-in-Appeal No. 271-CE/APPL/NOIDA/2010 dated 31/8/2010 passed by Commissioner (Appeals), Customs & Central Excise, Noida]

ISGEC JOHN THOMPSON, Appellant

Vs.

C.C.E. Noida Respondent

Appearance:
Present for the Appellant: Shri Atul Gupta, Advocate
Present for the Respondent: Shri Sandeep Kumar Singh (Deputy Commissioner), AR

**Coram: Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)**

Final Order No. 70296-70298/2018

Per: Anil Choudhary

The Appellant is a company *inter-alia* engaged in the Business of export of sugar mill boilers. The Appellant is registered with Service Tax Authorities *interalia* under 'Erection, Commissioning or Installation Service' vide Service Tax Registration No. AAACT5540KST001 and is paying service tax and also filing ST-3 returns periodically. (Copy of the Service Tax Registration Certificate of the Appellant is enclosed as Annexure-2).

2. The Appellant received various services from service providers and used the same for exporting the boilers to its customers located outside India.

3. Notification No. 40/2007 S.T. dated 17.9.2007 & Notification No. 41/2007 dated 6.10.2007 granted service tax exemption to certain specified services received and used by the exporters for exporting the goods manufactured/traded by them. This exemption was available by way of refund of service tax paid by the exporters on services received and used by them for exporting its goods. The Appellant opted for availing exemption and claiming refund as per the aforesaid Notifications, for the following specified services received and used towards exporting the goods out of India:

a. Custom House Agent Service
b. Business Auxiliary Service – Commission Agent service
c. Services provided by Banks.

4. However the present appeals relate to only Business Auxiliary Service i.e. Commission Agent Service. The details of dispute in these appeals, is as follows:-

Appeal	Period in dispute/export	Date of filing of refund application	Order-in-Appeal	Amount	Period when Commission remitted	Date of payment of Service Tax on Commission
ST/1682/2010	Oct, 2008 to Dec,2008	22.06.2009	271-CE/APPL/NOIDA/2010 dated 31.08.2010	INR 4,45,155	5^{th} Dec. 2008	22.12.2008
ST/1683/2010	Jan., 2009 to March, 2009	29.09.2009	270-CE/APPL/NOIDA/2010 DATED 31.08.2010	INR 24,29,851	Jan-March, 2009	5.03.2009 & 31.03.2009
ST/1823/2010	April, 2009 to June, 2009	24.12.2009	294-ST/APPL/NOIDA/2010 dated 24.09.2010	INR 26,52,215	May, 2009	5,06,2009

5. The refund claims were rejected on the ground that the claims were filed after a period of six months from the end of the relevant quarter during which the goods were exported, by the respective order-in-original. The appeals filed by the appellants were rejected by the Commissioner (Appeals) vide the order-in-appeals mentioned above in the table.

6. However from the above table it is apparent that the refund claims were filed within six months from the end of the relevant quarter in which payment of the service tax on commission paid in respect of exported goods. The refund claim cannot be filed before the date on which service tax were remitted. We find that the issue of time bar in this appeal is no longer *res integra* and is decided by this tribunal in the matter of CCE, Kanpur Vs. Pacific Leather Finishers reported at 2016 (43) S.T.R. 273 (Tri.-All.) the relevant portion of which is reproduced is below:-

> "Having considered the rival contentions, we find that the issue of time bar in this appeal is no longer res integra, and is decided by the Hon'ble Delhi High Court in the case of Sony India Ltd. – 2014 (304) E.L.T. 660 (Del), wherein the Hon'ble High Court has held that the limitation cannot start to run unless right to receive a claim or refund crystallized. In the present case, the right to claim/refund under Notification No. 41/2007-S.T. crystallized only when the service tax was deposited in October, 2008. Thus, the refund claim was filed within six months on 30.3.2009. Accordingly, we hold that the refund claim is within time. In view of the above findings, we dismiss the appeal of the Revenue and confirm the order-in-appeal. The respondent assessee will be entitled to consequential benefit, if any, in accordance with law."

In view of the above findings we allow the appeals and set aside the orders impugned to the extent for the amount challenged in these appeals. The appellant will be entitled to refunds along with interest in accordance with law.

(Dictated and pronounced in the open Court)

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

प्रमाणित प्रति/Certified True Copy
27/02/18
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

(K. Gupta)