

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH**

Dated: 09/03/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/50530/2015-CU[DB] dated 19/02/2015

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(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/420/2009	KLA INDIA PUBLIC LTD Door No 3, Galla Mandi Rudrapur, Distt- Udham Singh Nagar(uttarakhand)

Name and Address of
Respondent

2	-C.C.E. MEERUT I Excise Chowk, Opposite Choudhary Charan Singh University Mangal Panday Nagar, Meerut - 250005.
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Copy To

3 Advocate(s) / Consultant(s):

S. K. Pahwa
Marwah & Pahwa, 45,
Aradhana Sector 13, R. K.
Puram,
New Delhi
Delhi
110066

4 Additional Party's Name & Address :

5 Bar Association, CESTAT, Delhi

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

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

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

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

10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.**

**DIVISION BENCH
Court-I**

ST/420/2009-CU(DB)

Date of Hearing: 19/02/2015

M/s KLA India Public Ltd

Appellant

Vs.

C.C.E. Meerut-I

Respondent

Appearance:

Present for the Appellant: Shri R.L. Thapaliyal, Advocate

Present for the Respondent: Shri R.K. Mishra, DR

**Coram: Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr.R.K.Singh, Member (Technical)**

Final **ORDER NO. 50530/2015**

PER: R.K.SINGH

Appeal is filed against Order-In-Appeal No.136-ST/MRT-II/2009 dated 27.02.2009 which upheld the Order-In-Original dated 17.7.2008 in terms of which the appellants' refund claim for Rs.6,84,152.69 was rejected.

2. The facts, briefly stated, are as under:

The appellants filed a refund claim on 16.6.2008 for claiming refund of the service tax paid on services used for export of goods in terms of Notification No. 41/2007-ST dated 06.10.2007. Under the said exemption notification, claim for refund was to be filed on a

quarterly basis within sixty days from the end of the relevant quarter during which the said goods were exported. The Adjudicating Authority held that the claim pertained to the period 01.10.2007 to 31.12.2007 and therefore the last date for filing refund claim was 29.2.2008 whereas the refund application was received on 16.6.2008. Therefore the claim was held to be time-barred and rejected. In there appeal, the appellants have contended that they had actually filed their claim on 28.2.2008 which was well within the time limit prescribed under the said notification. They contended that the claim filed on 16.6.2008 was actually a re-submission made after rectification of deficiencies in response to the letter of the Assistant Commissioner dated 22.5.2008 and therefore the date of filing the claim is to be reckoned to be 28.2.2008 which makes their claim as having been filed within the prescribed time limit. They cited several judgments to the effect that when the original refund claim was filed within time and proper claim in prescribed format was filed after direction from the department beyond the prescribed time limit, the date on which the claim was initially filed is to be considered for the purpose of limitation, as had been held by Tribunal in the cases of Commissioner of Central Excise, Bolpur Vs. Bhandiguri Tea Estate 2001 (134) ELT 116 (Tri.-Kolkata), Goodyear India Ltd. Vs. Commissioner of Customs, New Delhi 2002 (150) ELT 331 (Tri.-Del.) and Super Spinning Mills Ltd. Vs. Commissioner of Central Excise, Coimbatore 2007 (219) ELT 958 (Tri.-Chennai).

3. We have considered the contention of the appellants. There is no doubt that several judgements of CESTAT as cited above have held that the time limit is to be computed with reference to the date on which refund /rebate claim was initially filed and not from the date on which refund/rebate claim was re-submitted after removing defect. In the present case, we have perused the application which they had filed on 28.2.2008. In that application they have not even mentioned the amount of refund which they sought to claim. That application also does not contain the classification of various input (taxable) services in respect of which the refund was claimed. The claim was also not accompanied with any documents showing payment of service tax and other documents required to be enclosed alongwith with the refund claim as per the condition laid down under the said notification. As per Notification No. 41/2007-ST dated 06.10.2007, the refund claim was required to be accompanied with the documents "evidencing export of goods, payment of Service Tax on the specified services for which claim for refund of Service Tax paid is filed and copy of written agreement entered into by the exporter with the buyer of said goods."

It is thus evident that what was filed on 28.2.2008 can by no stretch of imagination be called a refund claim (defective or otherwise). In these circumstances ^{it} ~~it~~ can not be held that the appellants had filed a "refund claim" (even a defective one) on 28.2.2008 and ^{that} ~~what~~ they did on 16.6.2008 was to re-file it after removal of defects. Thus it has to be held that the appellants filed

the refund claim for the first time only on 16.6.2008 which is clearly beyond the prescribed time limit.

4. In the light of the analysis above, we find no infirmity in the impugned order. The appeal is dismissed.



(Justice G. Raghuram)
President



(R.K. Singh)
Member (Technical)

K. Gupta