

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

Dated: 19/01/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/53910/2015-CU[DB] dated 04/12/2015

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.


Deputy/Asstt. Registrar (CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/870/2009	DSS IMAGE TECH (P) LTD P-39, Ist Floor, South Extension Part-ii, N Delhi.

	Name and Address of Respondent
2	-C.S.T. DELHI 17-B, I.P. Estate, IAEA House, New Delhi.

Copy To

3 Advocate(s) / Consultant(s):

R. Krishnan
297-E, Pocket-II, Phase-I,
Mayur Vihar,
Delhi
110091

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

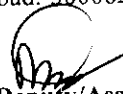
11 LAWCRUX Advisors Pvt. Ltd., LAW House, I-8, Sector-10, Faridabad 121003 (Haryana)

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

15 C.D.R. 16 Office Copy 17 Guard File

 19/01/16
Deputy/Asstt. Registrar (CUSTOMS Appeal Branch)

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**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi - 110 066.**

Date of Hearing/Order : 4.12.2015

Appeal No. ST/870/2009-CU(DB)

(Arising out of Order-in-Appeal No. 73/ST/DSS/2009 dated 27.8.2009 passed by the Commissioner (Appeals), Central Excise, New Delhi)

For Approval & Signature :

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

DSS Image Tech (P) Ltd.

Appellant

Vs.

CST, New Delhi

Respondent

Appearance

Shri R. Krishnan, Advocate

- for the appellant

Shri Ranjan Khanna, D.R.

- for the respondent

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

Final Order No. 53910/2015

Per R.K. Singh:

Appeal is filed against order in appeal dated 27.8.2009 which upheld the order in original dated 28.1.2008 in terms of which rebate claim of Rs. 13,59,338/- was rejected.

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2. The appellant had filed rebate claim in terms of Notification No. 11/2005- ST dated 19.5.2005 issued under Rule 5 of Export Service Rules 2005. The period covered for the rebate was August 2005 to January 2006 and the application for refund was filed on 29.6.2007. The primary adjudicating authority held that as the rebate application was filed after one year from the date of payment of service tax, the rebate claim was time-barred.

3. The appellant has contended that the rebate was claimed under Rule 5 of Export Service Rules read with Notification No. 11/2005 - ST and in that notification there was no limitation period prescribed for filing rebate claim and therefore its claim cannot be rejected as time-barred. It cited the judgement of Madras High Court in the case of *Dy. Commissioner of C. Excise, Chennai Vs. Dorcas Market Makers Pv. Ltd.* - 2015 (321) ELT 45 (Madras) and Punjab & Haryana High Court in the case of *JSL Lifestyle limited Vs. Union of India* - 2015 (62) Taxmann.com 46 (Punjab and Haryana).

4. Ld. DR contended that even in the absence of time-limit in the concerned notification time-limit of one year applicable to refunds/rebates as per Section 11B of Central Excise Act, 1994 made applicable to service tax matters vide Section 83 of Finance Act, 1994



will be applicable and therefore the rebate was rightly rejected as time-barred.

5. We have considered the contentions of both sides. We find that in terms of Rule 5 of Export of Service Rules, 2005, the rebate claim is only subject to such conditions or limitations and fulfilment of such procedure as may be specified in the notification. In the concerned Notification No. 11/2005 – ST there was no time-limit prescribed during the relevant period. A combined reading of Rule 5 of Export of Service Rules, 2005 and Notification 11/2005 –ST makes it clear that the rebate scheme under the said rules is a self-contained scheme and it nowhere invites the condition of one year for filing the application for rebate. Madras High Court in the case of ***Dorcas Market Makers Pvt. Ltd.*** (supra) held that rebate of excise duty in terms of Rule 18 of Central Excise Rules, 2002 sanctioned in terms of Notification No. 19/2004 – CE dated 6.9.2004 cannot be rejected on the ground of time-bar as the said notification did not contain any time-limit for claiming rebate. We find that Rule 18 of Central Excise Rules 2002 is essentially pari materia Rule 5 of the Export of Service Rules and Notification No. 19/2004 –CE dated 6.9.2004 also did not contain any time-limit as was the case in respect of Notification No. 11/2005 – ST. Thus the ratio of the Madras High Court judgement in the case of ***Dorcas Market Makers Pvt. Ltd.*** is squarely applicable to the present case. Indeed similar



view has been held by Punjab Haryana High Court in the case of *JSL Lifestyle Ltd.* (supra) and also by Delhi High Court in the case of Sony India Pvt. Ltd. Vs. CC, New Delhi - 2014 (304) ELT 660 (Delhi).

6. In the light of the foregoing analysis, we find that the rejection of the appellants' rebate claim on the ground of time-bar is not sustainable. Accordingly, we set-aside the impugned order and allow the appeal with consequential relief.



(Justice G. Raghuram)
President



(R.K. Singh)
Member (Technical)

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