FAX : 011-26108426 **REGISTERED / AD**

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

Dated: **27/03/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/51181/2014-CU[DB]** dated **13/03/2014**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	C/730/2008	**KWALITY METAL WORKS,** TABELA , HATHRAS (U.P.)
		Name and Address of Respondent
2	C/730/2008	**C.C.(PREVENTIVE)** New Custom House, Near I.G.I. Airport, new Delhi 110037.

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

BIPIN GARG
B-1/1289, A - VASANT KUNJ,
NEW DELHI

4 Bar Association, CESTAT, Delhi

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

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

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

13 C.D.R. **14** Office Copy **15** 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 No.2

Date of hearing/Decision: 13.03.2014

Appeal No.C/730/2008

(Arising out of OIA No.CC(A)Cus/278/2008 dated 25.8.2008 passed by CC C(Appeals), New Custom House, New Delhi)

M/s.Kwality Metal Works — **Appellant**

Vs.

CC, New Delhi — **Respondent**

Present for the Appellant: Shri Bipin Garg, Advocate
Present for the Respondent: Ms.Rajana Jha, AR

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr.Manmohan Singh, Technical Member

FINAL ORDER No. 51181/2014

PER: D.N.PANDA

Refund in the present appeal arose by virtue of order passed by the Tribunal in Appeal No.C/971/89-A dated 13.6.1996. Upon arise of such refund, department has not entertained the refund claim. When that was not entertained, the appellant made refund claim on 1.8.2005 i.e. after 9 years of the order of the Tribunal. That application was held to be time barred and refund was denied by the Commissioner (Appeals).

2. Appellant submits that once consequence of order of the Tribunal was to be given effect, Revenue should have acted voluntarily to grant refund. There was no provision in

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the law to make application for refund in the year 1996. Only from 11.5.2007 fourth proviso was introduced to sub-section (1) of section 27 of Customs Act, 1962 to prescribe limitation to entertain refund claim. Therefore, appellant cannot be deprived of refund.

3. Revenue on the other hand submits that application for refund is necessary and appellant should have filed application alongwith necessary particulars within six months of the order of the Tribunal.

4. Heard both sides and also examined Fourth proviso to sub-section (1) of section 27 of Customs Act, 1962.

5. Prior to introduction of fourth proviso to sub-section (1) of section 27 of Customs Act, 1962 with effect from 11.5.2007, there was no limitation prescribed for making refund claim. In absence of statutory provision, it is difficult to appreciate the contention of Revenue that appellant should have made application for refund within six months from the date of receipt of the order from the Tribunal. It can be said that application is made before 2007 amendment and limitation provision cannot be considered to be retrospective in nature. Therefore, refund application needs to be considered in the light of law in force before 11.5.2007 and subject to test of unjust enrichment, if any, applicable and subject to the satisfaction of evidence if any on record entitling the appellant to refund. Refund claim shall be considered ~~accordingly~~ in accordance with law.

6. To carry out aforesaid direction, the matter is remanded back to the learned adjudicating authority to examine the evidence giving rise to refund subject to bar of unjust enrichment, if any applicable.

(Dictated & pronounced in the open court)

24.3.2014 24.3.2014

(MANMOHAN SINGH)
TECHNICAL MEMBER

(D.N.PANDA)
JUDICIAL MEMBER

mk