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: 20/10/2014

To

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

Final Order No. **ST/A/54017/2014-CU[DB]** dated **19/09/2014**

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/835/2011	**C.C.E, Bhopal** Hoshangabad Road, 48, Administrative Area, Area Hills, Bhopal (M.P.) 462011
		Name and Address of Respondent
2		**ESSARIJEE CONSTRUCTION PVT. LTD.,** ESSARJEE HOUSE, Z-10 ZONE-1, M.P. NAGAR, BHOPAL (M.P.)

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

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/decision:19.09.2014

Service Tax Appeal No.835 of 2011-CU(DB)

[Arising out of Order-in-Appeal No.58/BPL/2011 dated 9.3.2011 passed by the Commissioner of Central Excise, Bhopal]

CC,CCE & CST, Bhopal — Appellant

Vs.

M/s.Essarijee Construction Pvt. Ltd. — Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

Appearance: Rep. by Shri Amresh Jain,DR for the appellant.
Rep. by none for the respondent.

CORAM: **Hon'ble Smt. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. 54017/2014../Dated:19/09/2014

Per Archana Wadhwa:

Being aggrieved with the order passed by the Commissioner (Appeals), Revenue has filed the present appeal.

2. We have heard ld. DR appearing for the Revenue. None appeared for the respondent.

3. The respondents were engaged for construction of the residential complex inasmuch as they did not satisfy the definition of the said category, they ~~have~~ already filed a refund claim on 30.05.2009 for the service tax paid by them during the period May, 2008 to Jan. 2009. Certain objections were raised by the jurisdictional Central Excise Authorities as regards the proper format, etc. for filing the refund claim. Accordingly, the respondent removed the defects and deficiencies and filed the claim in proper format on 6.1.2010 .

4. The lower authorities by adopting a view that the subsequent date of filing the refund claim on 6.1.2010 is the proper relevant date for the purpose of limitation, initiated proceedings against them for denial of refund claim on the ground of limitation. The proceedings so initiated resulted in passing of an order by the adjudicating authority denying the refund claim.

5. The said order was challenged before the Commissioner (Appeals), who observed that inasmuch as the assessee has initially filed its claim for refund of service tax on 13.05.2009, by way of addressing a letter to the Revenue, which was being adjudicated and subsequently, the refund was filed on 6.1.2010, the first date of filing the refund claim, though not in proper format has to be treated as the actual date of filing the refund. If the said date is adopted, the claim is well within the period. Accordingly, he allowed the appeal partly in respect of the period falling within the limitation.

6. Revenue's contention in the present appeal is that the subsequent date when the assessee filed the refund claim in a proper format should be taken as the relevant date.

7. Ld. DR submits that the letter dated 13.05.2009 was neither proper nor appropriate inasmuch as the same was not in the proper format and no documents evidencing any payment of service tax were attached with the same. It is only subsequently when objected by the Revenue, they filed a proper application. As

such, he submits that the appellate authority has wrongly extended the benefit of limitation to the assessee.

8. Having gone through the impugned order of the Commissioner (Appeals), we find that the facts are not disputed. Admittedly, the assessee filed the claim for the first time on 13.05.2009, which may not be in a proper format. The appellate authority has referred to various decisions of the Tribunal, in support of conclusion that the original date of filing the refund claim for inception "to be taken as the relevant date for the purpose of limitation". On defects pointed out by the department, subsequent date of filing the revised refund claim cannot be taken into consideration for deciding the limitation issue. The Commissioner (Appeals) has referred to the Tribunal's decisions in the case of **CST, New Delhi Vs. HMA Udyog Pvt. Ltd. reported in 2010 (20) STR 827 (Tribunal-Delhi), CCE, Delhi-I Vs. Arya Export & Industries – 2005 (192) ELT 89 (Delhi), IGP Engineers Pvt. Ltd. Vs. CC, Chennai – 2008 (232) ELT 0481 (Mad.)** and **Goodyear India Ltd. Vs. CC, New Delhi – 2002 (150) ELT 331 (Tribunal-Delhi.** Inasmuch as the issue is settled by the various referred decisions of the Tribunal, we find no infirmity in the view adopted by the Commissioner (Appeals). However, we make it clear that the refund claims would be subjected to the provisions of unjust enrichment.

9. Revenue's appeal is rejected.

[Operative portion already pronounced]

16/10/14
(Archana Wadhwa)
Member (Judicial)

16/10/14
(Rakesh Kumar)
Member (Technical)

ckp