**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA**
**EASTERN ZONAL BENCH: KOLKATA**

**Appeal Nos. E/177/2010 & E/75183/2014**

Arising out of Order-in-Appeal No. 35/DB/CE(A)/GHY/09 dated 17.12.2009 passed by the Commissioner, Customs & Central Excise, (Appeals), Guwahati and (ii) O/O No. 02/Commr./CE/GHY/13-14 dated 02.12.2013 Commissioner of Central Excise & Service Tax, Guwahati.

M/s. Panbari Tea Co. Ltd.

….Appellant(s)

**Vs.**

Commissioner of Central Excise, Dibrugarh

….Respondent(s)

Appearance:
Shri Devraj Sahoo, Advocate for the Appellant (s)
Shri S. Mukhopadhyay, Suptd. (AR) for the Respondent(s)

**CORAM:**
**HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL**
**HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)**

Date of Hearing/Decision: - 18.07.2018

ORDER No…FO/A/77212-77213/2018

**Per Bench:**

The present appeals have been filed against the Order-in-Appeal No. 35/DB/CE(A)/GHY/09 dated 17.12.2009 passed by the Commissioner, Customs & Central Excise (Appeals), Guwahati and (ii) O/O No. 02/Commr./CE/GHY/13-14 dated 02.12.2013 Commissioner of Central Excise & Service Tax, Guwahati.

2. In both the appeals, the issue is identical regarding the refund which was claimed after a period of 6 (six) years. The original authority has allowed the claim but the Commissioner (Appeals) has rejected the claim, which was up held by the Tribunal.

3. After hearing both sides and on perusal of records, it appears that in the case of Mcleod Russel India Ltd. and ors. Vs. Commissioner of Central Excise and Service Tax, in Civil Appeal No. 09/2017, the Hon'ble Guwahati High Court vide its order dated 20.02.2018 remanded the matter to the Tribunal for denovo adjudication regarding Appeal No. E/571/2007.

4. But fact remains that Hon' ble Guwahati High Court in the case of Vernerpur Tea Estate & Ors. Vs. Commissioner of Central Excise, Shiilong in Civil Appeal No. 11/2016 vide its order dated 20.02.2018 has decided the issue, where the Tribunal's order was set aside and claim of the assessee for refund after six years was allowed with the cost of Rs.1000/-

5. After perusal of records, it appears that the issue is identical where the refund claim was rejected being time barred by more than 6 (six) years. But in the case of Vernerpur Tea Estate & Ors. (Supra) the Hon' ble Guwahati High Court has condoned the delay and allowed the claim of the assessee with cost.

6. By following the ratio as laid down by the Hon'ble Jurisdictional High Court, we set aside the impugned orders and allow the claim of the appellants regarding refund.

7. In the result, both the appeals are allowed.

(Dictated and pronounced in the open court.)

**(Bijay Kumar)**
**Member (Technical)**

**(P. K. Choudhary)**
**Member (Technical)**

Tushar Kr.