IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/59421/2013-EX[SM]

(Arising out of Order-in-Appeal No. 86-87-CE/APPL/NOIDA/2013 dated 23/04/2013 passed by Commissioner of Central Excise & Service Tax (Appeals), Noida)

Commissioner of Central Excise, Noida	**Appellant**
Vs.	
M/s Dharampal Satyapal Ltd.	**Respondent**

<u>Appearance:</u>

Shri Sandeep Kumar Singh, Deputy Commissioner (AR)	for Appellant
Shri Kartikeya Narain, Advocate	for Respondent

<u>CORAM:</u>

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing	:	01/02/2018
Date of Decision	:	01/02/2018

FINAL ORDER NO.70392/2018

Per: Anil Choudhary

The present appeal filed by the Revenue is being disposed of by impugned Order-in-Appeal dated 23.04.2013.

2. As per the facts on record, brief facts of the case are that respondent filed their rebate claim under Rule 18 of the Central Excise Rules, 2002. The rebate claim was sanctioned but the amount of sanctioned rebate claim has been adjusted against the demand pending against

the respondent vide the adjudication order dated 19.12.2012. Aggrieved by the said order, respondent filed appeal before Commissioner (Appeals) who held that the amount cannot be adjusted, therefore, the order of appropriation was set aside. Hence, the present appeal by the Revenue.

3. We have heard both the sides duly represented by Shri Sandeep Kumar Singh, Deputy Commissioner (AR) for Appellant-Revenue and Shri Kartikeya Narain, Advocate for Respondent-assessee.

4. We note that an identical appeal of the revenue against the same impugned order stands rejected by this Tribunal vide its Final Order No.A/50244/2015-EX[SM] dated 22.01.2015. We also further note that the order confirming the demand against which the sanctioned refund claims was adjudicated, no longer survives and stands set aside by the Tribunal and the matter remanded vide Final Order No.70618-70624/2017 dated 13.06.2017. The effect of the remand leads to a situation as if there is no confirmed demand out-standing against the assessee, so as to be adjusted with the sanctioned refund claim against the same.

5. In view of the above, we find no infirmity in the impugned order of Commissioner (Appeals). Accordingly, the appeal filed by Revenue is rejected.

(Dictated in Court)

(Anil Choudhary)
Member (Judicial)

akp