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

APPEAL No. E/70019/2019-EX[SM]

(Arising out of Order-in-Appeal No.369/CE/Alld/2018 dated 29/10/2018 passed by Commissioner of CGST & Central Excise (Appeals), Allahabad)

M/s Kesarwani Zarda Bhandar **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Allahabad

Respondent

Appearance:

Shri S. P. Ojha, Consultant, for Appellant
Shri Gyanendra Kumar Tripathi, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 18/03/2019

FINAL ORDER NO....70655/2019

Per: Anil G. Shakkarwar

On hearing both the sides duly represented by Shri S. P. Ojha, ld. Consultant appearing on behalf of the appellant & Shri Gyanendra Kumar Tripathi, ld. Deputy Commissioner appearing on behalf of the Revenue, I note that the appellant had paid Central Excise duty and the said duty was confirmed at original and first appeal stage. On deciding the matter by this Tribunal through Final Order No. A/71511-71513 dated 13/11/2017, the said demand of Central Excise duty was held to be unsustainable. Therefore, refund of Central Excise duty arose, which was sanctioned by

Original Authority on 03/05/2018. The claim of the appellant for interest on the same was rejected by Original Authority against which appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) through impugned order has held in Para 4.4 as follows:-

> "**Para 4.4** Even otherwise, in this case, the appellant became eligible for the refund of the amount of Rs.5,54,810/- deposited on 24.01.2014 consequent upon the aforesaid Final Order dated 13.11.2017 of the Hon'ble Tribunal. Accordingly, in the light of clause (B) (ec) of the Explanation under Section 11B of the Act (which provides that *"relevant date" in case where duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, means the date of such judgment, decree, order or direction),* the appellant had applied for refund of the deposit of Rs.5,54,810/- on 08.01.2018.

2. The ld. Consultant contends that the observation of ld. Commissioner (Appeals) that the appellant had applied for refund on 08/01/2018 by referring to Para 11.2 of Appeal Paper Book, wherein it is stated that the refund was claimed on 07/02/2014.

3. On careful consideration of the facts on record, I note from Order-in-Original dated 25/06/2018 that appellant had

filed application for refund on 08/01/2018 enclosing therewith the Final Order No. A/71511-71513 dated 13/11/2017 passed by this Tribunal. Therefore, I do not find the contention of appellant that application for refund was filed on 07/02/2014 to be related to the refund of Central Excise duty arising out of said Final Order of this Tribunal dated 13/11/2017. Therefore, I do not find any infirmity in the impugned order and the same is upheld.

4. In above manner, the appeal is rejected.

(Dictated in Court)

-Sd/-

(Anil G. Shakkarwar)
Member (Technical)

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10/05/19
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Ansari