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

APPEAL No.ST/70512/2017-CU[DB]

(Arising out of Order-in-Appeal No.107-ST/APPL-ALLD/LKO/2017 dated 03/04/2017 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow)

M/s Om Agro Foods & Feeds Pvt. Ltd. **Appellant**

Vs.

Commissioner, Central Excise & Service Tax, Allahabad **Respondent**

Appearance:

Shri Kapil Vaish (C.A) for Appellant
Shri Rajeev Ranjan, Additional Commissioner (AR), for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing/ Decision : 16/01/2019

FINAL ORDER NO.**70140 / 2019**

Per: Anil G. Shakkarwar,

After hearing both the sides duly represented by learned Chartered Accountant, Shri Kapil Vaish on behalf of the appellant and learned A.R. Shri Rajeev Ranjan on behalf of the Revenue, we note that the learned Chartered Accountant has taken a plea that the service tax was paid by them for transportation of De-oiled Cakes and the same was allowed to be refunded to them by Original Authority. He, further, submits that Notification No. 25/2012-ST was amended by Notification No.3/2013 dated 01.03.2013 and with effect from

01.03.2013 exemption of service tax for transportation of Oil Cakes was allowed. We note that after the refund was allowed, the said order passed by Original Authority was challenged by Revenue before Commissioner (Appeals). The learned Commissioner (Appeals) had relied upon the ruling by Hon'ble Supreme Court in the case of M/s Agriculture Produce Marked Committee V/s Biotor Industries Ltd. & Anr. In Civil Appeal No.3130-3131 of 2008 that De-oiled Cake is a completely different product than Oil Cake. In view of such ruling, the learned Commissioner (Appeals) has held that the refund granted to the appellant was erroneous.

2. After hearing both the sides, we note that the exemption from service tax is allowed of transportation of Oil Cakes, whereas the goods transported by appellant were De-oiled cake and as per ruling of Hon'ble Supreme Court, the said two products are different. We, therefore, do not find any infirmity in the order passed by learned Commissioner (Appeals). We, therefore, uphold the same and reject the appeal.

(Pronounced & Dictated in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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