IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No.ST/70542/2016-CU[DB]

(Arising out of Order-in-Appeal No. 436/ST/APPL-LKO/LKO/2015 dated 10/11/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s Bayer Crop Science Ltd., **Appellant**

Vs.

Commissioner of Central Excise & S.T., Lucknow **Respondent**

<u>Appearance:</u>

Shri Tarun Chatterjee, Advocate &
Ms Binita Pandey, Company Secretary for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR), for Respondent

<u>CORAM:</u>

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

Date of Hearing : 20/02/2019
Date of Pronouncement : 09/04/2019

FINAL ORDER NO-**70761 / 2019**

Per: Anil G. Shakkarwar

Present appeal is arising out of Order-in-Appeal No. 436/ST/APPL-LKO/LKO/2015 dated 10/11/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow.

2. Brief facts of the case are that on 26.03.2014 appellant submitted application seeking refund of service tax of Rs.10,45,063/- claiming that their commission agent Shri

Adesh Agrawal of Bahraich paid Service Tax under the category of "Business Auxiliary Service" as commission agent for sale and distribution of Hybrid Seeds and that services relating to agriculture or agricultural produce are covered by 'Negative List' provided through Section 66D of the Finance Act, 1994 and therefore, the said service tax was not payable. The appellants were issued with a show cause notice dated 10.05.2014 for denial of the said refund claim. The said show cause notice was adjudicated through Order-in-Original dated 31.12.2014. The Original Adjudicating Authority has held that the Hybrid Seeds are not agricultural produce and therefore refund was not admissible. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). The same was decided through impugned Order-in-Appeal dated 10.11.2015. The learned Commissioner (Appeals) has relied upon the judgment of Hon'ble Andhra Pradesh High Court in the Writ Petition No.16733 of 2004 in the case of Proagro Seed Company Pvt. Ltd. wherein it was held that seeds developed and manufactured by the petitioners and sold as certified or labeled seeds are not subject to levy of market fee as those seeds could not be considered as agricultural produce. Accordingly, he upheld the said Order-in-Original dated 31.12.2014. Aggrieved by the said order, appellant is before this Tribunal.

3. After hearing both the sides and on perusal of records, we note that the appellant has not raised any grounds of appeal through the present appeal through which he has contested as to how the ruling by Hon'ble Andhra Pradesh High Court in Writ Petition No.16733 of 2004 is not applicable to the facts of the present case. We, therefore, do not find any infirmity in the impugned order.

4. We, therefore, reject the appeal filed by the appellant.

(Pronounced in Court on-09/04/2019)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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