FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 12/01/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70048-70049/2017-EX[DB] dated 09/01/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

	Application	Appeal	Name and Address of Appellant
1	E/, E/CROSS/157/2006	E/2266/2006	**Commissioner of CUSTOMS-Kanpur** 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH 208005
2		E/2267/2006	**Commissioner of CUSTOMS-Kanpur** 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH 208005
			Name and Address of Respondent
3			Shri Ashish Kapoor, Director M/s R.r. Perfumers Pvt. Ltd. Makrand Nagar, Kannauj, (U.P.)
4			M/s R. R. Perfumers Pvt. Ltd., Makrand Nager, Kannauj, (U.P.)

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Amit Awasthi
H-1, IST FLOOR, RADHEY
APPARTMENT,
PLOT NO. 7/116A,
SWAROOP NAGAR,
KANPUR,
UTTAR PRADESH
208002

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy ~~18 Guard File~~

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL No. E/2266 & 2267/2006-EX[DB] With
CROSS Application No. E/CRORSS/157/2006

(Arising out of Order-in-Appeal No. 38-39-CE/APPL/KNP/2006 dated 19/01/2006 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

Commissioner of Central Excise & Service Tax, Kanpur
Appellant

Vs.

M/s R. R. Perfumers Pvt. Ltd., Shri Ashish Kapoor, Director
Respondent

Appearance:

Shri Rajeev Ranjan, Joint Commissioner (AR). for Appellant
Shri A.K. Dixit, Advocate. for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 08/12/2016

FINAL ORDER NO. 70048-70049/2017

Per: Anil G. Shakkarwar

The present appeal is filed by Revenue challenging Order-in-Appeal No. 38-39-CE/APPL/KNP/2006 dated 19/01/2006, through which ld. Commissioner (Appeals), allowed payment of interest on delayed payment of refund.

2. The brief facts of the case are that that there was a seizure (Gandha Oil valued at Rs.22,75,000/-) at the Foreign Post Office in respect of consignment booked by respondent-assessee for export. During the proceedings respondent-assessee made a pre-deposit of Rs.10,00,000/-

towards Redemption Fine, which was paid through TR-6 Challan dated 16/04/1999. The matter was initially adjudicated and respondent-assessee preferred appeal before this Tribunal. This Tribunal through its Final Order No. A/660-662/1999-NB(DB) & 3/314/15/99-NB(DB) dated 09/08/1999, remanded the matter back for De-novo Adjudication. In the De-novo Adjudication Original Authority passed Order-in-Original No. 24/Commr./Adj/Seiz/1999 on 03/11/1999 It was passed by the Commissioner, Central Excise, Kanpur. As per said order dated 03/11/1999, Redemption Fine of Rs.10,00,000/- was appropriated. The respondent-assessee again approached this Tribunal which decided the matter through Final Order No. A/812-14/2000(NB)DB dated 11/09/2000, and remanded the matter again for De-novo Adjudication. Second time De-novo Adjudication resulted in passing of Order-in-Original No. 02/Commr./Cust/Adj/2003 dated10/07/2003, wherein the proceedings were dropped by Commissioner. The respondent-assessee requested for refund of Rs.10,00,000/-, appropriated as Redemption Fine. Through Order-in-Original No. 52/Refund/DC/K-III/2003 dated 23/12/2003 passed by Deputy Commissioner (Appeals), Central Excise, Division-III, refund of Rs.10,00,000/-, which was appropriated as Redemption Fine was allowed. The respondent-assessee preferred an appeal before Commissioner (Appeals) for seeking interest on refund. The said appeal was decided through Order-in-Appeal No. 38-39-CE/APPL/KNP/2006 dated 19/01/2006, wherein ld. Commissioner (Appeals) allowed payment of interest on Redemption Fine of Rs.10,00,000/-. Aggrieved by the said Order-in-Appeal, Revenue is before this Tribunal.

3. The ground of appeal preferred by Revenue is that the Redemption Fine cannot be treated as duty and therefore Section 27A of Customs Act, 1962, is not applicable to said refund.

4. Heard ld. D.R. who has supported the ground of appeal.

5. Heard ld. A.K. Dixit, for the respondent who pointed out that Cross Objection was also filed through Cross Objection No. E/CROSS/157/2006. The contention in the Cross Objection is that the ld. Commissioner (Appeals) has rightly allowed interest on delayed refund of Redemption Fine by relying on the judgment of the Hon'ble Allahabad High Court in the case of Hello Mineral Waters Pvt. Ltd. *Versus* Union of India reported at 2004 (174) E.L.T. 422.

6. Having considered the rival contentions & perusal of record and Section 27 Customs Act, 1962, we find that there is only one provision for refund of duty which is incorporated in Section 27 of the said Act. It is fact on the record that the ld. Assistant Commissioner has allowed the refund of Rs.10,00,000/-, which was appropriated as Redemption Fine through his order dated 23/12/2003. We understand that such order was issued under the powers vested under ld.

Deputy Commissioner under Section 27 of Customs Act, 1962. That being so the argument of the Revenue that provisions of Section 27A of Customs Act, 1962 are not applicable for delayed refund of Redemption Fine is contradictory to the order already passed by the ld. Deputy Commissioner, which was not challenged by Revenue. In view of the said case, we do not find any merit in the grounds of appeal filed by Revenue. Therefore, both the appeals filed by the Revenue are dismissed. Cross Objection also stand disposed.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
20.1.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001