IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 10/02/2017.
DATE OF DECISION : 10/02/2017.

Excise Appeal No. 527 of 2010

[Arising out of the Order-in-Appeal No. 251/CE/DLH/2009 dated 17/12/2009 passed by The Commissioner (Appeals), Central Excise, Delhi – I.]

CCE, Delhi – I   Appellant

Versus

M/s Alkarma   Respondent

Appearance

Shri R.K. Manjhi, Authorized Representative (DR) – for the appellant.

Shri Awdesh Choudhary, Advocate – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 50843/2017 Dated : 10/02/2017

Per. B. Ravichandran :-

The appeal by Revenue is against order-in-appeal dated 17/12/2009 of Commissioner (Appeals), Delhi – I. The said order set aside the rejection of refund claim by the Original Authority and allowed the relief prayed for by the respondent. The Revenue is aggrieved by that order and in the appeal it is stated that though the Hon'ble Supreme Court dismissed the appeal filed by the Revenue on 09/02/2009, the Department is contemplating to file a review petition against the said order of the Hon'ble Supreme Court. Hence, it was prayed that the refund claim filed by the party is premature.

2. The learned AR elaborated on the grounds of appeal by the Revenue. On the other hand the learned Counsel for the respondent narrated the brief background of the issue and stated that the refund claim now in dispute is, consequent to a favourable decision holding that the process undertaken by them does not amount to manufacture. The issue has reached finality after the Hon'ble Supreme Court dismissed the appeal filed by the Revenue against the order of the Tribunal in the respondent's own case, reported in **2010 (254) E.L.T. A45 (S.C.)**. Out of 9 show cause notices involving the same issue, the present appeal deals with refund claims relating to two notices which were not disposed of as at that time the decision of the Hon'ble Supreme Court was awaited. Since, the appeal by the Revenue has been dismissed by the Hon'ble Supreme Court there is no reason to hold back consequent relief available to the respondent.

3. We have heard both the sides and perused the appeal records. We note that the other show cause notices on the same issue have reached finality consequent to a decision in favour of the respondent and the claims for refund have been settled. These two claims were also settled, however, the Revenue

preferred appeal against such payment. We note the Tribunal in respondent's own case vide final order No. 52484-52485 of 2015 – EX (DB) dated 05/08/2015 held that the respondents are eligible for consequential relief and dismissed the similarly placed appeals by Revenue.

4. In view of the above factual position, we find no merit in appeal filed by the Revenue. Accordingly, the same is dismissed.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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