IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. E/51372/2017-EX[SM]

[Arising out of Order-In-Appeal No04(AK)CE/JPR/2017 dated 07.02.2017 passed by Commissioner (Appeals), Office of the Commissioner Customs & Central Excise (Appeals), Jaipur]

C.C.E. & S.T.- Jodhpur ...Appellant

Vs.

M/s. Dinesh Fragrance ...Respondent

Appearance:
Mr. K. Poddar, DR for the Appellant
Mr. O.P. Aggarwal, (Advocate) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision. 05.12.2017

Final Order No. 58241/2017

Per S. K. Mohanty:

Heard both sides.

2. In this case, the respondent had deposited the interest amount for late payment of duty by it. Subsequently, the refund application was filed, contending that the interest amount was wrongly deposited by the respondent. The original authority has rejected the refund application filed by the respondent. On appeal, the ld. Commissioner (Appeals) vide the impugned order, by placing reliance on the Final Order No. A/50163-50166/2016 dated 29.01.2016 of this Tribunal, passed in the case of M/s. Dinesh Tobacco Industries has allowed the appeal in favour of the

respondent, holding that the respondent is entitle for refund of the interest amount paid by it. The Revenue has assailed the impugned order on the sole ground that the decision of the Tribunal in the case of Dinesh Tobacco Industries has been challenged by Revenue before the Hon'ble Rajasthan High Court. Thus, according to the Revenue, the order dated 29.01.2016 passed by the Tribunal has not attained finality and the issue is still sub-judice before the Hon'ble Rajasthan High Court.

3. I find that the Revenue has not placed on record any order or decision of the Hon'ble Rajasthan high Court in staying the operation of the order of Tribunal in the case of Dinesh Tobacco Industries. In view of the fact that the order of the Tribunal in the case of Dinesh Tobacco Industries has not been stayed or over-ruled by any higher judicial forum, I am of the view that the decision taken by the Tribunal can be considered for deciding the issue involved in this case. Since the Tribunal has categorically held that interest in not payable during closer of the factory, interest paid by the respondent in this case, should be eligible for refund. Hence, there is not infirmity in the order passed by the ld. Commissioner (Appeals).

4. Therefore, I do not find any merits in the appeal filed by the Revenue. Accordingly, the same is dismissed.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

Sakshi