CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – III

Customs Appeal No. 53441 of 2018 [SM]

[Arising out of Order-in-Appeal No. 189(SM)CUS/JPR/2018 dated 11.07.2018 passed by the Commissioner(Appeals), Central Goods & Service Tax Commissionerate, Jaipur]

M/s Surendra Industries **...Appellant**
H-174, Malviya Nagar, Phase-II
Jaipur

Vs.

The Commissioner **...Respondent**
Central Goods & Service Tax
Commissionerate, Jaipur

APPEARANCE:

Ms. Priyanka Goel, Advocate for the Appellant
Ms. Tamana Alam, Authorised Representative for the Respondent

Coram: HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No. 50693/2019

DATE OF HEARING/ DECISION : 16 May, 2019

AJAY SHARMA

The present Appeal has been filed from the impugned Order dated 11.07.2018 passed by the Commissioner(Appeals), Central Excise and Central Goods and Service Tax, Jaipur in Order-in-Appeal No. 189(SM) CUS/JPR/2018.

2. The issue involved in this Appeal is whether the appellant is entitled for refund claim of Rs. 5,55,933/- on the ground that they had paid excess duty on palm acid oil imported by them in the year 2012? The refund claim has been denied to the appellant on the ground that the appellant has failed to produce any document to establish that the existence of duty paid by them has not been passed on to any person.

3. I have heard learned Counsel for the appellant and learned Authorised Representative for the Revenue and perused the records.

4. The issue involved in this Appeal is no longer *res integra*. In view of the decision of this Tribunal in the assessee's own Appeal being Customs Appeal No. 60303 of 2013–SM titled as M/s Surendra Industries Vs. C.C.E., Jaipur – I dated 18.04.2018 which has been placed on record by the learned Counsel for the appellant alongwith the Appeal memo. The learned Authorised Representative for the revenue submitted that the appellant did not produce this decision before the Commissioner and therefore the Commissioner had no occasion to deal with the same at the time of passing the impugned Order. It has also been prayed that the matter may be remanded to the learned Commissioner to decide the Appeal afresh.

5. In view of the submissions made hereinabove I find it appropriate to remand the matter to the learned Commissioner to decide the Appeal afresh after taking into consideration the aforesaid decision of the Tribunal in the matter of **M/s Surendra Industries** (**supra**).

6. The Appeal is therefore allowed by way of remand.

[Dictated and pronounced in the open Court]

(AJAY SHARMA)
MEMBER (JUDICIAL)

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