

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NO: E/86256/2017

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-0465-16-17 dated 02/03/2017 passed by the Commissioner of Central Excise (Appeals), Pune – I.]

Commissioner of Central Excise
Pune – II

...Appellant

versus

Racold Thermo Ltd

...Respondent

Appearance:

Shri S. Hasija, Superintendent (AR) for the appellant

Shri Makrand Joshi, Advocate for the respondent

CORAM:

Hon'ble Shri M V Ravindran, Member (Judicial)

Date of hearing: 12/03/2018

Date of decision: 12/03/2018

ORDER NO: A/85654/2018

This appeal is filed by Revenue against Order-in-Appeal No: PUN-EXCUS-001-APP-0465-16-17 dated 02/03/2017 passed by the Commissioner of Central Excise (Appeals), Pune – I

2. Learned Counsel appearing for the respondent submits that identical issue of the very same respondent was being agitated by

Revenue in appeal No. E/86042/2014 and has been decided by this bench by final order No. A/90819/2017/SMB dated 03/11/2017 wherein the bench has remanded the matter back to the adjudicating authority as per the directions in the said order and penalty has been set aside. He produces copy of the final order No. A/90819/2017/SMB date 03/11/2017.

3. On perusal of the records and the final order No. A/90819/2017/SMB dated 03/11/2017, I find that the issue is same and the period is subsequent to the period involved in that appeal. I do find that the bench had remanded the matter back to the adjudicating authority with directions which needs to be considered in this appeal. Respectfully following the *ratio* of the said final order of the Tribunal No. A/90819/2017/SMB date 03/11/2017, I set aside the impugned order and remand the matter back to the adjudicating authority to pass a fresh order after following the principles of natural justice and the directions given in order No. A/90819/2017/SMB dated 03/11/2017. The penalty having been set aside by the Tribunal in order dated 03/11/2017, the penal liability is set aside in this appeal also.

4. The appeal stands remanded to the adjudicating authority.

(Dictated in Court)

(M V Ravindran)
Member (Judicial)

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