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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.156 OF 2015

The Commissioner of Central Excise,Kolhapur ...Appellant
vs.
M/s.Dr.Writers Food Products Pvt.Ltd. ...Respondent

Mr.A.S.Rao a/w Mr.J.B.Mishra for the appellant
Mr.V.Sridharan, Senior Counsel with Mr.Hirawat and Mr.Jas Sanghvi i/b PDS Legal for the respondent

CORAM : A.S.OKA, &
A.K.MENON,JJ.
DATE : OCTOBER 3, 2017

P.C.:

1 Heard the learned counsel appearing for the appellant-Revenue. On the basis of the show cause notice issued to the respondent, the Commissioner, Central Excise, Pune-II confirmed the demand and imposed penalty. Being aggrieved by the said order, the respondent preferred an appeal before the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (for short `the Appellate Tribunal'). By the impugned Judgment and order dated 31st March 2009, the said appeal has been allowed. In paragraph 8 of the impugned Judgment and order, the Appellate Tribunal has held thus:

> "8 <u>The learned Jt.CDR, in view of the above, emphasized that only when the credit is reversed before utilization and before</u>

clearance of the exempted goods only then it will amount to not taking the credit. Hence, he prayed that the matter may be remanded to the Commissioner to verify this aspect. We, however, note that there is no specific finding by the Hon'ble Supreme Court that if the credit is reversed after utilization and after the clearance of the exempted goods, it would still amount to taking the credit and exemption will not be available. The appellants in the case before us have not only reversed the credit of Rs.70,21,383/- but also paid the interest of Rs.4,71,189/-. We feel that by doing so, the appellants have undone the act of taking/utilizing the credit and in the light of Allahabad and Gujrat High Court judgments supra, it amount to not taking the credit and therefore, they are not required to pay an amount equal to 10%."

(Underline supplied)

2 When this appeal was called out on 21st August 2017, the learned counsel for the appellant submitted that in fact the respondent had not made reversal. Today, the learned counsel for the appellant accepted that the reversal has been made but it is done belatedly.

3 A finding of fact recorded by the Appellate Tribunal in paragraph 8 is that not only that there was reversal of credit, but the respondent paid interest of Rs.4,71,189/-. On this ground, the

order of the Commissioner imposing penalty has been set aside. Today, the learned counsel for the appellant is not in a position to substantiate the challenge by the appellant to the factual finding recorded in paragraph 8.

4 Hence, we are of the view that no substantial question of law arises. There is no merit in the appeal and the same is dismissed.

(A.K.MENON,J.) (A.S.OKA,J.)