IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Customs Appeal No.77140 of 2017

(Arising out of Order-in-Appeal No.KOL/CUS(PORT)/AA/1093/2017 dated 25.09.2017 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s. Skylark Office Machines
(10, Aziz Mullick Street, Thousand Light, Chennai-600006.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata
.....Respondent
(15/1, Strand Road, Custom House, Kolkata-700001.)

APPEARANCE

Shri S.C. Ratho, Consultant for the Appellant (s)

Shri A.Choudhary, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 77243/2023

DATE OF HEARING : 9 October 2023
DATE OF DECISION : 9 October 2023

Per : R. MURALIDHAR :

The appellant was allowed refund of SAD paid by them in terms of Notification No.102/2007. While granting refund claim, the department relied on the Chartered Accountant's Certificate produced by the appellant. Subsequently, it was found that the certificate issued by the Chartered Accountant was not authentic. Accordingly, recovery proceedings were initiated. After due process, the demands were confirmed. Being aggrieved, the appellant is before the Tribunal.

2. The Ld.Consultant for the appellant submits that production of Chartered Accountant Certificate is not mandatory and has not been made as a condition precedent under the Notification No.102/2007-CUS dated 14.09.2007. On account of CBEC Circular No.06/2008-CUS dated 28.04.2008, the importers were directed to submit copies of the Chartered Accountant's Certificate. In this case, the importer trusted the third party to arrange for the Chartered Accountant's Certificate and did not know that the concerned Chartered Accountant had expired. Therefore, the Ld.Consultant submits that they had no mala fide role in submitting the Chartered Accountant's Certificate in question. He produces a copy of the fresh Chartered Accountant's Certificate dated 17.08.2017. The details of his Membership has been verified and certified on 06.10.2023. The Ld.Consultant requests that the matter may be remanded to the adjudicating authority for considering this fresh Chartered Accountant's certificate. He also relied on the decision of this Tribunal in the case of Joy International vs. Commissioner of Customs (Port), Kolkata vide Final Order NO.77055/2019 dated 17.12.2019, wherein on identical issue, the matter was remanded to the adjudicating authority.

3. The Ld.AR for the revenue reiterates the findings of the lower authorities.

4. Heard both sides and perused the documents produced before us.

5. On perusal of records, we find that no ulterior motive of the appellant towards production of the earlier certificate has been proved. They have produced a fresh Chartered Accountant's Certificate dated 06.10.2023. Therefore, following the ratio of the cited case law, we remand the matter to the adjudicating authority.

6. He is directed to check the veracity of the Certificate and if all other related documents are found to be in order, pass a necessary

order allowing the refund claim filed by the appellant. If the refund is held as eligible, the present confirmed demand against the appellant along with interest and penalty would get set aside.

Appeal stands disposed of.

(Dictated and pronounced in the open Court.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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