IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75366 of 2018

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/AA/2031/2017 dated: 28.11.2017 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s. M B Chemical

(36, Maharishi Debendra Road, 2nd Floor, Kol-700 006.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

(15/1, Strand Road, Kolkata-700 001) **...Respondent**

Appearance:

Mr. Rathindra Nath Bandyopadhyay, Advocate for the Appellant
Mr. A.K. Chowdhury, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON MEMBER (TECHNICAL)

Final Order No. 75197/2024

Date of Hearing: 09.02.2024
Date of Decision: 09.02.2024

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. 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. 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 in respect of 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 stand disposed of.

(Dictated and pronounced in the open court)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

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