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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 77046 of 2017

(Arising out of Order-in-Appeal No. Kol/Cus(Port)/AA/1087/2017 dated 25.09.2017 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s Shubham Trading Co.,
(19, Bysack Street, 2nd Floor, Kolkata-700007)

...Appellant

VERSUS

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

.. ...**Respondent**

APPERANCE :

Shri S. C. Ratho, Consultant for the Appellant
Shri S. Debnath, Authorized Representative for the Respondent

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

Final Order No...76460/2024

DATE OF HEARING : 15.07.2024
DATE OF DECISION : 15.07.2024

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 Learned 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 not mala fide role in submitting the Chartered Accountant's Certificate in question. He produces a copy of the fresh Chartered Accountant's Certificate. The details of his membership has been verified and certified. 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 Learned 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 alongwith interest and penalty would get set aside.

(Dictated and pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Tushar Kr.