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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.76487 of 2019

(Arising out of Order-in-Appeal No.KOL/CUS(PORT)/AA/76/D/2019 dated 26.03.2019 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s. G.N.Enterprises
(67-A, N.S. Road, Kolkata-700001.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

.....Respondent

(15/1, Strand Road, Custom House, Kolkata-700001.)

<u>APPEARANCE</u>

Shri B.N.Pal, Advocate for the Appellant (s)
Shri Tariq Suleman, Authorized Representative for the Revenue

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

<u>FINAL ORDER NO. 75845/2025</u>

DATE OF HEARING : 03.04.2025
DATE OF DECISION : 03.04.2025

Per : R. MURALIDHAR :

The facts of the case are that the appellant filed refund claims under Notification No.102/2007-CUS dated 14.09.2007. The appellant was allowed refund of SAD paid by them. While granting refund claims, 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. Against the said orders, the appellant is before us.

3. The Ld.Advocate appearing on behalf of the appellant submits that production of Chartered Accountant Certificate is not mandatory and has not been made 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. The appellant has also produced Chartered Accountant's Certificate before this Tribunal and requested that the matter be remanded back to the adjudicating authority for considering the fresh Certificate issued by the Chartered Accountant. He also relied on the decision of this Tribunal in the case of Skylark Office Machines v. Commissioner of Customs (Port), Kolkata vide Final Order No.77243/2023 dated 09.1.2023, wherein on the identical issue, the matter was remanded to the adjudicating authority.

4. On the other hand, the Ld.AR for the department reiterated the findings of the lower authority.

5. Heard the parties, considered the submissions.

6. We find that identical issue came up before this Tribunal in the case of Skylark Office Machines (supra), wherein this Tribunal observed as under:-

> *"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."*

7. As on the identical facts, this Tribunal has remanded the matter back to the adjudicating authority, observing that no ulterior motive of the appellant towards production of the earlier certificate has been

proved and they have produced a fresh Chartered Accountant's Certificate. Therefore, following the precedent decision on the identical issue, we remand the matter back to the adjudicating authority with the direction to check the veracity of the certificate issued by the Chartered Accountant and pass a necessary order as per law.

Appeal is disposed of by way of remand.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

sm