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

REGIONAL BENCH - COURT NO.1

Customs Appeal No.76554 of 2019

(Arising out of Order-in-Appeal No.KOL/CUS(Port)/AA/184/2019 dated 05.03.2019 passed by Commissioner of Customs (Appeals), Kolkata.)

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

...Appellant

VERSUS

M/s. Albert David Limited

.....Respondent

(Block D, 3rd Floor, Gilander House, 8, Netaji Subhas Road, Kolkata-700001.)

APPEARANCE

Shri A.K.Choudhary, Authorized Representative for the Revenue
Shri Abhishek Sengupta, Authorized Representative for the Respondent

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

FINAL ORDER NO. 76350/2025

DATE OF HEARING : 14.05.2025
DATE OF DECISION : 14.05.2025

Per : R. MURALIDHAR :

The Revenue has filed this Appeal being aggrieved by the impugned Order-in-Appeal wherein the Commissioner(Appeals) has held that there was no necessity for the Appellant to file any Appeal before the higher authority seeking revision of classification on account of the exemption Notification.

2. On going through the Appeal papers, we find that the issue pertains to the import of goods during the period May 2014 to December 2014. During this period, the Appellants have claimed only one exemption whereas subsequently the CBEC vide DOF

No.334/5/2015-TRU dated 28.02.2015 has clarified that the Appellant would be eligible for two types of exemption. After this the Appellant have filed the refund claim on 18.12.2017.

2. The Adjudicating authority has rejected the refund claim on the sole ground that they have not preferred any further Appeal against the earlier classification granting only one exemption. On appeal against Order-in-Original, the Commissioner (Appeals), after going through the case, has relied on the case law of **Aman Medical Products Ltd. v. Commissioner of Customs, Delhi [2010 (250) 30 (Del.)]** and **Micromax Informatics Ltd. v. Union of India [2016 (335) ELT 446 (Del.)]** and has held that there was no need for the Appellant to have approached the Commissioner(Appeals) for seeking the second exemption. Being aggrieved the Revenue is before us.

3. We find that a clarification was issued by Govt. of India, Ministry of Finance vide DOF No.334/5/2015-TRU dated 28.02.2015. This itself would clarify that the second exemption is also allowed. Therefore, in such a case even on this ground the Appellant was not required to file any further Appeal since the refund granting person will not be sitting on judgement of any other order, but simply following the clarification given by the CBEC.

4. We also find that the Commissioner (Appeals) has correctly relied on the two cited decisions, wherein it was held that no Appeal is required to be filed in case of self-assessments. This was the law during the period under consideration in the present case.

5. In view of the foregoing, we uphold the impugned order and dismiss the appeal filed by the Revenue.

(Dictated and pronounced in the open Court.)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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