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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CUSAA 3/2017, CM APPL.2984-2985/2017

COMMISSIONER OF CUSTOMS ICD PATPARGANG AND OTHER ICD'S NEW DELHI ..... Appellant

Through: Ms. K. Enatoli Sema, Advocate.

versus

KENT RO SYSTEMS PVT LTD. ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% **24.01.2017**

The Revenue claims to be aggrieved in this appeal by the order of the Tribunal which affirmed the order of the Commissioner (Appeals). The Appellate Commissioner's order had the effect of allowing the refund claim of the respondent/importer.

The facts are that the assessee had imported eight consignments of ferrite magnets and filed bills of entry but at that time had not claimed exemption. The competent officer proceeded to assess them to duty even though he was obliged not to do so in view of the exemption Notification prevailing at that time 12/2012-Cus dated 17.03.2012. The assessee realized that it had omitted to claim the benefit available to it and sought refund of the duty, i.e., of ₹6,76,165/- which was initially rejected by the Deputy Commissioner on the ground that the bills of entry had not been challenged. The assessee's appeal was, however, allowed by the Appellate Commissioner in view of this Court's judgment in *Aman Medical Products Ltd. v. CC, Delhi*, 2010 (250) ELT 30 (Del) which considered the Supreme Court's decision in *Priya Blue Industries Ltd. vs. Commissioner of Customs,* 2004 (172) ELT 145 (SC). The Court held that where the duty had been paid by the assessee without an order of assessment and there was no *lis* pending between the parties then in such a situation, the refund claim of the assessee could not be rejected merely on the ground of non-filing of appeal against the bills of entry, which had subsequent attained finality.

Learned counsel submitted that the judgment of this Court is not final and that the Revenue has appealed against it. At the same time, the record is clear that the competent officer though obliged to take heed of the prevailing situation, i.e., exemption Notification which entitled the assessee to clear the goods without payment of duty upon being pointed out, the assessee is entitled to the refund of the amount, given that the amounts could not have been collected lawfully in the first place. We find that the CESTAT's order is unexceptionable. No substantial question of law arises; the appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JANUARY 24, 2017
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