

**Asstt. Collr. of Customs Vs. Everett (India) Private Ltd.**

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**SooperKanoon Citation :** [sooperkanoon.com/880743](http://sooperkanoon.com/880743)

**Court :** Kolkata

**Decided On :** Jan-24-1995

**Reported in :** 1995(80)ELT788(Cal)

**Judge :** C.J. and ;Ruma Pal, J.

**Appeal No. :** Appeal No. 298 of 1984 and Matter No. 1561 of 1981

**Appellant :** Asstt. Collr. of Customs

**Respondent :** Everett (India) Private Ltd.

**Advocate for Def. :** A.K. Auddy, Adv.

**Advocate for Pet/Ap. :** Pranatosh Mukherjee, Adv.

**Disposition :** Appeal allowed

**Judgement :**

C.J.

1. This appeal has been preferred against the judgment of the learned Single Judge dated February 2, 1983 setting aside the order of the Assistant Collector of Customs, quashing the penalty of Rs. 7,695/- imposed on the respondent and directing refund of the penalty, if paid, forthwith.

2. The Department has preferred this appeal against the judgment of the learned Single Judge on the ground that the Notification No. 132, dated December 14, 1973 did not apply to the present case inasmuch as it applies to the case of refund and as it was not a case of refund the learned Single Judge wrongly relied on that and passed the order impugned by means of this appeal.

3. We find merits in the submission of the Department and after reading the said Notification and the other relevant papers we are of the view that the Notification relied on could not be applied to the facts of the case. That being so, the imposition of penalty by the Department, could not be set aside on this ground. We also quash the order of the learned Single Judge on the ground that a remedy was provided against the order of imposition of penalty of Rs. 7,695/- by means of an Appeal according to the Statute. On that ground the writ petition should not have been entertained by the learned Single Judge.

4. In the result, the Appeal succeeds and is allowed. The order of the learned Single Judge is set aside.

5. There will be no order as to costs.