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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ CUSTOM A. 1/2015 & CM Nos.1678/2015 (delay in filing appeal & 1680/2015 (delay in refiling appeal)

HARISH ANIL VASANT

..... Petitioner

Through Mr. V V Gautam and Mr. K C Baliar Singh, Advs.

versus

COMMISSIONER OF CUSTOMS

..... Respondent

Through Mr. Satish Kumar, sr. standing counsel with Ms. Shruti Yadav, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **30.01.2015**

1. Issue notice.

2. Mr. Satish Kumar, Advocate accepts notice.

3. The question of law sought to be urged in this case is whether the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT") was right in rejecting the application seeking condonation of delay, and consequently the appeal preferred by the assessee.

4. The assessee suffered an adverse order by the adjudicating Commissioner on 31.08.2012. It however preferred an appeal on 08.06.2012. In support of the appeal, it filed an application seeking condonation of delay which did not spell out the exact time. Besides, there were some defects in the affidavits sworn in support of the application. The

revenue had been contending that the appellant had not disclosed its *bona fides*, and that the other aggrieved party had even approached the CESTAT earlier. In these circumstances, the explanation given by the present appeal that it had not received the certified copy was unconvincing.

5. The CESTAT, in its order, considered the factual matrix and noted that whilst there exists a right of redressal by way of appeal, it has to be exercised within the time limit specified by the statute. The CESTAT was of the opinion that the recital by the appellant, that he received orders belatedly, did not absolve him of the limitation prescribed. It was also of the opinion that a litigant of ordinary prudence would not prefer to prejudice its interest by approaching the higher forum belatedly.

6. We have heard counsel for the parties. It appears that whilst the CESTAT – in our opinion correctly – noticed the law and the judgment of the Supreme Court in *Collector of Land Acquisition Anantnag V. Mst. Khatiji* 1987 (28) ELT 185 (SC), it was considerably swayed by the fact that the other litigant had suffered penalty and approached the CESTAT earlier. The appellant has given instances where it addressed several letters to the respondents seeking to be informed about the outcome of the proceedings. The revenue had contended that it had dispatched the order of the Commissioner on 04.09.2010 and that there was a presumption of due receipt. During the hearing, it is submitted that the appellant has already deposited ₹40 lakhs in compliance of the order of the adjudicating authority and that denial of his right to appeal would prejudice it seriously. The appellant appears to lack locus in its approaching the Tribunal rather belatedly. However, at the same time, this Court is of the opinion that having complied with the adjudicating authority's order, the denial of the

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right to appeal would undoubtedly prejudice the assessee; this is an important factor which cannot be overlooked. Taking note of this circumstance, this Court is of the opinion that, on balance, a larger interest of justice lies in condoning the delay occasioned by the appellant in approaching the CESTAT, and in requiring that Tribunal to decide the appeal on its merits.

7. Parties are directed to be present before the CESTAT on 11.02.2015 for further directions towards hearing of the appeal and the application of stay preferred by the appellant.

8. The application and the appeal are allowed in the above terms.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

JANUARY 30, 2015
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