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* IN THE HIGH COURT OF DELHI AT NEW DELHI
21.

CUSTOM A. 2/2015

ARUN SURI ..... Petitioner
Through: Mr. Huzefa Ahmadi, Senior Advocate with Mr. Faisal Farook and Mr. Shubail Farook, Advocates.

versus

U.O.I. & ANR. ..... Respondents
Through: Ms. Sonia Sharma, Advocate for R-2.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>
% **05.08.2015**

<u>CM No. 13795/2015 (for exemption)</u>

1. Exemption allowed subject to all just exceptions.

2. The application is disposed of.

<u>CM No. 13796/2015 (for condonation of delay of 3 days in re-filing the appeal)</u>

3. For the reasons stated in the application, the delay of 3 days in re-filing the appeal is condoned.

4. The application is disposed of.

CUSTOM A. 2/2015 & CM No. 13794/2015 (for stay)

5. This appeal under Section 130 of the Customs Act, 1962 ('Act') is directed against an order dated 6th April 2015 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi ('CESTAT') in Customs Appeal No. 485 of 2007.

6. Against an order dated 13th April 2007 passed by the Commissioner of Customs, New Delhi, the Appellant had preferred an appeal which was dismissed by the CESTAT on 23rd October 2007 since the Appellant failed to deposit the pre-deposit amount as directed by the CESTAT. It appears that against the same order of the Commissioner, the Department had also filed appeal but for some reasons that appeal was not heard along with the appeal filed by the Appellant.

7. The Department's appeal was heard many years later by the CESTAT and was allowed ex parte by the order dated 18th March 2013. The CESTAT held that the Commissioner was in error in holding that since the goods that were confiscated were not available, no redemption fine could have been imposed. The CESTAT followed the judgment of the Supreme Court in

Weston Components Ltd. v. C.C.New Delhi 2000 (115) ELT 278 (SC) and remanded the matter to the Commissioner for a *de novo* decision and fixing of redemption fine.

8. When the Appellant received notice in the remand proceedings, it applied to be provided with copies of the relevant documents including a copy of the order dated 18th March 2013 passed by the CESTAT allowing the Department's appeal. These documents were provided to the Appellant under cover of a letter dated 29th October 2013.

9. Admittedly, for a period of more than 10 months thereafter the Appellant did not take steps to question the order earlier passed in its appeal by the CESTAT. It filed an application dated 18th September 2014 seeking recall of the Tribunal's order dated 18th March 2013 dismissing its appeal. The said application although dated 18th September 2014 was in fact filed only on 22nd September 2014. Since in any event this was well beyond the period of six months stipulated for filing an application for rectification in terms of Section 129B (2) of the Act, the application was dismissed by the CESTAT by the impugned order dated 6th April 2015.

10. Mr. Huzefa Ahmadi, learned Senior counsel appearing for the Appellant,

urged that the CESTAT should have taken a more liberal view of the matter particularly since the remand proceedings were pursuant to an ex parte order passed by the CESTAT allowing the Department's appeal. He submitted that the normal course would have been to hear the Department's appeal along with the Assessee's appeal. He further submitted that the Appellant is *bona fide* participating in the remand proceedings and after receiving the documents took steps to file the application for rectification furnishing the reasons for the delay in the application filed on 22nd September 2014. He finally urged that the CESTAT should be asked to consider the Appellant's application on merits.

11. The Court has perused the application dated 18th September 2014 filed by the Appellant seeking to explain the delay in approaching the CESTAT for rectification of its order dated 18th March 2013. The Court is unable to find any explanation why the Appellant waited for more than ten months after the documents were furnished to it by the Department (by letter dated 29th October 2013) to file an application for rectification. In the circumstances, the Court is unable to find any error in the impugned order of the CESTAT warranting the entertaining of the present appeal by the Court.

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12. The appeal and the application are dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

AUGUST 05, 2015/dn