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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
19.
\+ **CEAC 2/2016**

COMMISSIONER OF CENTRAL EXCISE DELHI –I ..... Petitioner
Through: Ms. Sonia Sharma, Senior Standing counsel.

versus

THE HEELS & ANR. ..... Respondents
Through: Mr. Rupesh Kumar, Mr. Pravesh Bahuguna and Mr. Jitin Singhal, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **08.02.2016**

CEAC 2/2016 & CM No. 3910/2016 (for stay)

1. A fervent plea is made by Ms. Sonia Sharma, learned Senior Standing counsel appearing for the Appellant, that in September 2015 the Department has come across certain documents which show that the units from where the Respondents have been procuring their products were using registered trademarks which would make the Respondents ineligible for exemption as a Small Scale Industry ('SSI') in terms of the Notification No. 8/2003-Central Excise dated 1st March 2003.

2. It is seen that the present appeal has arisen as a consequence of the show cause notice dated 9th September 2008 issued to the Respondents and the

consequential Order-in-Original passed on 25th September 2009. Against that order, the Respondents went in appeal to the Commissioner (Appeals) who by an order dated 9th July 2010 allowed the appeal. The specific finding of the Commissioner (Appeals) was "it is very much clear that it is for the department to establish that the brand names being used belonged to some other persons and it has not been indicated or proved that the brand names other than 'THE HEELS' belonged to some other person as no Trade Mark Registration or some other document proving the ownership of the impugned brand names by some other persons have been placed on record while making allegations in the show cause notice".

3. Against the above order when the Department went in appeal before the Customs, Excise & Service Tax Appellate Tribunal ('CESTAT'), no ground was raised that the Respondents was buying the products from a person using a registered trademark. The Department did not urge before the CESTAT that it had documents in its possession to substantiate such plea. It is not understood why, information concerning registration of trademarks, which is in the public domain, could not be gathered by the Department and placed before the CESTAT. Permitting the Department to do so at this stage, nearly eight years after the issuance of the show cause notice, is neither justified nor proper.

4. The CESTAT has held that even if the affixing of a sticker to the footwear in question may amount to manufacture, the Respondents would nevertheless be entitled to exemption under the aforementioned notification as an SSI unit. This factual finding does not, in the considered view of the

Court, give rise to any substantial question of law. This is irrespective of the preliminary objection of the Respondent on the maintainability of the present appeal on the ground that the issue arising from the impugned order of the CESTAT concerns payment of duty and, therefore, an appeal is maintainable only before the Supreme Court.

5. The appeal and the application are accordingly dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 08, 2016
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