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

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\+ **CUSAA 6/2016**

PRINCIPAL COMMISSIONER OF CUSTOM ..... Appellant

Through: Mr. Satish Kumar, Senior Standing Counsel.

versus

LS CABLE INDIA PVT. LTD. ..... Respondent

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **22.01.2016**

CM No. 2352 of 2016(exemption)

1. Allowed subject to all just exceptions.

2. The application is disposed of.

CUSAA 6/2016 & CM 2351 of 2016(stay)

3. The grievance raised by the Appellant-Department in this appeal under Section 130 of the Customs Act 1962 against an order dated 25th August 2015 passed by the of the Custom Excise & Service Tax Appellate Tribunal ('CESTAT'), is that in terms of the Circular No. 6/2008 issued by the Central Board of Excise and Customs ('CBEC') dated 28th April 2008, not more than one refund claim can be made by the Assessee in a month whereas the Custom Excise & Service Tax Appellate Tribunal ('CESTAT')

while allowing the Assessee's appeal held that a refund claim cannot be rejected relying on the abovementioned circular since the refund claim was filed under notification no. 102/2007-CUS which does not prohibit the filing of more than one refund claim in a month.

4. The Court has been taken through the said circular. Given the language used in the said circular it is not possible to agree with the Department that the Department has the power to reject the refund application which may be the second application in the same month filed by the Assessee. Consequently, the Court finds no error in the impugned order dated 25th August 2015 of the CESTAT allowing the appeal of the Assessee and remanding the matter to the adjudicating authority for deciding the refund claim afresh.

5. The appeal and the application are accordingly dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 22, 2016
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