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

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\+ **VAT APPEAL 13/2016**

KAPUR GEMS PVT. LTD. ..... Appellant
Through: Mr. Raj K. Batra and Mr. Sumit K. Batra, Advocates.

versus

COMMISSIONER OF TRADE AND TAXES & ANR.... Respondent
Through: Mr. R.A. Iyer for Mr. Gautam Narayan ASC for the Respondent.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **27.05.2016**

CM 20749 of 2016 (exemption) in VAT APPEAL 13/2016

1. Allowed subject to all just exceptions.

CM 20752/2016 in VAT APPEAL 13/2016

2. For the reasons stated therein, the delay in re-filing the appeal is condoned.

3. The application is disposed of.

CM 20751/2016 in VAT APPEAL 13/2016

4. The delay of 546 days in filing the present appeal has been explained by

pointing out that against the impugned common order dated 16th July 2014 of the learned Single Member of the Appellate Tribunal, Value Added Tax ('AT'), writ petitions were filed in this Court which ultimately came to be decided on 18th February, 2016 holding that an order passed by the Single Member of the AT was valid. The Court had in that judgment granted leave to the Petitioner to prefer the present statutory appeal along with applications for condonation of delay.

5. In that view of the matter, the delay in filing the present appeal is sufficiently explained and is, accordingly, condoned. The application is disposed of.

VAT APPEAL 13/2016 & CM 20750/2016 (stay)

6. The short question that arises for determination is whether the AT was, by the impugned order dated 16th July 2014 in the applications for waiver of pre-deposit in Appeal Nos. 991-1091/ATVAT/ 13-14 for Assessment Years (AYs) 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12, justified in requiring the Appellant to pay 20% of the tax and interest and 10% of the penalty as pre-deposit for the purposes of the appeals to be considered. The present appeal pertains to the order in the appeal for AY 2009-10.

7. Having heard learned counsel for the parties, the Court is of the view that the impugned order dated 16th July 2014 of the AT requires to be modified by requiring the Appellant to deposit 10% of the disputed amount of the tax alone or furnish a security equivalent to the said amount to the satisfaction

of the AT within a period of four weeks from today.

8. Subject to the compliance of the above direction, the Appellant's appeal among Appeal Nos. 991-1091/ATVAT/ 13-14 pertaining to AY 2009-10 before the AT shall stand restored to the file of the AT for being considered on merits. It will be open to the Respondents to raise any objection they may have to the maintainability of the said appeal on the ground of delay. Such objection will also be considered by the AT in accordance with law. The appeal and application are disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 27, 2016
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