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

\+ CUSAA 26/2016

MEDIPLUS (INDIA) LTD ..... Appellant

Through: Mr. Amit Joshi along with Mr. B.M. Joshi, Mr. Prabhjot kaur Joshi, Ms. Vineeta Sharma and Ms. Rachna Sharma, Advocates.

versus

COMMISSIONER OF CUSTOMS ,AIR CARGO(EXPORT) NEW DELHI ..... Respondent

Through: Mr. Sanjeev Narula, Sr. Standing Counsel along with Mr. Sunil Dalal and Mr. Ajay Kalra, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

<u>O R D E R</u>
% **27.09.2016**

Issue notice. Mr. Sunil Dalal, Advocate appearing on behalf of the respondent accepts notice.

The appellant's grievance is with respect to order of the Customs Excise and Service Tax Appellate Tribunal ("CESTAT") which rejected its application for restoration of the appeal on the ground that on 03.07.2015, the appeal itself was dismissed as withdrawn.

The facts of the case are that the appellant had claimed duty redemption on the basis of exports made. The customs authority issued a show-cause notice on 24.03.2009; adjudication resulted in confirmation of the demand to the tune of ` 2,99,63,348/-. The appellant approached the CESTAT in the first instance; however since it could not deposit the sum required as a pre-condition of the hearing of the appeal under the unamended Customs Act, 1962, its counsel sought liberty to withdraw the appeal and pursue an alternative remedy – which was allowed by the CESTAT. Upon realisation that the appellant did not have any alternative remedy, an application for restoration was made which has now been rejected by the impugned order.

We have heard counsel for the parties. It is an established principle of law that mistake of law or mistake in legal understanding of opinion of a counsel does not bind the party whom he or she represents or at least to the extent of causing irreparable prejudice. This is exactly what happened in this case. The appellant did not have any alternative remedy; yet the CESTAT permitted withdrawal of the appeal. In refusing to restore the appeal on the technical ground that the applicant's contention that there was no mandatory pre-deposit condition, the CESTAT merely compounded the injustice.

For the above reasons, we are of the opinion that the appeal preferred before the CESTAT i.e. SR No. 51757/2015- originally dismissed as withdrawn on 03.07.2015 should be restored to the file of the CESTAT. The appellant is at liberty to file an application seeking exemption from the condition of pre-deposit in which it shall set out clearly the grounds of financial hardship, if any, within two weeks. The CESTAT shall thereafter take up the application and decide upon it.

The appeal is allowed to the above extent.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 27, 2016
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