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

\+ W.P.(C) 11264/2016

DURGA APPARELS PVT. LTD. ..... Petitioner

Through: Sh. C. Harishankar, Sr. Advocate with Sh. S. Sunil and Sh. P.K. Singh, Advocates.

Versus

UNION OF INDIA & ANR. ..... Respondents

Through : Sh. Akash Vajpai, Advocate, for Respondent No.1.

Sh. Harpreet Singh, Sr. Standing Counsel, for Respondent No.2.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **28.11.2016**

Issue notice. Sh. Akash Vajpai and Sh. Harpreet Singh, Advocates, accept notice on behalf of Respondent Nos. 1 and 2 respectively.

Though several grounds were urged in support of the petition which challenges an Order-in-Original [hereafter “the order”] of the Joint Commissioner of Customs pursuant to a Show Cause Notice dated 14.08.2013 alleging wrongful availment of duty drawback, learned counsel confined the claim to the question of appropriateness of the demands made twice over in the order and submitted that both as to the quantum as well as the principal underlying them, there would be grave difficulties in availing of appellate remedies before the Commissioner of Customs (Appeals).

We have considered the submissions of the parties. The

Revenue highlights that the liability fixed upon the individuals is both joint and several with respect to the principal amount due as well as penalties imposed along with each of the concerns and that additional specific sums have been indicated with respect to individual Directors/Proprietors of five concerns/entities involved.

Having considered the submissions, we are of the opinion that in the interest of justice, the Commissioner of Customs (Appeals) (when approached by the aggrieved parties) should proceed to deal with the merits provided the entities ensure that the principal deposit amount mandated (i.e. 7½ %) in respect of the basic duty drawback element (regardless of the penalty of like amount) is paid by each of the five entities. Likewise, if individual liabilities imposed by the adjudicating authority are appealed against *vis-a-vis* specific amounts indicated, ignoring the joint and several liability made generally (in the Order-in-Original) against such appellants, their appeals too shall be heard on the merits, subject to such pre-deposit.

However, this clarification will not apply in the case of M/s. White Swan Inc. which is not an incorporated company but a partnership concern. In the event of an appeal on its behalf, the concerned proprietor shall pay the mandatory pre-deposit amount. The writ petition and the pending application are disposed of in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

NOVEMBER 28, 2016/ajk