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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
6.
\+ **CUSAA 16/2015**

PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT) ..... Appellant
Through: Ms Sonia Sharma, Senior Standing Counsel with Mr C. P. Pandey, Advocate.

versus

SIDDHARTHA OPTICAL DISC PVT. LTD. ..... Respondent
Through: Mr Prabhat Kumar, Mr Sukhbir Singh, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **02.03.2016**

1. This appeal by the Customs Department is against an order dated 7th January, 2015 by the Customs Excise & Service Tax Appellate Tribunal (CESTAT) dismissing the Department's the Miscellaneous Application No. C/MISC/926/2009-CU[DB] filed in an Appeal No. C/547/2008-CU [DB] filed by the Respondent Assessee.

2. The short question that arises for determination is whether the CESTAT was justified in declining the Department 's prayer to be permitted to adduce additional evidence at the stage of the appeal before the CESTAT?

3. A original Show Cause Notice ('SCN') was issued to the Assessee on 24th March 2007 in respect of alleged undervaluation of import of four pieces of

machinery. Annexure-A to the SCN set out, with reference to four Bills of Entry (B/E) dated 27th March 2002, 19th October 2002, 14th October 2003 and 17th February, 2004 the declared value of goods cleared, the comparable value of similar goods imported by M/s Softalk Technologies Ltd. and the differential value in Euros. On this basis the differential duty demanded was worked out as Rs. 89,92,121.

4. An adjudication order was passed on 24th April, 2008 by the Commissioner of Customs (Appeals) confirming the above demand of duty as well as interest and penalty apart from ordering confiscation the seized goods and its provisional release upon payment of redemption fine.

5. While the Assessee's appeal was against the aforementioned order was pending before the CESTAT, the Department file the aforementioned application on 26th October 2009 stating that the Directorate of Revenue Intelligence (DRI) had submitted further evidence which had been provided by the Dutch Customs authorities. The Department accordingly sought permission to place the said documents on record. As already noticed, this request was declined by the CESTAT by the impugned order in which it relied on three of its earlier decisions.

6. The Court has been shown a copy of the application filed by the Department before the CESTAT as well as the documents sought to be tendered as additional evidence. It is seen that the said documents were received in the office of the Commissioner of Customs from the DRI on 13th October 2008. Yet, for reasons best known to the Department, the

application seeking permission to tender the said documents as additional evidence was not filed before the CESTAT till 26th October 2009 i.e., more than one year after the receiving the said additional evidence from the DRI.

7. Considering that the Department has slept over the matter for over a year, the Court is of the view that no interference with the impugned order of the CESTAT is called for. The Court is, therefore, not inclined to examine to the plea of the Department that the additional evidence ought to have been permitted to be tendered or the plea of the Assessee to the contrary on the ground that in the Assessee's appeal the Department could not have been permitted to tender additional evidence.

8. The appeal is accordingly, dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MARCH 02, 2016
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