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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.247 OF 2016

M/s.Maneesh Export (EOU)& Ors. ...Appellants
vs.
Union of India & Ors. ...Respondents

Mr.R.N.Gaonkar a/w Mr.Ashok Singh for the appellants
Mr.M.Dwivedi i/b Ms Shalaka Gujar for the respondents

CORAM : A.S.OKA, &
RIYAZ I. CHAGLA,JJ.
DATE : SEPTEMBER 25, 2017

P.C.:

1 Notice for final disposal was issued on 29th August 2017. By the order dated 30th January 2015 passed by the Commissioner, Central Excise, Belapur, he confirmed the excise duty demand under the Central Excise Act,1944 (for short "the said Act of 1944"). He imposed penalty on the appellants.

2 Being aggrieved by the order dated 30th January 2015 of the Commissioner, Central Excise, Belapur confirming the demand of Central Excise duty and penalty, the appellants preferred an appeal before the Custom, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (for short `the Appellate Tribunal'). As the appellants did not deposit amount equivalent to 7.5% of the duty and the penalty amount, a show cause notice was issued to the appellants on 7th February 2014. The appeal

was dismissed by the impugned order on the ground of non compliance with the requirement of deposit of 7.5% of the duty and penalty amount.

3 Paragraph 1 of the order dated 29th August 2017 reads thus:

> "1 The learned counsel appearing for the Appellants on instructions states that the Appellants will deposit the requisite amount as required by law within a period of 10 weeks. We accept the said statement as undertaking of the appellants. In view of this statement, issue notice for final disposal at admission stage to the first respondent returnable on 25th September 2017."

4 Hence, there is an undertaking given by the appellants to comply with the statutory requirement of section 35F of the said Act of 1944 within ten weeks from 29th August 2017. In view of the undertaking given by the appellants, one more opportunity deserves to be granted to the appellants to deposit the statutory amount of duty and penalty and prosecute the appeal.

5 Accordingly, we pass the following order:

> (I) The impugned order dated 30th November 2015 is hereby quashed and set aside and the appeal preferred by the appellant (bearing No.E/86022/15-MUM) is restored to the file of

the Appellate Tribunal subject to condition of the appellants complying with the requirement of section 35F by depositing the requisite amount within period of ten weeks from 29th August 2017;

(II) On the failure of the appellants to make compliance within the statutory period of ten weeks from 29th August 2017, the appeal shall stand dismissed for non prosecution;

(III) This appeal is partly allowed on above terms with no order as to costs.

(RIYAZ I. CHAGLA,J.) (A.S.OKA,J.)