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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CUSTOMS APPEAL NO.89 OF 2016

Shree Nand Kishore Sharma … Appellant
Vs.
Union of India and Ors. … Respondents

Mr. Ashok Singh for the Appellant.
Ms. P.S. Cardoza for the Respondent – Union of India.

CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.

DATE : 4th SEPTEMBER, 2017

P.C.

1 Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent. Forthwith taken up for final disposal. The present appellant preferred an Appeal before the Customs, Excise and Service Tax Appellate Tribunal for challenging the order dated 18th June, 2014 passed by the Commissioner of Customs, (Export) Jawaharlal Nehru Port Trust, imposing penalty of Rs.66,00,000/- on him by taking recourse to Section 112(b) of the Customs Act, 1962. By order dated 23rd February, 2015 the Customs, Excise and Service Tax Appellate Tribunal observed that in view of amended provisions of Section 129A of the Customs Act, the requirement of pre-deposit at the rate of 7.5% of the amount demanded

could not be dispensed with. The Customs, Excise and Service Tax Appellate Tribunal dismissed the said application preferred by the applicant but granted time of eight weeks to make pre-deposit of 7.5% of the amount equivalent to penalty. By consequential order dated 6th May, 2015 the Appeal preferred by the appellant was dismissed on the failure of the appellant to deposit the requisite amount.

2 Today, the learned counsel appearing for the appellant states that the appellant shall deposit pre-deposit amount in terms of order dated 23rd February, 2015 within a period of 10 weeks from today. We accept the said statement as an undertaking of the appellant. In view of the statement, one more opportunity deserves to be granted to the appellant to prosecute the Appeal preferred by him against the order dated 18th June, 2014. Hence, we dispose of the Appeal by passing the following order :-

ORDER

(i) The impugned order dated 6th May, 2015 shall stand set aside on the appellant depositing the requisite amount in terms of the order dated 23rd February, 2015 within a period of 10 weeks from today;

(ii) On failure of the appellant to deposit the requisite amount within the stipulated period of 10 weeks from today, the impugned order dated 6th May, 2015 shall continue to operate;

(iii) On the appellant depositing requisite amount in terms of the order dated 23rd February, 2015 within stipulated period of 10 weeks from today, time of four weeks granted under the order dated 23rd February, 2015 will stand automatically extended till the date on which the amount is deposited by the appellant. In such case, Customs, Excise and Service Tax Appellate Tribunal shall proceed to decide the Appeal preferred by the appellant in accordance with law;

(iv) All contentions on merits are kept open;

(v) Appeal is partly allowed on above terms.

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