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

\+ **CUSAA 5/2017 & CM 5089/2017**

SHRI DEV ANAND AGGARWAL (PROPRIETOR) RUDRA ENTERPRISES ..... Appellant

Through: Mr. Anjaneya Mishra with Mr. Anurag Sharma, Advocates.

versus

THE COMMISSIONER OF CUSTOMS NEW DELHI .... Respondent

Through: Mr. Deepak Anand, Junior Standing Counsel.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% 22.09.2017

1. Admit. The following question of law is framed for consideration:

> "Whether the CESTAT erred in rejecting the Appellant's restoration application seeking restoration of appeal No. 163 of 2010."

2. By the impugned order dated 5th December, 2016, the Customs, Excise, Service Tax Appellate Tribunal ('CESTAT') rejected the application filed by the Appellant-Assesseee seeking recall of the earlier order dated 24th February, 2016 dismissing Customs Appeal No.163 of 2010 on merits. It is noted in the impunged order that after the said decision, an application for restoration had been filed which was listed on 23rd May, 2016 when again the counsel for the Assessee did not attend the hearing and the application

was dismissed.

3. Although the CESTAT has observed that the Assessee has not been vigilant in pursuing its remedies, the learned counsel for the Assessee states that the notice from the Registry of the CESTAT notifying the listing of the restoration application was received by the Assessee only on the evening of 23rd May 2016, the very date of listing of the said application. It was, therefore, practically impossible for the Assessee to remain present before the CESTAT on the said date. This fact has not been taken note of in the impugned order of the CESTAT.

4. The Court further notes that the Assessee filed written submissions before the CESATAT raising the issue of jurisdiction of the Additional Director, Directorate of Revenue Intelligence (DRI) to issue a Show Cause Notice (SCN) and adjudicate it. The challenge was to the DRI officer not being a 'proper officer' under the Customs Act 1962.

5. The above question was answered in favour of the Assessee by this Court in its judgment in ***Mangli Impex Limited v. Union of India 2016 (335) ELT 605 (Del).*** The said decision was rendered on 3rd May, 2016, prior to the impugned order of the CESTAT dismissing the Assessee's restoration application.

6. Learned counsel for the Respondent points out that against the said decision in ***Mangli Impex Limited v. Union of India*** (*supra*), the Respodnent filed a Special Leave Petition in which leave has been granted and the said judgment has been stayed. Nevertheless, the Court is of the

view that the CESTAT had to decide the issue on merits.

7. For the aforementioned reasons, the Court finds that the CESTAT was not justified in rejecting the application filed by the Appellant-Assessee. The impugned order dated 5th December, 2016 of the CESTAT is accordingly set aside. The Assessee's application seeking restoration of Customs Appeal No. 163/2010 is allowed. Customs Appeal No. 163/2010 will now be listed before the CESTAT on 14th November, 2017 for further hearing on merits on which date the Appellant-Assessee will remain present through counsel without fail.

8. It is clarified that this Court has not expressed any opinion on the grounds urged by the Assessee including the issue as regards the jurisdiction of the DRI to proceed with the SCN. All the issues will be decided on merits by the CESTAT.

9. In view of the fact that inconvenience has been caused to the Department as a result of the Assessee's lapse as aforementioned, the Assessee is directed to pay costs of Rs.3000 to the Department within a period of four weeks. The appeal and application are disposed of in the above terms.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 22, 2017
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