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

+ W.P.(CRL) 1123/2013

AIR CUSTOMS

..... Petitioner

Through: Mr. Satish Aggarwal, Advocate

versus

ASHOK KUMAR

..... Respondent

Through: Mr. Atul Nanda, Sr. Adv. with Ms.
Rameeza Hakeem, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
17.02.2017

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Mr. Nanda, learned senior counsel for the respondent has taken instructions and does not dispute the fact that in view of the value of the contraband recovered, the judgment of this court in W.P.(Crl.) No. 258/2012, ***Department of Customs v. Virsa Singh*** decided on 10.05.2013 would be applicable in the facts of the present case. However, he submits that the decision in ***Thippawwamy v. State of Karnataka***, (1983) 1 SCC 194 would also be available to the respondent.

In view of the aforesaid decision, the impugned judgment dated 03.05.2013 passed in breach of proviso to section 135(b) of the Customs Act, as it was prevailing at the relevant time, cannot be sustained. The same

is, accordingly, set aside and the matter is remanded to the Trial Court to consider the matter afresh. It shall be open to the respondent to place upon the judgment in *Thippaswamy* (supra) and the same shall be considered by the Trial Court.

The parties shall appear before the learned CMM concerned on 02.05.2017.

VIPIN SANGHI, J

FEBRUARY 17, 2017

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