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

\+ **CUSAA 17/2017 & CM Nos. 11702-03/2017**

SARAL COMMUNICATIONS THROUGH: PROPRIETOR HARI SINGH VISHTA ..... Appellant

Through: Mr. Prem Ranjaj Kumar, Advocate.

Versus

COMMISSIONER OF CUSTOMS (PREVENTIVE) ..... Respondent

Through: Mr. Sanjeev Narula and Mr. Abhishek Ghai, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 24.03.2017

CM No.11703/2017 (for exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed off.

CUSAA 17/2017 & CM No. 11702/2017

3. Issue notice. Mr. Sanjeev Narula, Advocate accepts notice on behalf of the respondent.

4. With the consent of the parties, the appeal is taken up for hearing.

5. The assessee/appellant is aggrieved by the refusal of the Customs, Excise & Sales Tax Appellate Tribunal (CESTAT) to condone the delay of 470 days occasioned in filing of the appeal.

6. The CESTAT has taken into consideration the fact that although the assessee had participated in show-cause notice proceedings, he disclaimed

knowledge of the order made by the Adjudicating Officer, arguing that it had not been served. The record showed that an attempt was made to serve the Adjudicating Officer's order upon the appellant, unsuccessfully and someone, at the notified address, refused to accept a copy of that order. This was held to constitute 'insufficient cause', warranting condonation of delay. The appellant's counsel submits that the amounts deposited by it were appropriated towards due demand and that the amount is equivalent to 25% of the penalty levied, too was appropriated from the Bank Guarantee furnished.

7. Having considered the submissions made by the parties, the Court is of the opinion that in the peculiar circumstances of the case, the larger interest of justice would be subserved if the appellants' contentions are accepted. In the other event, the appellant's right to appeal would be denied altogether even though it has sufficient dues left to pay.

8. In the circumstances, the appeal deserves to be and is allowed. Consequently, the delay in the filing of appeal to the CESTAT is also condoned. The CESTAT shall proceed to hear the appeal on merits after issuing notice to the parties. The appeal is allowed in the above terms.

9. The appeal and the pending application stands disposed off accordingly.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

MARCH 24, 2017
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