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

\+ CEAC 45/2012

SRIRAM CABLES PVT LTD ..... Petitioner

Through : Sh. Jitendra Mohan Sharma, Sr. Advocate with Sh. Shwetank Sailawal, Advocate, for petitioner.

versus

COMMISSIONER OF CENTRAL EXCISE, JAIPUR-1 & ANR ..... Respondents

Through Sh. Sanjeev Narula, Sr. Standing Counse with Sh. Abhishek Ghai and Sh. Raghav Khurana, Advocates, for respondent, in Item No.9.

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

O R D E R

% 14.03.2017

C.M. APPL.43415/2016

It was brought to the notice of this Court that a circular of CESTAT dated 28.08.2014 states that at least in regard to appeals received after 06.08.2014 pursuant to amendments to the Customs Act, CENVAT credits can be claimed as adjustment towards duty. The applicant is aggrieved by the CESTAT's order declining its application for restoration of appeal and a consequent decision on the merits. The CESTAT had declined that relief since the applicant/assessee's appeal against the original pre-deposit order dated 31.08.2012 had not been complied with and this Court had rejected the appeal preferred (CEAC 45/2012) on 19.10.2012. The Court had also refused to clarify the order dated 19.10.2012. In the circumstances, the appellant was duty bound to comply with the orders and make the appropriate pre-deposit. It claimed to have made an appropriate deposit and sought restoration of the appeal. That application was adjourned by the CESTAT, to enable presentation of an appropriate application to this Court, for restoration.

It is in these circumstances that CM No.43415/2016 has been filed. Notice was issued to the respondents. The applicant submits that in compliance with the original order, the appropriate sums were deposited and a *No Dues Certificate* was issued by the Revenue/customs department on 04.09.2015. The respondents who were issued notice have not contested this position. They however, pointed to the averments in the application, contending that some parts of the pre-deposit amounts, shown to have been lodged with it, were claims of CENVAT credit adjustment. In these circumstances, the Court had required the respondents to state its position with respect to CENVAT credits in such matters, i.e. appeals which require pre-deposit of amounts.

The circular of the CESTAT, though of 28.08.2014, and made in the light of the amendment, appears to have been given effect to by the Revenue in this case itself as is evident from its *No Dues Certificate*, for the relative period dated 04.09.2015. In the circumstances, this Court is of the opinion that the larger interest of justice would be sub-served if the CESTAT appropriately records its satisfaction with respect to compliance with the pre-deposit amount and hears the appeal on merits. The dismissal of the appeal - CEAC 45/2012 by the order dated 19.10.2012 is consequently recalled. C.M. Appl.43415/2016 is allowed in the above terms.

CEAC 45/2012

In view of the in-principle compliance recorded above, the CESTAT shall pass appropriate orders and restore the appeal to hear and dispose it off on merits.

CEAC 45/2012 is allowed in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

MARCH 14, 2017/ajk