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

\+ **CUSAA 41/2017**

COMMISSIONER OFCUSTOMS AND EXCISE ..... Appellant
Through: Ms. K. Enatoli Sema, Advocate

Versus

LEADING POINT TECHNOLOGIES ..... Respondent
Through: None.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

ORDER

% **26.05.2017**

C.M. No. 20462/2017 (for exemption)

1. Allowed, subject to all just exceptions.

CUSAA 41/2017 & CM APPL 20461/2017 (stay)

2. The Customs Department has filed the present appeal against the order dated 10th August, 2016 passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi ('CESTAT') dismissing Customs Appeal No. C-/50059/2016-Cu(SM) whereby the Order-in-Appeal No. Cus/D-II/ICD/PPG/1053 & 1054/2015 dated 12th October, 2015 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals) has been affirmed.

3. The short point involved in the present appeal is whether refund can be denied to an Assessee only because the denial of the benefit at the time of assessment of the Bill of Entry (B/E) was not challenged? The CESTAT has,

in answering the question in the negative, relied upon the judgment of this Court in ***Aman Medical Products Ltd. v. Commissioner of Customs Delhi 2010 (250) ELT 30 (Del).***

4. Learned counsel for the Appellant states that the above decision has been appealed against by the Department before the Supreme Court. However, no stay has been granted. The Court is not persuaded to take a different view in the matter.

5. The appeal and the applications are, accordingly, dismissed.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 26, 2017
'anb'