$~

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

18,19 & 22

\+ **W.P.(C) 5460/2017**

RAVI SINGHAL DIRECTOR OF M/S. SUPREME ROAD TRANSPORT PVT. LTD. .....Petitioner

Through: Mr Arvind Nayar, Senior Advocate with Mr Praval Arora and Mr. Amitabh Sinha, Advocates

versus

COMMISSIONER CENTRAL EXCISE (ADJN) ..... Respondent

Through: Mr. Deepak Anand, Standing Counsel

\+ **W.P.(C) 5461/2017**

SUPREME TRADING CO. ..... Petitioner

Through: Mr Arvind Nayar, Senior Advocate with Mr Praval Arora and Mr. Amitabh Sinha, Advocates

versus

COMMISSIONER CENTRAL EXCISE (ADJN) ..... Respondent

Through: Mr. Deepak Anand, Standing Counsel

\+ **W.P.(C) 5482/2017**

SUPREME ROAD TRANSPORT PVT. LTD. ..... Petitioner

Through: Mr Arvind Nayar, Senior Advocate with Mr Praval Arora and Mr. Amitabh Sinha, Advocates

versus

COMMISSIONER CENTRAL EXCISE (ADJN) ..... Respondent

Through: Mr. Deepak Anand, Standing Counsel

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>

% **04.07.2017**

1. Mr. Deepak Anand, learned Standing Counsel appears on advance notice on behalf of the Respondent. With the consent of the parties, the writ petitions are taken up for final hearing.

2. These three writ petitions arise out of a common set of facts and are accordingly being disposed of by this common order.

3. These petitions have a chequered history. Show Cause Notices ('SCNs') were issued to the Petitioners way back on 13th April, 2007 pursuant to the searches conducted at their godowns located in Raipur in Chattisgarh. The SCNs resulted in an adjudication order dated 22nd December, 2008 creating demands and levying penalties on the Petitioners. Along with the appeals, before the Customs, Excise and Service Tax Appellate Tribunal ('CESTAT'), each of the Petitioners filed an application seeking interim orders including stay of the penalty and demand and waiver of the pre-deposit amount. By its order dated 2nd November, 2011, the CESTAT, while granting stay, required the Petitioners to collectively deposit Rs. 5 crores within 12 weeks from that date.

4. On 26th March, 2012, the appeals were listed before the CESTAT. The appeal of one of the appellants, viz., K.P. Pouches Pvt. Ltd. was dismissed on that date for non-compliance of the order dated 2nd November, 2011.

5. On 3rd April, 2012, the appeals of the other Appellants including the Petitioners before this Court were dismissed on the same ground, viz., failure to comply with the order dated 2nd November, 2011.

6. The Petitioners then filed writ petitions which were disposed off by this Court on 21st September, 2012 remanding the matters to the CESTAT with the direction that the applications of the individual Appellants must be addressed separately having regard to their peculiar circumstances.

7. Thereafter, on 1st September 2014, the CESTAT passed fresh orders on the said applications requiring each of the Petitioners to make a pre-deposit of 50% of the impugned penalty under Section 35F of the Central Excise Act, 1944. Accordingly, Mr. Ravi Singhal, the Petitioner in W.P.(C) No. 5460/2017 was required to deposit Rs. 50 lacs; M/s Supreme Trading Co. (STC), the Petitioner in W.P.(C) No.5461/2017 was required to deposit Rs. 25 lacs, and the Supreme Road Transport Pvt. Ltd. (SRTPL), the Petitioner in W.P.(C) No. 5482/2017 was required to deposit Rs. 75 lacs.

8. Thereafter, on 9th December 2014, the CESTAT again dismissed the appeals of the three Petitioners for non-compliance of the previous order dated 1st September, 2014.

9. Statutory appeals were filed by the Petitioners before this Court. By an order dated 18th August, 2015 in each of the appeals this Court required Mr. Ravi Singhal and STC to deposit Rs 10 lakhs and SRTPL to deposit Rs. 25 lakhs on or before 30th September, 2015 for their appeals to be heard on

merits by the CESTAT. It is required to be noticed that this was the second round of litigation before this Court.

10. Against the order of this Court, each of the Petitioners filed appeals before the Supreme Court. On 11th December, 2015, the Supreme Court dismissed the appeals of the Petitioners stating that it found no reason to interfere with the order passed by this Court.

11. The third round of litigation commenced with each of the Petitioners filing an application before this Court on 22nd February, 2016 seeking extension of time for making the pre-deposit. By orders dated 1st March, 2016 and 11th March, 2016, this Court declined the prayer. Against these two orders, the Petitioners again filed Special leave Petition (Civil) Nos. 10551-10553 of 2016 in the Supreme Court. By the order dated 25th April, 2016, the Supreme Court dismissed the SLPs with costs of Rs. 25,000/- in each of the SLPs.

12. Thereafter, on 7th July, 2016, STC and Mr. Ravi Singhal deposited Rs. 10 lakhs each and SRTPL deposited Rs. 25 lakhs. Having made the aforesaid deposits, these three Petitioners commenced a fourth round of litigation with applications seeking the indulgence of this Court to direct the CESTAT to accept the pre-deposit and hear the appeals of the Petitioners on merits.

13. In the said applications on 28th November, 2016, an order was passed by this Court recording the statement made by the learned counsel for the Petitioners regarding withdrawal of the application with liberty to approach

the CESTAT. The applications were, accordingly, dismissed as withdrawn.

14. Thereafter, fresh applications were filed before the CESTAT by each of the Petitioners requesting that the deposit made by the Petitioners should be accepted by the CESTAT and the respective appeals be heard on merits. IN these applications, the following order was passed by the CESTAT on 18th April, 2017:

> "Shri Arvind Nayar, learned Sr. Advocate submits that in the matter, the applicants want to move an application in the Hon'ble High Court of Delhi for clarification. For this purpose, he request for an adjournment.
>
> List on 22nd May, 2017."

15. Thereafter, the present writ petitions have been filed praying that this Court should direct the CESTAT to accept the entire amount of pre-deposit made by each of the Petitioners, notwithstanding the earlier withdrawal, and hear the appeals of the Petitioners on merits.

16. Mr Arvind Nayar, learned Senior Counsel appearing for the Petitioners sought the indulgence of this Court by pointing out that the Petitioners' appeals have not been taken up for hearing on merits till date. The Petitioners ultimately complied with the pre-deposit order in terms of the earlier directions issued by this Court. Learned Senior Counsel for the Petitioners relied upon the following decisions in support of his contentions:

(i) ***Kisan Gramodyog Sansthan v. Commissioner of Central Excise, Kanpur (2015) 10 SCC 629***; and

(ii) ***Super Industries v. Commissioner of Central Excise and Customs, Vadodara (2014) 13 SCC 651***

17. It is submitted by Mr. Nayar that in each of the above cases the Supreme Court permitted the deposits to be made belatedly notwithstanding the earlier defaults.

18.There are distinguishable features as far as the above two cases are concerned. In ***Super Industries v. Commissioner of Central Excise*** (*supra*), the Supreme Court observed as under:

> "9. At the time when the appeals had been notified for hearing for the first time, the learned Senior Counsel appearing for the appellants had given details about the financial difficulties faced by the appellants. He had however added that the appellants were in a position to deposit some amount as they had made some arrangements and had collected some amount so that some amount could be paid. So as to verify the bona fides of the appellants, this Court had directed the appellants to deposit Rs.1 crore with the Registry of this Court and the said amount has been deposited by the appellants within the time prescribed by this Court. Thus, a sum of Rs. 1 crore has already been deposited by the appellants with the Registry of this Court."

19. It is plain, therefore, that in the above case, the pre-deposit was made "within the time prescribed" by the Supreme Court.

20. As far as the decision in ***Kisan Gramodyog Sansthan v. Commissioner of Central Excise, Kanpur*** (*supra*) is concerned, the Supreme Court in para 5 held as under:

> "It would be pertinent to note that immediately thereafter, the appellants have complied with the directions issued by the Tribunal with regard to the pre-deposit of certain amounts."

21. In both the above cases, therefore, the pre-deposits were made within the extended time granted by the Supreme Court itself. In the present case, there

has been a chronic delay in making pre-deposits far beyond the time granted by the Court.

22. In the circumstances, the Court is not inclined to grant any further indulgence to the Petitioners.

23. The writ petitions are, accordingly, dismissed but in the circumstances, no orders as to costs.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 04, 2017
rd