$~1

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

\+ **CUSAA 2/2017**

C.C. (ICD) NEW DELHI ..... Appellant
Through: Ms. K. Enatoli Sema, Advocate

versus

HOTEL EXCELSIOR LTD. ..... Respondent
Through: Ms. Malini Sud & Ms. Vidhi Goel, Advocates

CORAM: JUSTICE S. MURALIDHAR
JUSTICE NAJMI WAZIRI

O R D E R

% **18.04.2017**

C.M. No. 2821/2017

1. Allowed, subject to all just exceptions.

C.M. Nos. 2822-2823/2017

2. In view of the fact that the appeal already stood admitted by the very first order dated 23rd January, 2017, these applications should be taken to be allowed. The delay in filing and re-filing is condoned.

CUSAA 2/2017 & C.M. No. 2820/2017

3. At the time of admission of this appeal, the Court's attention was not drawn to the fact that arising out of the same impugned order dated 17th November 2015 of the Customs Excise and Service Tax Appellate Tribunal (CESTAT), the appeal filed by the Commissioner

of Customs (Air Cargo Export), being CUSAA 16/2017, was dismissed by this Court by a reasoned order dated 27th May, 2016. A copy of the said order has been enclosed as Annexure R-2 to the reply filed by the Respondent. It is pointed out that the Commissioner of Customs (Air Cargo Export) has not carried the matter further in appeal. Learned counsel for the Respondent states that they have in fact refunded the sum due to it pursuant to the said order.

4. It is not in dispute that the same impugned order dated 17th November 2015 has been challenged in the present appeal, this time by the Commissioner of Customs (ICD), New Delhi. Both the Commissioner of Customs (Air Cargo Export) and the Commissioner of Customs (ICD) are part of the same Customs Department. The Court sees no reason why the present appeal of one wing of the Customs Department should be entertained when the appeal by its other wing against the same order of the CESTAT has already been dismissed and the said order has attained finality.

5. The appeal is, accordingly, dismissed. The question framed by the order dated 23rd January 2017 is answered in favour of the Assessee and against the Department.

S. MURALIDHAR, J

NAJMI WAZIRI, J

APRIL 18, 2017/tp