$~38

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

\+ **CUSTOM A. 1/2017**

PRAVEEN SINGH PATWAL ..... Appellant
Through: Mr. B. S. Yadav, Mr. Ravinder Kumar Yadav, Ms. Arti and Mr. Vinay Mohan Sharma, Advocates

versus

COMMISSIONER OF CUSTOMS (PREVENTIVE) ..... Respondent
Through: Mr. Amit Bansal and Mr. Akhil Kulshreshta, Advocates

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

ORDER

% 19.09.2017

1. This appeal is directed against the order dated 25th January 2017 passed by the Customs, Excise & Service Tax Appellate Tribunal ('CESTAT'). The said impugned order was passed in an appeal filed by the Appellant against the order dated 25th June 2015 passed by the Commissioner of Customs, New Delhi. The said appeal has been dismissed by the CESTAT by invoking clause (iii) to the second proviso to Section 129A of the Customs Act, 1962 ('Act') on the ground that penalty imposed upon the Appellant, in terms of the impugned order of the Commissioner of Customs, did not exceed Rs. 2 lakhs.

2. **Admit.**

3. The following question of law is framed for consideration:

> Whether the CESTAT erred in rejecting the appeal of the Appellant under clause (iii) to the second proviso of Section 129A of the Customs Act, 1962?

4. Having heard the counsel for the parties, the Court is of the view that the above question must be answered in the affirmative.

5. To begin with, the impugned order has several errors. The order appealed against is described in the impugned order as an 'order in appeal' passed by the Commissioner of Central Excise whereas it is in fact an order in original passed by the Commissioner of Customs. Secondly, the CESTAT appears to have overlooked the fact that clause (iii) of the second proviso to Section 129A of the Act applies only to the orders which form the subject matter of clauses (b), (c) or (d) of Section 129 A (1) of the Act. In the present case, the appeal before the CESTAT was appealable under Section 129 (1) (a) of the Act and not under Section 129A (1) (b), (c) or (d) of the Act. Therefore, the second proviso to Section 129A of the Act did not apply as far as the appeal of the Appellant herein was concerned. This is clearly an error apparent on the face of the impugned order of the CESTAT.

6. Consequently, the Court sets aside the impugned order of the CESTAT and restores the appeal of the Appellant to the file of the CESTAT for a fresh consideration on merits.

7. The question framed is answered in the affirmative, i.e. in favour of the Appellant Assessee and against the Respondent Department.

8. The Appellant's appeal before the CESTAT shall be listed on 25th October 2017 for a fresh disposal on merits. Considering that the appeal has been pending for some time, the CESTAT is requested to dispose it of within a period of three months after the receipt of a certified copy of this order.

9. The appeal is disposed of in the above terms.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 19, 2017
dk