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

**Date of decision: 24th November, 2017**

\+ **W.P.(C) 8210/2017 & CM APPL. 33748/2017 (Stay)**

EBIZ.COM PVT.LTD & ORS. ..... Petitioners

Through : Mr. J.K. Mittal, Mr.Rajvir Singh, Mr.Nikhil Kumar, Advocates.

versus

CENTRAL EXCISE, CUSTOMS AND SERVICE TAX APPELLATE TRIBUNAL, DELHI ( CESTAT & ANR.)

..... Respondents

Through : Mr. Kirtiman Singh, CGSC with Mr.Waize Ali Noor, Mr.Prateek Dhanda, Mr.Momin Khan, Advocates for R1 with Mr.Mohinder Singh, Deputy Registrar, CESTAT. Mr. Satish Aggarwala, Mr.Vineet Sharma, Advocates for R2.

**CORAM:**
**HON'BLE MR. JUSTICE SANJIV KHANNA**
**HON'BLE MS. JUSTICE PRATHIBA M. SINGH**

**<u>SANJIV KHANNA, J.</u>(ORAL)**

The grievance of the petitioners is that the appeal filed by them before the Customs, Excise & Service Tax Appellate Tribunal ('CESTAT') was not being registered and listed for hearing. The court, while issuing notice in the present writ petition on 15th September, 2017, had sought response from the CESTAT on the following two questions:

> *"(a) On what basis is an issue concerning the jurisdiction of the CESTAT to entertain an appeal on*

*the judicial side being referred by the Bench of the CESTAT to the President of the CESTAT on the administrative side?*

*(b) On what basis were notices issued by the CESTAT Registry to the Petitioners herein (who have filed separate appeals before the CESTAT) "with regard to maintainability of the appeal in absence of mandatory deposit" when the Petitioners assert that the sums already deposited by them with the Department is in excess of 7.5% of the demanded sum?*

2. Respondent no.1- CESTAT, has filed an affidavit through its Registrar. It is stated by the respondent that the matter was listed on the judicial side, when the two members' Bench had referred the matter to the President on the question of jurisdiction.

3. The explanation is also being given in view of the order passed by the Allahabad High Court dated 20th August, 2015, a copy of which has been enclosed as 'Annexure-B'.

4. The second issue relates to pre-deposit. On the said aspect, it is stated in the affidavit that the aforesaid noting was issued inadvertently by the Registry of the Tribunal. A prayer is made that the said mistake may be condoned.

5. Anxiety of the petitioners for hearing and disposal of their appeal expeditiously can be understood especially when the pre-deposits made are substantial. There would be other similarly situated assesses. It is obvious that the appeals should be listed on the judicial side, even if, there is an issue or debate with regard to the territorial jurisdiction of the Tribunal. Such matters

cannot be decided on the Administrative side, by the Registry of the CESTAT, even when it is of the opinion that the appellants have not approached the right or correct Bench of the Tribunal having territorial jurisdiction.

6. Counsel for the petitioner has submitted that on four occasions, applications were made for inspection of files and on one pretext or another, the inspection of the file was not granted. The issue is to be resolved on the administrative side. Adequate mechanism should be there to deal with such complaints.

7. Mr. Mittal, during the course of hearing has accepted and stated that practice directions have been issued with regard to the removal of objections by the Registry, listing of matters, inspection, furnishing of certified copies etc. Mr. Mittal states that these directions are not being complied with. This aspect would also be examined and appropriate administrative orders can be issued.

8. The appeals filed by the petitioners, which is still awaiting registration in the Registry of the Tribunal would be registered as per Rules, for hearing, within two weeks from today and the date of hearing would be communicated to the learned counsel for the petitioners.

9. The present writ petition is disposed of in the above terms.

**SANJIV KHANNA, J.**

**PRATHIBA M. SINGH, J.**

**NOVEMBER 24, 2017/**j/R