$~8

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

\+ **<u>CUSAA 59/2017</u>**

Date of decision: 31st October, 2017.

TAHIR STAR ..... Appellant

Through Mr. Bhusan Lal Garg, Advocate.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS PREVENTIVE ..... Respondent

Through Mr. Sanjeev Narula, Senior Standing Counsel for Customs & Mr. Abhishek Ghai, Advocate.

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

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

Tahir Hussien, sole proprietor of M/s Tahir Star, has filed the present appeal under Section 130 of the Customs Act, 1962 (Act, for short) against the order dated 15th March, 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal, for short) rejecting his application for condonation of delay of 248 days in filing the appeal.

2. With the consent of the learned counsel for the appellant and respondent-Revenue, we frame the following substantial question of law and have heard arguments as a very short issue arises for consideration:-

> "Whether the tribunal was justified and correct in law in rejecting application No. C/COD/51815/2016-CU(DB) and refusing to condone delay of 248 days?"

3. The appellant had imported a consignment of glass sets and glass chatons vide bill of entry No. 2730075 dated 28th September, 2015. The consignment was examined by officers of Customs (Preventive), New Delhi and it is alleged that certain discrepancies in the quantum of imports and valuation was noticed. A panchnama dated 14th October, 2015 was prepared and the consignment was subsequently seized. Statements of the appellant and some others were recorded under Section 108 of the Act. On the basis of the alleged material, order-in-original dated 5th January, 2016 was passed and dispatched to the appellant on 13th January, 2016. The said order re-determined assessable value of the goods at Rs.2,13,95,475/- attracting customs duty of Rs.62,99,042/-. The appellant was given an option to pay redemption fine of Rs.12,00,000/- under Section 125 of the Act. Penalty of Rs.3,44,692/- was imposed under Section 112 (a), in addition to similar penalty on Altaf Khan, elder brother of the present appellant.

4. The appellant states that he had received copy of the order-in-original on 18th January, 2016.

5. The appellant preferred an appeal against the said order on 22nd December, 2016 along with an application for condonation of delay. The grounds taken in the application for condonation of delay primarily relate to failure of the respondents to issue show cause notice and furnishing of papers/documents. The appellant has raised the plea that the respondents had not issued a show cause notice and had also not furnished and given copy of the Relied upon Documents (RUDs) before the order was passed.

6. The stand of the respondents, on the other hand, is that the appellant had waived his right to show cause notice.

7. The impugned order of the Tribunal dated 15th March, 2017 notices the respective contentions and has refused to condone the delay recording that the appellant had made an application for furnishing of RUDs on 7th December, 2016, just a few days before the appeal was preferred. In this light, it has been held that the long delay of 248 days has not been explained and there was no reason and justification to condone the same.

8. We have noted the respective contentions of the appellant and the respondent. As per the stand of the respondents, the appellant had waived the show cause notice and hence there was no need and requirement for the appellant to follow the procedure of giving an opportunity to the respondents to file a reply and contest the proceedings. Thus, it is accepted that RUDs were not furnished. While some documents may be with the appellant, it is apparent that entire set was not available.

9. Learned Counsel for the appellant submits that the appellant was not aware and conscious of his rights to file appeal and contest the finding and had proceeded on the basis of legal advice given. Later on, the appellant realized that he must file an appeal otherwise he would suffer and has to meet the liabilities. The appellant has pleaded that he had made an oral requests for furnishing of RUDs. Appellant certainly did make an application just before filing of the appeal for supply of RUDs.

10. Be that as it may, we have noticed that the appellant has been saddled with a fairly substantial demand. The matter does require consideration. The appellant had, as per the respondents as noticed above, waived his right to show cause notice and hence he did not have copy of the entire RUDs. It is *per se* evident that there would have been difficulty in filing of an appeal without relevant documents. Be that as it may, learned counsel for the appellant has stated that the appellant would be ready and willing to pay costs, but the appeal should be heard and disposed of on merits.

11. Keeping in view the aforesaid position and the respective contentions and issues raised by the parties, we are inclined to accept the prayer made by the appellant and condone the delay in filing of the appeal, subject to payment of costs of Rs.35000/- to the respondents within a period of four weeks from today. The appellant has agreed to pay the said costs.

12. The question of law recorded above is accordingly answered in favour of the appellant and against the respondents. Subject to the

appellant paying costs of Rs.35,000/- to the respondents within a period of four weeks, the appeal would be heard and decided by the Tribunal, in accordance with law. We clarify that we have not expressed any opinion on merits.

13. To cut short delay, the parties are directed to appear before the Tribunal on 7th December, 2017, when a date of hearing would be fixed.

14. The appeal is disposed of in the aforesaid terms.

SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

OCTOBER 31, 2017
MR/VKR