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

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\+ **<u>CUSAA 4/2018</u>**

NARESH KUMAR SHARMA ..... Appellant

versus

COMMISSIONER OF CUSTOMS (PREV) ..... Respondent

AND

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<u>CUSAA 5/2018</u>

KAMAL VIRMANI ..... Appellant

versus

COMMISSIONER OF CUSTOMS (PREV) ..... Respondent

Present: Mr. Ashish Batra, Advocate for appellants in both the matters.
Mr. Amit Bansal, Sr. Standing Counsel with Mr. Akhil Kulshrestha, Advocate for respondent in both the matters.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

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

% **17.08.2018**

<u>CM APPL. 33143/2018 in CUSAA 4/2018</u> *(for exemption)*
<u>CM APPL. 33145/2018 in CUSAA 5/2018</u> *(for exemption)*

Allowed, subject to all just exceptions.

<u>CM APPL. 33142/2018 in CUSAA 4/2018</u> *(for early hearing)*
<u>CM APPL. 33144/2018 in CUSAA 5/2018</u> *(for early hearing)*

For the reasons mentioned in the applications, the applications are allowed and the appeals are taken up for hearing.

Applications are disposed of accordingly.

CUSAA 4/2018
CUSAA 5/2018

These appeals challenge a common order which was also the subject matter of other appeals [CUSAA 29/2018, 142/2018, 125/2018, 137-138/2018, 143/2018 & 148/2018 – Rohit Sakhuja vs. Commissioner of Customs (Preventive) & connected matters]. Those appeals were disposed of on 23.07.2018 by a common order.

The order reads as follows:-

> *"The common question involved in these appeals filed against common order in Original No.09/KAM/COMMR/2015 dated 16.01.2015 under Section 130 of the Customs Act, 1962 is that the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) vide common impugned order dismissed all the appeals. The appellant's grievance is that the appeals were filed by way of First Appeals, directed against the order of the Commissioner which had imposed substantial liabilities in the form of huge penalties. Given these facts, the CESTAT did not even consider or deal with their arguments on the merits.*
>
> *We have heard counsel for the parties. There is no merit in the appellant's grievance; the order in original - the common one against several assessees, was appealed through separate proceedings. The CESTAT noticed the arguments addressed in each of those appeals, however, it summarily disposed of all the appeals in merely two paragraphs, on an assumption of culpability and consequential reliability of the assessees.*
>
> *There is no gainsaying that in an appeal the person aggrieved has a right to address the facts in law. That the CESTAT was presented with the arguments on merits undisputed given the tenor of its order, yet it is an unreasoned order as regards the conclusions and why it chose to dismiss the appeals. The impugned orders are*

> *accordingly set aside. The matter is remitted for fresh hearing and consideration by the CESTAT which shall address the arguments of all the appellants on their merits and pass a speaking and reasoned order dealing with all contentions.*
>
> *The appeals are partly allowed in the above terms…………….."*

Since the appellant's grievance is identical to those in *Rohit Sakhuja's (supra)* batch of cases, this Court is of the opinion that the directions in those cases would be equally applicable in the present appeals.

Accordingly, following *Rohit Sakhuja (supra)* the appeals are partly allowed; the appeals are remitted for fresh hearing and consideration by Customs Excise and Sales Tax Appellate Tribunal which shall deal with the all the contentions of the parties and pass a speaking and reasoned order. All rights and contentions of the parties are reserved.

The appeals are partly allowed.

Parties are directed to appear before the CESTAT on 23rd August, 2018.

Order *dasti.*

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

AUGUST 17, 2018

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