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

\+ W.P.(C) 5360/2018

SHIVAM(UZ)INTERNATIONAL ..... Petitioner
Through Mr. Navneet Panwar, Advocate.

versus

UNION OF INDIA & ANR. ..... Respondents
Through Mr. Sanjeev Narula, Sr. Standing Counsel & Mr. Abhishek Ghai, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

O R D E R
% **18.05.2018**

The present writ petition by M/s Shivam (UZ) International impugns the order-in-original dated 16th/15th March, 2018. The said order is appealable before the Commissioner (Appeals) under Section 128 of the Customs Act, 1962. Learned counsel for the petitioner accepts and admits existence of statutory appellate remedy, but submits that in the present case the order-in-original is bad in law as the defaults relate to the period 2007 and the question of reasonable time has not been examined and discussed in the impugned order. Further, the petitioner was not furnished relied upon documents.

2. On the first contention, we would observe that the same can be effectively examined and considered by the Commissioner (Appeals), with reference to facts. Plea of reasonable time, if applicable, has to be decided

on facts and law. On the second contention, the petitioner has merely averred and stated that the order-in-original does not deal with and examine the contentions and the documents relied by the petitioner objecting to the show cause notice. No specific plea, as urged, has been raised in the writ petition.

3. The primary contention raised in the writ petition is predicated on the plea of double jeopardy as the petitioner was earlier issued show cause notice dated 22nd January, 2010, which had culminated in order-in-original dated 22nd June, 2010. This order was affirmed by the Commissioner (Appeals) on 28th February, 2011 and by the Revisionary Authority vide order dated 23rd August, 2012. The petitioner had thereupon filed Writ Petition (Civil) No. 1887/2013, which was allowed by the Delhi High Court vide order dated 27th January, 2014.

4. The petitioner had relied upon the said order before the authority and the order-in-original has examined the said aspect and distinguished the decision of the Delhi High Court on the ground that the said writ petition related to claim and availment of Central Excise portion of drawback against nine shipping bills, whereas the show cause notice in the present case was in respect of repatriation of export proceeds and failure to finish bank realisation certificates for eleven shipping bills in terms of the provisions of Foreign Exchange Management Act, 1999 read with the guidelines of the Reserve Bank of India.

4. We have merely recorded the contention of the petitioner and what is stated in the order-in-original and do not make any comment on merits. We feel that the issues and contentions raised and that arise for consideration can be appropriately raised and considered by way of appeal before the Commissioner (Appeals). Therefore, it will not be appropriate and proper

for the Writ Court to exercise discretionary power under Article 226 bypassing the statutory remedy. We may also note that the petitioner in Writ Petition (Civil) No. 1887/2013 had followed and taken recourse to the departmental remedies before filing the writ petition.

5. At this stage, counsel for the petitioner states that they would be preferring an appeal within fifteen days. In case appeal is preferred within fifteen days, the same would not be dismissed on the ground of limitation.

6. With the aforesaid observations, the writ petition is not entertained and is disposed of without any comment on merits. No costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

MAY 18, 2018
VKR