$~44,45,48,49,51,54,55

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

\+ W.P.(C) 12641/2018, CM APPL. 49093-49094/2018

PARESH K DAFTARY ..... Petitioner

versus

COMMISSIONER OF CUSTOMS, ....Respondent

\+ W.P.(C) 12642/2018, CM APPL. 49095-49096/2018

PARESH K DAFTARY ..... Petitioner

versus

COMMISSIONER OF CUSTOM ..... Respondent

\+ W.P.(C) 12645/2018, CM APPL. 49101-49102/2018

PARESH K. DAFTARY ..... Petitioner

versus

COMMISSIONER OF CUSTOMS ..... Respondent

\+ W.P.(C) 12646/2018, CM APPL. 49103-49104/2018

PARESH K. DAFTARY ..... Petitioner

versus

COMMISSIONER OF CUSTOMS, ICD, ..... Respondent

\+ W.P.(C) 12649/2018, CM APPL. 49118-49119/2018

PARESH K DAFTARY ..... Petitioner

versus

COMMISSIONER OF CUSTOMS ..... Respondent

\+ W.P.(C) 12652/2018, CM APPL. 49126-49127/2018

PARESH K DAFTARY ..... Petitioner

versus

COMMISSIONER OF CUSTOMS, ..... Respondent

\+ W.P.(C) 12653/2018, CM APPL. 49128-49129/2018

PARESH K DAFTARY ..... Petitioner

versus

COMMISSIONER OF CUSTOMS ..... Respondent

**Present:** Ms. Aakriti Mathur & Ms. Khushboo Kumari, Advs. for petitioner.
Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur, Adv. for respondent

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE PRATEEK JALAN**

**O R D E R**

% **27.11.2018**

Issue notice.

Mr. Harpreet Singh, Senior Standing Counsel accepts notice on behalf of the respondent.

In all these proceedings, the petitioner's grievance is that the Commissioner of Customs who adjudicated the various show cause notices refused and omitted to provide an opportunity of cross-examining four individuals, two of whom were named in the show cause notices. Their statements were ultimately relied upon in the impugned order-in-original.

This is a matter of record that the materials on record in the form of replies to the show cause notices show that the petitioner had disputed the statements. The replies also contended that the statements of such individuals, without the opportunity of cross-examination, cannot be relied upon.

The respondent-Revenue contends that the present petition should not be entertained as the petitioner has an efficacious appellate remedy before the CESTAT.

Having considered the submissions, this Court is of the opinion that the petitioner, who has an alternative remedy, may invoke it, if so advised. At the same time, in the event the appeal is filed before the CESTAT, it would consider the same on merits and remand the matter for appropriate provision of opportunity of cross-examining the concerned witnesses. This remand is only for the purposes of providing opportunity of cross-examination to the petitioner (in other words, the appropriate remit order to record the cross-examination of witnesses only shall be made). This Court is also informed that the requirements in the statute of pre-deposit in all these cases would work out a substantial amount of about ₹1.4 crores. In these circumstances, the CESTAT shall entertain and adjudicate on the merits of the appeal – including the remand provided the petitioner deposits 1% of the penalty amount in each case levied by the order-in-original within a time stipulated by the CESTAT. After receiving a report with respect to the proceedings of the Commissioner viz-a-viz the cross-examination of the witnesses and in the light of it, the CESTAT shall proceed to hear the appeal on its merits and decide it in accordance with law.

All rights and contentions of the parties are kept open.

The writ petitions are disposed of in the above terms.

Order *dasti* under the signatures of the Court Master.

**S. RAVINDRA BHAT, J**

**PRATEEK JALAN, J**

**NOVEMBER 27, 2018/**akv