$~2

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

\+ CUSAA 339/2018, CM APPL. 54332-54334/2018

JAI SHIV TRADING CO. ..... Appellant
Through: Mr. Amit Kumar Attri & Mr. Priyanshu Upadhyay, Advs.

versus

COMMISSIONER OF CUSTOMS (IMPORT) ..... Respondent
Through: Mr. Amit Bansal, Adv.

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

**ORDER**

% **21.12.2018**

**CM APPL. 54332/2018**

Issue notice.

Mr. Amil Bansal, Advocate accepts notice on behalf of the respondent.

For the reasons stated in the application, the delay in filing the appeal is condoned.

The application is disposed of.

**CUSAA 339/2018, CM APPL. 54333-54334/2018**

Issue notice.

Mr. Amil Bansal, Advocate accepts notice on behalf of the respondent.

The appellant’s grievance in this case is that its appeal before the CESTAT against the order-in-appeal of the Commissioner of Customs dated 27.12.2016 was not dealt with but was merely dismissed on the ground that the Revenue's appeal was rejected. The Revenue's appeal – we notice, was confined to the issue of valuation of goods whereas the appellant's appeal was in respect of its right – as it claimed, to re-export the goods on an assumption of its liability and certain other grounds. Clearly, the subject matter of these two appeals; one by the Revenue and the other by the assessee was entirely different. The impugned order of the CESTAT reads as follows:

> *2. Inspite of the order, the appellant has approached the Hon 'ble High Court of Delhi in Writ Petition (C) No. 10774/2017 where the Hon'ble High Court has passed the following order:*
>
> > *"After some hearing learned counsel for petitioner states that he would withdraw the present writ petition and approach the Tribunal for relief in view of the. observations made in paragraph 10 of the order dated 27'h December, 2016 passed by Commissioner (Appeals). The writ petition is dismissed as withdrawn with liberty as prayed for.*
> >
> > *We clarify that we have not expressed any view on merits of the case and it will be open to the respondent to contest the said proceedings on all aspects including the question of limitation."*
>
> *3. Now, the appellant has filed the present appeal.*
>
> *4. With this background, we heard Sh. Priyanshu Uppadhyay, ld. Advocate for the appellant and Sh. Rakesh Kumar, ld. AR for the Revenue.*
>
> *5. After hearing both sides and on perusal of record, it may be mentioned that the Tribunal vide its order dated 04.09.2017 has dismissed the departmental appeal by observing that-*
>
> > *".... we find no reason to interfere with the impugned order. Same is sustained."*
>
> *6. In view of above, we cannot interfere in the order which*

> *has already been sustained by the Tribunal, especially when the High Court upholds the Tribunal order. Present appeal is nothing but an example of misuse of the judicial process.*
> *7. In the result, the appeal is dismissed.*

It is evident that the CESTAT completely failed to apply its mind. This Court expresses its regret that the CESTAT which is under a duty to consider the appeals pending before it, on their merits, appears to have completely abdicated its responsibility merely on two circumstances; firstly, that the Revenue's appeal was rejected and secondly, that this Court had been approached on an earlier occasion for some directions. This can hardly be grounds for dismissing the appellate remedy, upon which compulsorily the CESTAT has to record findings on each of the contentions urged. The impugned order is therefore set aside. Parties are directed to be present before the CESTAT for further proceedings on 14.01.2019. The CESTAT is directed to proceed with the assessee's appeal, hear it and dispose it of by a reasoned order dealing with the merits of the contentions.

The appeal is allowed in the above terms.

Pending applications stand disposed of.

**S. RAVINDRA BHAT, J**

**PRATEEK JALAN, J**

**DECEMBER 21, 2018/**akv