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

\+ **CUSAA 64/2017**

COMMISSIONER OF CUSTOMS (EXPORT) ..... Appellant

Through: Mr. Harpreet Singh, Sr. Standing Counsel with Mr. Suresh Choudhary and Ms. Suhani Mathur, Advocates.

versus

VINEETAZ EXPORTS PVT LTD. ..... Respondent

Through: Mr. Krishna Kant, Advocate.

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

O R D E R

% **09.10.2018**

The question of law was framed in this appeal on 11.04.2018 which reads as follows:-

> *"Whether the Customs, Excise and Service Tax Appellate Tribunal was right in dismissing the appeal preferred by Commissioner of Customs (Export) holding that the show cause notice for imposition of penalty was barred by limitation?"*

The brief facts are that the Customs Authorities were of the opinion – as on 25.04.2018 when information was received, that the respondent/assessee availed the benefit under Notification No.48/2000-Customs wrongly however, show cause notice was issued much later on 30.06.2006 under Section 11(2) r/w Section 14 of Foreign Trade Development and Regulation Act, 1992 for imposition of penalty on account of alleged fraudulent DFRC availment. It culminated in the Order-in-Original dated 18.12.2008 cancelling 13 DFRC licenses. Based upon this a show cause notice dated 20.01.2010 was issued to the respondent/assessee culminating in an Order-in-Original dated 04.10.2010 dropping the show cause notice. This became the subject matter of the appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). The CESTAT following the judgment of the Supreme Court in *'State of Punjab vs. Bhatinda District Co-op. Milk P. Union Ltd.'*, 2007 (217) ELT 325 (SC) held that the belated show cause notice was illegal and consequently the attempt to inflict penalty was unwarranted.

This Court has considered the submissions of the parties. The decision in *Bhatinda District Co-op. Milk P. Union Ltd*. (supra) is clear that wherever power is conferred upon any statutory authority which can potentially result in infliction of penalty or such adverse orders, the jurisdiction is to be invoked within reasonable time atleast from obtaining the information preferably within five years. In this case the jurisdiction to invoke penalty clause was invoked atleast eight years after receipt of information.

As a result the principle in *Bhatinda District Co-op. Milk P. Union Ltd.* (supra) squarely applies. For the foregoing reasons, the question of law framed in this case is answered against the Revenue/appellant and in favour of the assessee. The appeal is dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

OCTOBER 09, 2018

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