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

\+ CUSAA 68/2019 & CM Nos.4040-41/2019

AMIT MAHAJAN ..... Appellant

Through : Mr. Saurabh Kansal and Ms. Pallavi S. Kansal, Advs.

versus

COMMISSIONER OF CUSTOMS (IMPORT AND GENERAL) ..... Respondent

Through : Mr. Amit Bansal, Sr. Standing Counsel with Ms. Seema Dolo, Adv.

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

O R D E R

% **28.01.2019**

CM Nos.4040-41/2019

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

The applications are disposed of.

CUSAA 68/2019

Issue notice to the respondent.

Mr. Amit Bansal, Senior Standing Counsel accepts notice on behalf of the respondent.

The question of law sought to be urged in this case is that the CESTAT did not apply its mind and rendered findings in the appeal preferred by the appellant, questioning the order of the Commissioner of Customs.

The appellant/assessee was employed by one M/s Alliance Strategies Ltd. as Manager, Business Development. A search was conducted at the appellant's premises on the ground that the company which employed him had imported wireless transmitted/receiving apparatus and other equipments; his statement was recorded under Section 108 of Customs Act, 1962. A show cause notice was issued to the company as well as the appellant; it proposed action against him as well as penalty under Section 112(a) of the Customs Act, 1962. By an order dated 05.05.2014, a penalty of ₹2,00,000/- under Section 112 and further an equivalent amount under Section 114AA of the Customs Act, 1962 was imposed. Complaining that the appellant was merely an employee and could not be ascribed the role attributed to him, by the Commissioner, an appeal was preferred to the CESTAT. It is contended that the CESTAT has not applied its mind to the materials on record and rather rejected the appeal, solely on the basis of the findings given against the other noticees.

This Court has considered the submissions. Para 10 of the impugned order shows that the appellant's grounds were not even considered and the CESTAT did not apply its mind with respect to his contentions. It has merely extracted the findings of the Commissioner, which attributed motive to the appellant and imposed the penalty.

The Court is of the opinion that the order is a non-speaking one *per se* as far as the appellant is concerned. The impugned order is therefore, set aside and the appeal is restored to the file of CESTAT. The appellant's appeal shall now be decided afresh after issuing notice and granting reasonable opportunity of hearing to the parties.

The parties shall appear before the Tribunal on 21.02.2019.

This appeal is allowed in the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 28, 2019

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