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

\+ CUSAA 217/2019

COMMISSIONER OF CUSTOMS, ... Appellant

Through: Mr. Harpreet Singh, Senior Standing Counsel with Mr. Arunesh Sharma and Ms. Suhani Mathur, Advocates.

versus

SHRI SURAJ PRAKASH DUA, ... Respondent

Through:

\+ CUSAA 213/2019

COMMISSIONER OF CUSTOMS, ... Appellant

Through: Mr. Harpreet Singh, Senior Standing Counsel with Mr. Arunesh Sharma and Ms. Suhani Mathur, Advocates.

versus

SHRI ASHWANI DUA, ... Respondent

Through:

\+ CUSAA 214/2019

COMMISSIONER OF CUSTOMS, ... Appellant

Through: Mr. Harpreet Singh, Senior Standing Counsel with Mr. Arunesh Sharma and Ms. Suhani Mathur, Advocates.

versus

SHRI ASHOK KUMAR JHA ..... Respondent

Through:

\+ CUSAA 215/2019

(3)

COMMISSIONER OF CUSTOMS, ... Appellant

Through: Mr. Harpreet Singh, Senior Standing Counsel with Mr. Arunesh Sharma and Ms. Suhani Mathur, Advocates.

versus

SH. RAKESH ARORA ..... Respondent

Through:

\+ CUSAA 216/2019

COMMISSIONER OF CUSTOMS, ... Appellant

Through: Mr. Harpreet Singh, Senior Standing Counsel with Mr. Arunesh Sharma and Ms. Suhani Mathur, Advocates.

versus

M/S G N INTERNATIONAL, ... Respondent

Through:

\+ CUSAA 219/2019

COMMISSIONER OF CUSTOMS, ... Appellant

Through: Mr. Harpreet Singh, Senior Standing Counsel with Mr. Arunesh Sharma and Ms. Suhani Mathur, Advocates.

versus

SURINDER GOYAL, C/O KSHITIZ IMPEX PVT. LTD. ..... Respondent

Through: Mr. Shubhankar Jha, Advocate.

\+ CUSAA 221/2019

COMMISSIONER OF CUSTOMS, ... Appellant

Through: Mr. Harpreet Singh, Senior Standing Counsel with Mr. Arunesh Sharma and Ms. Suhani Mathur, Advocates.

versus

DISHA OVERSEAS PVT. LTD, ... Respondent

Through: Mr. Shubhankar Jha, Advocate.

\+ CUSAA 222/2019

COMMISSIONER OF CUSTOMS, ... Appellant

Through: Mr. Harpreet Singh, Senior Standing Counsel with Mr. Arunesh Sharma and Ms. Suhani Mathur, Advocates.

versus

KSHITIZ IMPEX PVT. LTD., ... Respondent

Through: Mr. Shubhankar Jha, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **15.11.2019**

<u>CM APPL. 42766/2019 in CUSAA 219/2019</u>
<u>CM APPL. 42763/2019 in CUSAA 221/2019</u>
<u>CM APPL. 42765/2019 in CUSAA 222/2019</u>

1. The present appeals are directed against the orders passed by the Central Excise and Service Tax Appellate Tribunal (CESTAT), Principal Bench,

New Delhi in customs appeals preferred by the respective Respondents. The particulars of the impugned orders in respect of each of these cases are as follows:

S.No.	Appeal No.	Date of Impugned Order	Respondent
1.	CUSAA 217/2019	12.07.2017	Shri Suraj Prakash Dua
2.	CUSAA 213/2019	12.07.2017	Shri Ashwani Dua
3.	CUSAA 214/2019	03.07.2017	Shri Ashok Kumar Jha
4.	CUSAA 215/2019	03.07.2017	Sh. Rakesh Arora
5.	CUSAA 216/2019	12.07.2017	M/S G N International
6.	CUSAA 219/2019	09.10.2017	Surinder Goyal, C/O Kshitiz Impex Pvt. Ltd.
7.	CUSAA 221/2019	09.10.2017	Disha Overseas Pvt. Ltd
8	CUSAA 222/2019	09.10.2017	Kshitiz Impex Pvt. Ltd.

2. All these appeals have been filed with applications to seek condonation of delay which is in the range of around 486 days. Replies to the delay applications seeking condonation of delay has been filed in some of these appeals i.e. CUSAA 219/2019, CUSAA 221/2019 and CUSAA 222/2019. The submission of learned counsel for the Appellant is that in respect of similar impugned orders passed by the Tribunal, the Commissioner of Customs had preferred appeals before this Court which were decided in a batch, on 03.08.2018 titled as ***Principal Commissioner of Customs v. Col. Sanjeev Sethi*** and other connected matters. Learned counsel for the

Appellant submits that vide order dated 03.08.2018, the Court allowed the appeals following the earlier decision of this Court in ***Forech India Pvt. Ltd. v. Commissioner of Customs, Inland Container Depot, Tughlakabad, New Delhi***, [CUSAA 67/2017] decided on 13.12.2017, thereby giving a direction to the CESTAT to independently apply its mind to the question of jurisdiction and decide the appeals on merit, including the aspect of imposition of penalty, if any. The submission of learned counsel for the Appellant is that there are about 500 such appeals which have been filed from time to time, after obtaining the requisite sanction. Learned counsel for the Appellant submits that no prejudice would be caused to the Respondent if this Court directs the CESTAT to itself undertake the determination- including of the question of jurisdiction and other related matter, rather than requiring the Adjudicating Authority to do so in terms of the impugned order.

3. Learned counsel for the Respondents, however opposes the prayer for condonation of delay on the ground that the same is substantial. He also relied upon the order passed by the Supreme Court in the case of ***State of Bihar & Ors. v. Deo Kumar Singh and Ors.*** SLP (C) Dairy No. 13348/2019 decided on 09.05.2019, wherein the Supreme Court rejected a similar plea to seek condonation of delay of 728 days. In that case as well, the delay was sought to be condoned on the premise that the SLP had been filed "*after obtaining all sanctions from the respective departments*" which "*took time to receive the affidavit and vakalatnama from the concerned department*".

4. The aspect of condonation of delay has to be viewed in the light of the

explanation furnished by the Appellant, as also in the context of the prejudice which would be caused to the Respondent, in case the delay is condoned. As noticed hereinabove, orders of similar nature passed by the CESTAT were not accepted by the department, and several other appeals were preferred in the year 2018 itself. The same have been allowed by this Court as early as on 03.08.2018.

5. The department has been preferring such like appeals from time to time, and this Court has consistently been setting aside the orders passed by the CESTAT with the direction to the CESTAT to independently apply its mind to the question of jurisdiction, and to decide the appeals on merit, including the aspect of imposition of penalty. The effect of the orders passed by this Court in earlier appeals, setting aside similar impugned orders is that rather than the Adjudicating Authority, it is the CESTAT itself that would now undertake the required exercise. Pertinently, it were the appeals of the assessees/Respondents on which the impugned order had been passed. The effect of the impugned order is to await the decision of the Supreme Court in ***Mangli Impex Limited v. Union of India*** and then the case is to be decided on merits. This would delay the proceedings, and the same would neither be in the interest of the Revenue, nor in the interest of the assessee.

6. We are of the view that in these circumstances, the decision in ***Deo Kumar Singh*** (supra) is not attracted. We therefore reject the objection of the Respondents to the condonation of delay, and accordingly, allow the applications seeking condonation of delay and condone the same.

CUSAA 217/2019, CUSAA 213/2019, CUSAA 214/2019, CUSAA 215/2019, CUSAA 216/2019, CUSAA 219/2019, CUSAA 221/2019 CUSAA 222/2019

7. Following the decision of this Court, inter alia, in CUSAA 168/2018 (***Principal Commissioner of Customs v. Col. Sanjeev Sethi***) decided on 03.08.2018 and ***Forech India*** (supra), the impugned order is hereby set aside and the matter is remitted to the CESTAT, which shall proceed to examine and decide the merits of the appeal including the aspect of imposition of penalty, if any. Tribunal shall hear the parties on the merits of the case as well as with respect to the issue of jurisdiction, if necessary, on account of ***Mangli Impex (supra)*** and record separate findings. The findings with respect to the lack of jurisdiction, if any, based on the reasoning in ***Mangli Impex (supra),*** would be subject to the final outcome of the proceedings in the Supreme Court. The Court, at the same time, like in the other cases, expresses no opinion on the merits or procedure that the Tribunal should adopt and follow. The Tribunal is directed to issue reasonable notice to the assessees for hearing the appeal before it.

8. In view of the above, the appeals are allowed and disposed of in the above terms.

VIPIN SANGHI, J

SANJEEV NARULA, J

NOVEMBER 15, 2019

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