

\$~15

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

+ CUSAA 280/2018 & CM Appl. 44102-04/2018

UNISON ENTERPRISES Appellant

Through: Ms.Anjali J. Manish & Ms.Nidhi
Saini, Advocates

versus

COMMISSIONER OF CUSTOMS (APPEALS)

NEW CUSTOM HOUSE, NEW DELHI Respondent

Through: Mr.Deepak Anand, Std.Counsel

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **23.01.2019**

1. The appellant's grievance is that both the Commissioner (Appeals) and CESTAT did not consider its appeal on merits and rejected them on the ground of limitation.

2. It is urged that the show cause notice for mis-declaration i.e. under valuation of the goods imported [567840 Nos. of CFL Burner 7W [coated with halo powder] was issued on 02.05.2013. The appellant contested the show cause notice and denied liability.

3. Apparently, the adjudicating authority [Additional Commissioner of Customs] made an order, rejecting the appellant's contentions. Its grievance is that the order-in-original was never received by it and consequently it could not approach the Commissioner (Appeal) in time.

4. This Court on considering the submissions, directed the respondent to produce the despatch registers or any other evidence to show that the appellant was in fact served with the copy of the order-in-original. Learned counsel for the respondent shows the register which indicates that on 31.03.2014, some communication was addressed to the appellant. The note in remarks column reflects that the communication was returned [“wapasi”] on 24.04.2014.

5. In these circumstances, the Court is of the opinion that the rejection of the appellant’s further appeal due to non-consideration of the appellant’s plea on merits, was unjustified. The orders of Commissioner (Appeal) and CESTAT are set aside. The matter is remitted for consideration of the Appellate Commissioner. The Appellate Commissioner shall proceed to consider the appellant’s appeal on merits and render its decision by a reasoned order, after giving reasonable opportunity of hearing, with adequate notice in that regard to the appellant. Every endeavour shall be made to complete the proceedings within four months from today.

6. The appeal is allowed in the above terms.

7. Copy of the order be given *dasti* to the parties.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 23, 2019

‘hkaur’