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

\+ CUSAA 329/2018, C.M. Appl. No. 52933-52936/2018

ALLIANCE STRATEGIES LTD.THROUGH ITS DIRECTOR

..... Appellant

Through: Ms. Kiran Bhardwaj, Mr. Shailendra Sharma, Advocates

versus

COMMISSIONER OF CUSTOMS (IMPORTS & GENERAL)

..... Respondent

Through: Ms. K. Enatoli Sema, Advocate

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

O R D E R

% **09.01.2019**

Issue notice of the appeal as well as the applications to the respondent.

Ms. K. Enatoli Sema, Advocate accepts notice on behalf of the respondent.

The appellant had approached this court claiming the benefit of reduced mandatory pre-deposit to pursue the appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT). By order dated 20.05.2015, this court had permitted depositing of reduced amount i.e. 10% of the penalty so determined, within a period of six weeks, subject to which the appeal was to be heard. The appellant, however, did not fulfil this condition either within the time or even thereafter. Consequently, its appeal was dismissed on 10.08.2015. The appellant has therefore again approached this court – this time against the order of the CESTAT rejecting its appeal, for non-compliance with the requirement of mandatory pre-deposit of the penalty amount.

The conduct of the appellant in not depositing the amount, and approaching the court, deserves to be frowned upon; at the same time, this court notices that according to the averments, the appellant was facing severe financial constrains as it has been subjected to some search and seizure process and its assets were also attached. It is stated, however, that the appellant is willing to deposit the entire mandatory amount (20% of the penalty). Given the fact that, its appeal has not been adjudicated on merits but dismissed on the ground of failure to comply with the statutory requirement of mandatorily pre-depositing the amount, this court is of the opinion that the interest of justice require that the request of the appellant be granted. Accordingly, in the event of appellant depositing 20% of the penalty, within four weeks, the appeal would stand restored. The CESTAT would verify whether the appellant has complied with the condition and, after due notice to the parties, hear and dispose of the appeal having regard to the contentions of the parties, in accordance with law.

The appeal as well as applications is disposed of in the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 09, 2019
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