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

\+ CUSAA 155/2019 & C.M.Appln.16383/2019

PR. COMMISSIONER OF CUSTOMS (PREV.) ..... Appellant

Through: Mr. Harpreet Singh, Sr. Standing Counsel

versus

GOODWILL ENTERPRISES ..... Respondent

Through: None

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE ASHA MENON

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

% 06.03.2020

1. The appellant was permitted to serve the respondent through substituted service in terms of the order dated 17.02.2020, passed by the learned Joint Registrar. Pursuant to the said order, necessary steps were taken by the appellant to serve the respondent by way of publication in the daily newspaper, 'Dainik Jagran', (Hindi) Haryana Edition. When the matter was listed before the Joint Registrar on 26.02.2020, the proof of service of notice through substituted mode was not found to be on record. The appellant was directed to file proof of service of notice well before the date fixed before this court, i.e., before 28.02.2020. However, none had appeared on behalf of the respondent on 26.02.2020.

2. On 28.02.2020, learned counsel for the appellant had stated that the respondent was served through substituted mode, but the affidavit of service was still not on record. As none was present on behalf of the respondent on 28.02.2020, at the request of learned counsel for the appellant, the matter

was adjourned for today. The position remains the same even today, as none is present on behalf of the respondent. The affidavit of publication of notice is placed on record. The respondent is proceeded against ex-parte.

3. The present appeal is directed against the order dated 10.07.2017, passed by the Customs Excise and Service Tax Appellate Tribunal (in short '**CESTAT**'), disposing of Customs Appeal No.C/57569/2013 filed by the respondent, remanding the matter back to the original adjudicating authority for deciding the issue of jurisdiction after awaiting the decision of the Supreme Court in the appeal preferred by the Union of India against the judgment of the Coordinate Bench of this Court in Mangli Impex vs. Union of India reported as **2016 (335) ELT 605 (Del.)**.

4. For passing the aforesaid order, the CESTAT has followed the order dated 25.05.2017, passed by a Coordinate Bench in **W.P.(C) 4438/2017** entitled BSNL vs. UOI & Ors..

5. By a subsequent order dated 20.11.2017, passed by another Coordinate Bench in Vipul Overseas Pvt. Ltd. vs. Commissioner of Customs reported **2018 (359) ELT 646 (Del.)** and the order dated 13.12.2017, passed by yet another Bench in **CUSAA 67/2017** entitled Forech India Pvt. Ltd. vs. Commissioner of Customs, Inland Container Depot Tuglakabad, New Delhi, in similar circumstances, the appeals were remanded to CESTAT for a fresh decision on merits, uninfluenced by the decision in the case of Mangli Impex (supra), which had since been stayed by the Supreme Court vide order dated 07.10.2016. Pertinently, the said appeal is still pending adjudication before the Supreme Court.

6. Accordingly, following the order passed in the case of Vipul Overseas (supra), the impugned order dated 10.07.2017, passed by the CESTAT is quashed and set aside. Customs Appeal No. C/57569/2011 is restored to its original position, for the CESTAT to dispose of the same afresh, uninfluenced by the decision in the case of Mangli Impex (supra).

7. Before proceeding to decide the captioned appeal, the CESTAT shall ensure service of notice upon the respondent.

8. The present appeal is allowed and disposed of on the above terms alongwith the pending application.

HIMA KOHLI, J

ASHA MENON, J

MARCH 06, 2020
s/pkb