$~30

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

% *Date of Decision: 20.09.2022*

\+ **CUSAA 138/2022**

COMMISSIONER OF CUSTOMS ......Appellant

Through: Mr Harpreet Singh, Sr. Standing Counsel with Ms Suhani Mathur and Mr Jatin Kumar Gaur, Advs. for R-2.

versus

RAVINDRA HERAEUS PVT LTD ......Respondent

Through: Mr Agrim Arora, Adv.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU
[**Physical Court hearing/ Hybrid hearing (as per request)**]

RAJIV SHAKDHER, J. (Oral):

CM APPL.41558/2022

1. Allowed, subject to just exceptions.

CM APPL.41560/2022

2. This is an application filed on behalf of the respondent, seeking condonation of delay in re-filing the appeal.

2.1 According to Mr Harpreet Singh, learned senior standing counsel who appears on behalf of the appellant/revenue, there is a delay of 79 days in re-filing the appeal.

3. For the reasons stated in the above-captioned application, the delay is condoned.

4. The above-captioned application is disposed of in the aforesaid terms.

This is a digitally signed Judgement.

<u>**CUSAA 138/2022 & CM Appl.41559/2022**</u>***[Application filed on behalf of the appellant seeking condonation of delay in filing the appeal]***

5. Mr Singh has drawn our attention to the order dated 28.03.2022 passed in a batch of appeals, the lead appeal being CUSAA 20/2021, titled: ***Pr. Commissioner of Customs vs. Kunal Lalani***, passed by a co-ordinate Bench, which included one of us [Rajiv Shakdher, J.].

6. Mr Singh says that *via* the said judgment, the aforesaid appeal and the connected appeals had been remitted to the Customs, Excise & Service Tax Appellate Tribunal [in short "Tribunal"] after setting aside the impugned order.

7. It is also submitted, that the Court had directed the Tribunal to decide the matters on merits, having regard to the fact that the challenge to the jurisdiction of the adjudicating authority, based on the judgment of a Division Bench of this Court rendered in ***Mangli Impex Limited*** **v.** ***Union of India*** 2016 (335) ELT 605 (Del.) has been stayed by the Supreme Court.

8. Issue notice.

8.1 Mr Agrim Arora accepts notice on behalf of the respondent.

9. Mr Arora says that he would have no objection, if a similar direction is issued in the instant matter.

10. Accordingly, the delay in filing the appeal is condoned.

11. The impugned order dated 01.08.2017 passed by the Tribunal is set aside.

12. The Tribunal is directed to decide the matter, one way or other, on merits.

13. Thus, in effect, the directions contained in the judgment dated 28.03.2022 shall apply *mutatis mutandis* to this matter as well, as the

This is a digitally signed Judgement.

question of law framed in the appeal, is identical. [See paragraph 3 of the appeal].

14. Needless to add, the decision on merits will be subject to the outcome of the decision in *Mangli Impex Limited* pending adjudication in the Supreme Court.

15. The appeal is disposed of in the aforesaid terms.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

SEPTEMBER 20, 2022
pmc

This is a digitally signed Judgement.