IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOM APPEAL NO.6 OF 2020

Hariyana International Pvt. Ltd. .. Appellant
v/s.
The Assistant Commissioner of
Customs, CRARS .. Respondent

....

Mr. Mohit Prabhakar, for the Appellant.

Mr. Karan Adik, a/w. Mr. Satyaprakash Sharma, for the Respondent.

....

CORAM: G.S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : 6th JULY 2023

P.C:-

We have heard learned Counsel for the Appellant and learned Counsel for the Revenue on this appeal. We re-frame the question of law and propose to dispose of the appeal on the following question of law:-

> "Whether in the facts and circumstances of the case the Tribunal was justified in disposing of the appellant's appeal on merits, in the absence of appellant being not represented?

2. We have perused the impugned order. It is a short order,

the relevant portion of which needs to be noted:-

> "2. None appeared for appellant. We have heard Learned Authorised Representative.
>
> 3. Condition no.2(d) of notification no.102/2007-Cus dated 14th September 2007 mandates discharge of VAT liability as a pre-requisite for claiming the exemption *ex post facto*. It is not disputed that some of the sales had occurred more than a year after the goods were cleared. The exemption is effected through refund upon evidencing of discharge of VAT liability and section 27 of Customs Act, 1962 prescribes time-limit of one year from the relevant date beyond which it cannot be claimed. To the extent that the impugned order has rendered a finding on the ineligibility, the sanction of refund by the original authority was not proper.
>
> 4. Accordingly, we find no merit in the appeal which is dismissed."

3. The issue involved in the appeal before the Tribunal was *inter alia* on the applicability of the exemption Notification No.102 of 2007 dated 14th September 2007 in regard to the assessment in question. The Tribunal has recorded the aforesaid finding on the merits in the absence of the Appellant. The impugned order of the Tribunal does not consider as to whether the Appellant had any notice of hearing of the proceedings.

4. In our view, the Tribunal ought to have heard the Appellant by giving another opportunity to the Appellant to remain present before the Tribunal. In our opinion, in the facts and cirumstances of the present case, it is in the interest of justice that the

Appellant be heard by the Tribunal on the merits of the issues which had fallen for consideration of the Tribunal.

5. We, accordingly, set aside the impugned order restoring the proceedings of the Appellant's appeal and on remand the appeal be adjudicated afresh. All contentions of the parties are kept open. The parties are directed to appear before the Tribunal on 17th July 2023, along with a copy of this order so that a suitable date of hearing can be fixed.

6. Appeal disposed of. No costs.

(JITENDRA JAIN, J.) **(G.S. KULKARNI, J.)**