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

\+ **CUSAA 5/2024**

M/S OVT INDIA PRIVATE LIMITED .....Appellant
Through: Mr. Swastik Verma, Advocate.

versus

COMMISSIONER OF CUSTOMS .....Respondent
Through: Mr. Anurag Ojha, SSC with Mr. Subham Kumar, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

ORDER

% 11.12.2024

1. This hearing has been done through hybrid mode.

2. This is the second appeal challenging the impugned order dated 30th June, 2023 passed by Customs, Excise and Service Tax Appellate Tribunal (*CESTAT*). A perusal of the impugned order would show that the CESTAT has refused to condone the delay of 304 days against the order originally dated 22nd February, 2022. The said order of the adjudicating authority is stated to have been received by the Appellant on 2nd March, 2022 but the appeal was preferred on 31st March, 2023. This delay was held to be non-condonable and the appeal was dismissed by CESTAT. Various reasons have been set out in the application for condonation of delay.

3. The admission of this appeal is opposed vehemently by Mr. Anurag Ojha, ld. Counsel on the ground that the delay is not condonable. A perusal of Section 129A of the Customs Act, 1962 would show that under Section 129A(3), 129A(4) and 129A(5), the period during which the appeal would

have to be filed is three months by the party preferring the appeal, however, Section 129A(5) provides that after the expiry of relevant period prescribed under sub-Section 3, if there is sufficient cause, the filing of the appeal can be permitted.

4. The demand in this case is substantial as held by the adjudicating authority. The operative portion of the adjudicating authority order is set out below:

> "***E. ORDER***
>
> *In view of above discussion and findings, I pass the following order.*
>
> *(i). The classification of goods under importation as self-assessed under different CTH is rejected and the individual items are re-assessed under CTH as given in Annexure-A of the notice.*
>
> *(ii). The benefit of Customs notification 50/2017-Cus dt. 30.6.17 (Sl. No.510) is denied to the imported goods as per details in annexure A of the notice.*
>
> *(iii). The importer is held liable to pay additional duty of Rs. 1,59,74,734/- (Rupees one crore fifty nine lakh seventy four thousand seven hundred thirty four only) as per details in annexure A of the notice under section 28(1) of Customs Act, 1962.*
>
> *(iv). The importer is held liable to pay interest under section 28AA of Customs Act, 1962 from the date of presentation of bill of entry as per annexure A, till the date of actual payment.*
>
> *(v). The imported goods are not held liable to confiscation under section 111(m) of Customs Act, 1962.*
>
> *(vi). No penalty is levied under section 112 of the Customs Act, 1962.*
>
> *(vii). A penalty of Rs.4,00,000/- (Rupees Tour lakh only) is levied under section 117 of Customs Act, 1962."*

5. It is seen that the adjudicating authority's order deals with classification

of the goods and an additional duty of approximately Rs. 1.59 crores has been directed to be paid including interest and penalty of Rs. 4 lakhs have also been levied. Considering the nature of the quantum of duty that has been imposed upon the Petitioner and the reasons given for condonation of delay, this Court is of the opinion that the Petitioner deserves to be heard on merits. The Court is inclined to condone the delay.

6. Accordingly, the delay is condoned subject to payment of costs of Rs.1 lakh to the Department. If the costs are deposited within four weeks, the matter shall be listed before the CESTAT on 23rd January, 2025. CESTAT shall then consider the appeal on merits.

7. The present appeal is disposed of in the above stated terms. Needless to add, this Court has not examined the merits of the appeal.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

DECEMBER 11, 2024
dj/ks/pr