

2019-TIOL-2327-HC-DEL-CUS

IN THE HIGH COURT OF DELHI

CUSAA 177/2019

COMMISSIONER OF CUSTOMS

Vs

M/s KSHITIZ IMPEX PVT LTD

Vipin Sanghi & Sanjeev Narula, JJ

Dated: September 30, 2019

Appellant Rep by: Mr Harpreet Singh and Ms Suhani Mathur, Advs.

Respondent Rep by: None

Cus - The Revenue's grievance is that the Tribunal remanded the issue for reconsideration by concerned Commissioner in view of previous judgment of this Court in *Mangli Impex Limited* - **2016-TIOL-877-HC-DEL-CUS** - This was on account of a dichotomy of judicial opinion with respect to the competence and jurisdiction under the amended Section 28 of Customs Act, 1962, one view holding that no jurisdiction laid with DRI and the other view endorsed in a subsequent judgment of this Court in *Vipul Overseas Pvt. Ltd.* - **2017-TIOL-2478-HC-DEL-CUS** - An identical approach is necessary in this case - Accordingly, following the order in *Forech India*, this appeal is allowed and the CESTAT would independently apply its mind to the question of jurisdiction and also decide the appeal on merits including the aspect of imposition of penalty if any: HC

Appeal allowed

Case laws cited:

Mangli Impex Limited v. Union of India* - **2016-TIOL-877-HC-DEL-CUS... Para 3*

Vipul Overseas Pvt. Ltd. & Ors. v. Commissioner of Customs & Ors.* - **2017-TIOL-2478-HC-DEL-CUS... Para 3*

***Forech India Pvt. Ltd. v. Commissioner of Customs, Inland Container Depot, Tughlakabad, New Delhi* (Cus. A.A. No. 67/2017 dated 13.12.2017)... Para 3**

JUDGEMENT

C.M. No. 21637/2019

1. Heard. For the reasons stated in the application, the same is allowed and the delay in filing the accompanying appeal is condoned. Application stands disposed of.

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2. Since despite service, there is no appearance on behalf of the respondent, we proceed to decide the present appeal.

3. The Revenue's grievance is that the Customs, Excise and Service Tax Appellate Tribunal (hereafter "CESTAT") remanded the issues for reconsideration by the concerned Commissioner in view of the

previous judgment of this Court in *Mangli Impex Limited v. Union of India* 2016 (335) ELT 605 (Del.) = **2016-TIOL-877-HC-DEL-CUS**. This was on account of a dichotomy of judicial opinion with respect to the competence and jurisdiction under the amended Section 28 of the Customs Act, 1962 – one view holding that no jurisdiction laid with the Directorate of Revenue Intelligence (hereafter "DRI") and the other view endorsed in a subsequent judgment of this Court in *Vipul Overseas Pvt. Ltd. & Ors. v. Commissioner of Customs & Ors.* (Cus. A.A. No. 57 & 58 of 2017, dated 20.11.2017) = **2017-TIOL-2478-HC-DEL-CUS**. Given that all these issues are pending for consideration before the Supreme Court, in another order [*Forech India Pvt. Ltd. v. Commissioner of Customs, Inland Container Depot, Tughlakabad, New Delhi* (Cus. A.A. No. 67/2017 dated 13.12.2017)], this Court disposed of the appeals in the following terms:

"3. It was recorded in the said order that the respondent- Revenue had no objection if the remand order passed by the Tribunal was set aside with a request to the Tribunal to decide the issue on merit without taking into consideration the decision of the Delhi High Court in *Mangli Impex Limited Vs. Union of India* 2016 (335) ELT 605 (Del.) = **2016-TIOL-877-HC-DEL-CUS** which has been stayed by the Supreme Court.

4. For the reasons set out and stated in the said order, we answer the question of law in favour of the appellant with a direction to the Tribunal to decide the appeal on merits including the question of imposition of penalty and the right of Directorate of Revenue Intelligence who issued show cause notices.

5. The said adjudication would be without being influenced by the judgment in the case of *Mangli Impex Limited* (supra).

6. In other words, the Tribunal would independently apply its mind on the question of jurisdiction."

4. Having considered the submissions of the parties and also the material on record, this Court is of the opinion that an identical approach is necessary in this case. Accordingly, following the order in *Forech India* (supra), this appeal is allowed and the CESTAT would independently apply its mind to the question of jurisdiction and also decide the appeal on merits - including the aspect of imposition of penalty if any. The appeal is allowed in part in the above terms.

5. It goes without saying that the Tribunal shall proceed in the matter only after issuance of notice to the respondent.