

IN THE HIGH COURT OF DELHI

CUSAA 49/2018

COMMISSIONER OF CUSTOMS

Vs

SHRI MAHENDER PAL SINGH

Vipin Sanghi & Sanjeev Narula, JJ

Dated: November 08, 2019

Appellant Rep by: Mr Harpreet Singh, Sr. Standing Counsel for appellant with Ms Suhani Mathur, Adv.

Respondent Rep by: None

Cus - Whether the Tribunal was justified and correct in law in passing an order of remand to the original adjudicating authority to first decide the issue of jurisdiction, after decision of Supreme court in Civil Appeal preferred against the decision of Delhi High court in *Mangli Impex Limited* - **2016-TIOL-877-HC-DEL-CUS** - Following the decision in *Vipul Overseas Pvt. Ltd.* - **2017-TIOL-2478-HC-DEL-CUS**, the impugned order is hereby set aside and the matter is remitted to the Tribunal, which shall proceed to examine and decide the merits of the appeal - The assessee's right to contend that the SCN issued in this case was legally untenable, in view of the decision of this Court in *Mangli Impex*, are kept intact - The Court, at the same time, like in the other cases, expresses no opinion on the merits or procedure that the Tribunal should adopt and follow: HC

Appeal partly allowed

Case laws cited:

Commissioner of Customs (General) vs. SAP India Pvt. Ltd., CUSAA 40/2018... Para 5

Forech India Pvt. Ltd v. Commissioner of Customs Inland Container Depot, Tughlakabad, New Delhi, CUS.A.A. No. 67/2017... Para 7

Vipul Overseas Pvt. Ltd. Vs. Commissioner of Customs & Ors - 2017-TIOL-2478-HC-DEL-CUS... Para 7

JUDGEMENT

Per: Sanjeev Narula:

CM APPL. 11094/2018 (Delay)

1. By this application the applicant seeks condonation of delay of 48 days in filing the present appeal. For the reasons stated in the application, the delay is condoned.

2. The application stands disposed of in the aforesaid terms.

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3. The question urged by the appellant in the appeal is as under:-

*"Whether the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) was justified and correct in law in passing an order of remand to the original adjudicating authority to first decide the issue of jurisdiction, after decision of the Supreme court in Civil Appeal preferred against the decision of Delhi High court in Mangli Impex Limited v. Union of India 2016 (335) ELT 605 (Del.) = **2016-TIOL-877-HC-DEL-CUS**"*

4. No one appears on behalf of the respondent, despite service of notice being effected by way of substitution.

5. It is submitted, at the outset, by the learned counsel for the appellant that in the identical circumstances, where a similar issue was sought to be urged, this Court had passed an order in *Commissioner of Customs (General) vs. SAP India Pvt. Ltd., CUSAA 40/2018 and other connected matters decided on 02.04.2018.*

6. The Court had then directed as follows:-

*"Accordingly, the impugned order challenged in these appeals, remanding the matter to the adjudicating authority to await the judgment of the Supreme Court in the appeal preferred against the decision in Mangli Impex Limited vs. Union of India 2016 (335) ELT 605 (Del) = **2016-TIOL-877-HC-DEL-CUS** is set aside.*

The appeals preferred before the Tribunal are restored to their original position. The Tribunal would decide the appeals on merits including the question of jurisdiction of the officer of the Directorate of Revenue Intelligence who had issued show cause notices. The said issue would be examined by the Tribunal without being influenced by the decision of the Delhi High Court in the case of Mangli Impex Limited (supra). We clarify that we have not expressed any opinion on merits of the appeals or on the procedure that the Tribunal should adopt and follow.

Question of law is accordingly answered. The appeals are disposed of in the aforesaid terms. There would be no order as to costs."

7. Similar orders have been passed in several other decisions of this Court including *Forech India Pvt. Ltd v. Commissioner of Customs Inland Container Depot, Tughlakabad, New Delhi, CUS.A.A. No. 67/2017, decided on 13.12.2017 and Vipul Overseas Pvt. Ltd. Vs. Commissioner of Customs & Ors., CUSAA No.57 & 58 /2017, decided on 20.11.2017 = **2017-TIOL-2478-HC-DEL-CUS***. Following the above decisions, the impugned order is hereby set aside and the matter is remitted to the CESTAT, which shall proceed to examine and decide the merits of the appeal. The respondent/assessee's right to contend that the show cause notice issued in this case were legally untenable, in view of the decision of this Court in Mangli Impex (supra), are kept intact. In other words, the Tribunal may hear the parties on the merits of the case as well as with respect to the issue of jurisdiction, if necessary, on account of Mangli Impex (supra) and record separate findings. The findings with respect to the lack of jurisdiction, if any, based on the reasoning in Mangli Impex (supra), would be subject to the final outcome of the proceedings in the Supreme Court. The Court, at the same time, like in the other cases, expresses no opinion on the merits or procedure that the Tribunal should adopt and follow.

8. The Tribunal is directed to issue reasonable notice to the assesseees for hearing the appeal before it.
9. The appeal is partly allowed in the above terms.