FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 22/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71502-71503/2017-SM[BR] dated 16/11/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	C/53274/2014	**Mukesh Brokers** 37,katra Baryan (opp. Farash Khana) DELHI DELHI 110006
2	C/53275/2014	**Om Prakash Bansal** C/o Mukesh Brokers,37,katra Baryan (opp. Farash Khana) DELHI DELHI 110006
		Name and Address of Respondent
3		C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH-250005
4		C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH-250005

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

**BIPIN GARG & CO.
ADVOCATES(ALLD)
102, MAHALAXMI
ENCLAVE (ADJ. INCOME
TAX OFFICE), STANLEY
ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-211001**

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Cus.Appeal Nos.53274,53275/14

Arising out of O/A Nos.12 to 13-CUS/APPL/MRT-I/2013 dated 19.11.2013 passed by Commr.(Appeals) of Central Excise, Customs, Meerut I

M/s Mukesh Brokers
Shri Om Prakash Bansal

...APPELLANT(S)

VERSUS

Commr. of Customs, Meerut I

RESPONDENT (S)

APPEARANCE

Ms.Stuti Saggi, Adv. for the Appellant (s)
Shri Pradeep Kr. Dubey, Supdt. (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE JUDICIAL MEMBER

DATE OF HEARING/DATE OF DECISION : 16. 11. 2017

Final ORDER NO.71502-71503/2017

Per Mrs.Archana Wadhwa :

During course of hearing, both the sides agreed that the notices have been issued by the DRI, which is not competent person as per the ratio laid down by the Hon'ble Delhi High Court in the case of Mangali Impex Ltd. Vs. Union of India dated 03.05.2016, which ultimately has gone to the Hon'ble Supreme Court where the matter is sub-judice till date.

2. In this connection, I note that similar issues have been dealt with in various cases by the Tribunal recently. The decision of the Tribunal in

one such case vide Final Order No. 53941-53942 of 2017 dated 12/06/2017 is reproduced below :

> "During the course of arguments, the appellant's counsel has raised the preliminary plea that the show cause notice in the instant case was issued by the Directorate of Revenue Intelligence (DRI). The Hon'ble High Court of Delhi in the case of ***Mangali Impex Ltd. Vs. UOI dated 03.05.2016*** has observed that the DRI is not competent to issue the show cause notices. Hence, the request is being made to set aside the present proceedings where the notice was issued by the DRI.
>
> 2. On the other hand, learned Counsel for the Department has justified the notice issued by DRI and made a request to decide the matter on merit.
>
> 3. We have heard both the parties at length and gone through the material available on record.
>
> 4. From the record, it appears that the preliminary issue emerges in the present appeal is regarding the jurisdiction of the DRI Officers to issue the show cause notice under the Customs Act. The assessee-Appellant had taken a stand that in terms of the Hon'ble Apex Court decision in the case of ***Commissioner of Customs vs. Sayed Ali, 2011 (265) 17 (S.C.)],*** the DRI officers were not proper officers in terms of section 2(34) of the Customs Act, 1962.
>
> 5. It is also seen that after the declaration of law by the Hon'ble Supreme Court (Supra), the provisions of section 28 of the Customs Act, 1962 were amended with effect from 08.04.2011 vide Finance Act, 2011.
>
> 6. It is also noticed that in order to overcome the situation created by the judgment of Hon'ble Supreme Court in the case of ***Sayed Ali (supra),*** Notification No. 44/2011-Cus (NT), dated July 6, 2011 was issued by the CBEC, assigning the functions of the proper officer to various officers (including Additional Director General, DRI) mentioned in the notification, for the purposes of Section 28 of the Act. Thus, w.e.f. July 6, 2011, the Additional Director General, DRI was prospectively appointed as 'proper officer' for the purpose of Section 28 of the Customs Act. Hence,

from 06/07/2011 ADG-DRI has been empowered to issue demand notice under Section 28.

7. Subsequently, sub-Section (11) was inserted under Section 28 of the Customs (Amendment and Validation) Act, 2011 dated 16/09/2011, assigning the functions of proper officers to various DRI officers with retrospective effect.

8. Later on, i.e. for the period subsequent to the amendment, the matter i.e. the DRI officers having the proper jurisdiction to issue the SCN or not had came up before the ***Hon'ble Delhi High Court in the case of Mangali Impex Ltd. vs. Union of India [2016 (335) E.L.T. 605 (Del.)],*** and the High Court inter-alia, held that even the new inserted Section 28 (11) does not empower either the officers of DRI or the DGCEI to issue the SCN for the period prior to 08/04/2011. Thus, it is seen that the said order of the Hon'ble Delhi High Court is in favour of the assessee and against the Revenue.

9. However, it is further noticed that the said issue was also the subject matter of Hon'ble Mumbai High Court in the case of ***Sunil Gupta vs. Union of India [2015 (315) E.L.T. 167 (Bom)*** as also of the Hon'ble High Court of Telangana and Andhra Pradesh in the case of ***Vuppalamritha Magnetic Components Ltd. vs. DRI (Zonal Unit), Chennai [2017 (345) E.L.T. 161 (AP)],*** taking a view contrary to the one taken by the Hon'ble Delhi High Court.

10. Being conflicting decisions of various High Courts (Supra), finally the matter reached to Hon'ble Supreme Court who on 07/10/2016 granted the stay of operation of the judgment passed by the High Court of Delhi. Thus the issue is sub-judice before the Hon'ble Supreme Court ***[2016-TIOL-173-SC-CUS / 2016 (339) ELT A 49 (SC)].***

11. It may be mentioned that recently, the Hon'ble High Court of Delhi in the case of ***BSNL Vs. UOI vide writ petition no. C/4438/2017 and CM No. 19387/2017*** has dealt with the identical issue where the notice was also issued by DRI. The Hon'ble High Court of Delhi has considered the judgment in the case of ***Mangali Impex Ltd. Vs. UOI*** which is stayed by the

Hon'ble Supreme Court reported as ***2016 (339) E.L.T. A 49 (SC).*** Finally the Hon'ble High Court has granted liberty to the petitioner by observing that *"petitioner is permitted to review the challenge depending on the outcome of the appeals filed by the UOI in the Supreme Court against the judgment of the Court in the case of Mangali Impex Ltd."*

12. By following the ratio laid down by the Hon'ble High Court of Delhi in the case of ***BSNL (Supra)*** as well as by considering totality of facts and circumstances, we set aside the impugned order and remand the matter to the original adjudicating authority to first decide the issue of jurisdiction after the availability of Hon'ble Supreme Court decision in the case of ***Mangali Impex Ltd.*** and then on merits of the case but by providing an opportunity to the assessee of being heard. Till the final decision, the **status quo** will be maintained.

13. In the result, appeals filed by the assessee are allowed by way of remand".

4. In view of the above decision of the Tribunal, I remand the matters for fresh decision. All the parties have agreed to it.

5. The appeals filed by the appellant are thus allowed by way of remand.

(Operative part of the order was pronounced in the open Court)

Sd/-
(Archana Wadhawa)
Member(Judicial)

mm

प्रमाणित प्रति/Certified True Copy
12/12/17

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
39, एम. जी. मार्ग, इलाहाबाद-211001
39 M. G. MARG, ALLAHABAD-211001