

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Application(s) Involved:

**C/MISC/34/2010, C/MISC/35/2010, C/MISC/39/2010,
C/MISC/44/2010, C/MISC/47/2010 in C/212/2010-DB,
C/213/2010-DB, C/216/2010-DB, C/260/2010-DB, C/336/2010-DB**

Appeal(s) Involved:

**C/212/2010-DB, C/213/2010-DB, C/216/2010-DB, C/260/2010-DB,
C/336/2010-DB**

[Arising out of Order-in-Order-in-Original No. 22/2009 dated
31/08/2009 passed by the Commissioner of Customs,
Bangalore]

[Arising out of Order-in-Original No. 23/2009 dated
31/08/2009 passed by the Commissioner of Customs,
Bangalore]

[Arising out of Order-in-Original No. 22/2009 dated
31/08/2009 passed by the Commissioner of Customs,
Bangalore]

**M.C. Suvarna, M/s. Givaudan
India Pvt. Ltd.**

Plot No.26, 2nd Cross Jigani Industrial
Area, Anekal Taluk, Karnataka.

Appellant(s)

**M.C. Suvarna, M/s. Givaudan
India Pvt. Ltd.**

Plot No. 26, 2nd Cross, Jigani
Industrial Area, Anekal Taluk

Appellant(s)

Givaudan India Pvt. Ltd.

Plot No.26.2nd Cross, Jigani Industrial
Area, Anekal Taluk , Karnataka

Appellant(s)

**Ajit Pal, M/s. Givaudan India Pvt.
Ltd.**

Plot No. 26, 2nd Cross, Jigani
Industrial Area, Anekal Taluk,
Karnataka

Appellant(s)

Givaudan India Pvt. Ltd.

Plot No.26, 2nd Cross, Jigani
Industrial Area, Anekal Taluk,
Karnataka

Appellant(s)

Versus**Commissioner of Customs and
Service Tax, Bangalore**

C.R. Building, Queens Road,
P.B. No. 5400,
Bangalore – 560 001
Karnataka

Respondent(s)**Appearance:**

Mr. Derrick San G, Advocate
Mr. P.R.V. Ramanan, Special Counsel

For the Appellant
For the Respondent

Date of Hearing: 06/02/2018

Date of Decision: 06/02/2018

CORAM:

HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. V. PADMANABHAN, TECHNICAL MEMBER

Final Order Nos. 20237 - 20241 / 2018

Per: JUSTICE (DR.) SATISH CHANDRA

The present appeals are filed against Order-in-Original Nos. 22 & 23/2009 dated 31/08/2009. The Tribunal vide its order dated 22.09.2011 ordered the pre-deposit under Section 129E of Customs Act, 1962. Being aggrieved the appellant filed Writ Petition No. 41315/2011 before the Hon'ble Karnataka High Court where on 14.12.2011, the Hon'ble High Court has directed the Tribunal to dispose of the appeals in accordance with law within a period of four weeks.

2. With this background Shri Derrick San, the learned counsel raised the preliminary objection that in the instant case prior to 2011, the show cause notice was issued by the DRI who was a competent authority as per the ratio

laid down by Hon'ble Delhi High Court in the case of **Mangali Impex Ltd. vs. Union of India – 2016 (335) E.L.T. 605 (Del.)**.

3. We have heard all the parties at length and gone through the material available on record. We note that similar issue has come up before this Tribunal on many earlier occasions also including **Shri Manhinder Dagur vs. CC, New Delhi (Import & General) Final Order No. 53877-53880/2017 dated 13/06/2017** where it was observed as under :-

*“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.*

2. *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.*

3. *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.*

4. 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.

5. 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.

6. 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.

7. 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)]**.

8. 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."

9. *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.*

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

4. Following our orders (supra), we set aside the impugned order and remand the matters to the Original Authority for a fresh decision. All the parties have agreed to it.

(Order Dictated in Open Court on **06/02/2018**)

(V. PADMANABHAN)
TECHNICAL MEMBER

(JUSTICE (DR.) SATISH CHANDRA)
PRESIDENT

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