IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

C/164 & 165/2010

(Arising out of Order-in-Appeal 90/2009 dated 30.11.2009 passed by the Commissioner of Customs (Appeals), Trichy)

Commissioner of Customs, Tuticorin — Appellant

Vs.

M/s. Venkatesh Textiles
M/s. B.R. Mahesh — Respondents

Appearance

Shri K. Veerabhadra Reddy, JC (AR) for the Appellant
Shri S. Venkatachalam, Advocate for the Respondents

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **26.10.2017**

Final Order Nos. 42382-42383/2017

Per Bench

Heard both sides.

2. On perusal of records, it is learnt that the proceedings in the case were initiated by a show cause notice dated 12.2.2008 by the DRI. The Hon'ble High Court of Delhi in the case of ***Mangli Impex Vs. UOI*** by their order dated 03.05.2016 has observed that the DRI/SIIB is not competent

to issue show-cause notice. Hence, the request is being made to set aside the present proceedings where the show-cause notice was issued by the DRI/DGCEI.

3. From the record, it appears that the preliminary issue which emerges in the present appeal is regarding the jurisdiction of the DRI to issue the show-cause notice under the Customs Act. The assessee-Respondent has 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 (SC)],*** the DRI officers were not proper officers in terms of section 2(34) of the Customs Act, 1962.

4. 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.

5. 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.

6. Subsequently, sub-section 11 was inserted under section 28 of the Customs (Amendment and Validation) Act, 2011 dated 16.9.2011, assigning the functions of proper officers to various DRI officers with retrospective effect.

7. 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 vs. Union of India [2016 (335) ELT 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 or adjudicate for the period prior to 8.4.2011. 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.

8. 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) ELT 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) ELT 161 AP], taking a view contrary to the one taken by the Hon'ble Delhi High Court.

9. 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 subjudice before the Hon'ble Supreme Court ***[2016-TIOL-173-SC-CUS / 2016 (339) ELT A 49 (SC)].***

10. 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 ***Mangli Impex Vs. UOI*** which is stayed by the Hon'ble Supreme Court reported as ***2016 (339) ELT 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 Mangli Impex Ltd."

11. 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 ***Mangli Impex*** 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.

12. The impugned order is set aside and the appeals are disposed by way of remand to the adjudicating authority to decide the issue afresh after the judgment of the Hon'ble Supreme Court in the case of Mangli Impex (supra).

(Operative portion of the order was pronounced in open court)

Sulekha Beevi

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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