CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 52329 of 2016

(Arising out of Order-in-Original No. 42/KAM/Commr/25 dated 20.08.2015 passed by the Commissioner of Customs (General), New Delhi)

DATE OF HEARING : 11.04.2017
DATE OF DECISION : 11.04.2017

Rahul Arora .... Appellant
(Rep by Ms. Vinisha Mohanty, Adv)

VERSUS

CC, New Delhi .... Respondent
(Rep. by Sh. S. Nunthak, DR)

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

FINAL ORDER NO. 52851/2017

PER JUSTICE (DR.) SATISH CHANDRA :

This appeal is filed by the assessee-Appellant against the order-in-original no. 42/KAM/Commr/25 dated 20.08.2015 passed by the Commissioner of Customs (General), New Delhi.

2. The delay has already been condoned by the Tribunal in its separate order for the reasons mentioned in the application for Condonation of Delay.

3. In the instant case, the allegation of the Department is that the exporters have attempted to export the poor quality goods at grossly over invoiced value to avail the ineligible export benefits (Duty Drawback). Against the impugned order, the assessee-Appellant has already filed the Writ Petition before the Hon'ble High Court of Delhi being WP (C) No. 5578/2016 which was dismissed as withdrawn with liberty to approach the CESTAT. But, in the said order, the Hon'ble High Court has observed that the show cause notice in respect of other co-noticees in the decision dated 03.05.2016 in **Mangali Impex vs Union of India,** was quashed. Hence, the assessee-Appellant is before this Tribunal.

4. We have heard both sides at length and gone through the material available on record. 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 (SC)]*** 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 in the above mentioned case, the provisions of section 28 of the Customs Act, 1962 were amended with effect from 8.4.11 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 16.9.2011, 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 issue of DRI officers having the proper jurisdiction to issue the SCN came up before the Hon'ble Delhi High Court in the case of ***Mangali Impex vs. Union of India [2016 335 ELT 605 Del***], inter alia, laying down that even a new inserted section 28 (11) does not empower either the officers of DRI or the DGCEI to adjudicate the SCN issued by them for the period prior to 8.4.11. 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. However, the said decision of the Hon'ble Delhi High Court stand stayed by the Hon'ble Supreme Court reported as ***2016 (339) ELT A 49 (SC).***

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) 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.

10. The above developments show that there are two views holding the field and the matter now stand before the Hon'ble Supreme Court. In an earlier case, the Hon'ble Supreme Court in the case of ***Chandna Impex vs. CC Delhi*** *[2012 (26) STR 257 (SC)]* had remanded the matter to the Tribunal with a direction to examine the issue of jurisdiction afresh in the light of decision in ***Sayed Ali*** (supra). As already observed the entire issue is once again before the Hon'ble Apex Court, in view of the contrary decision of various High Courts. In these circumstances, we deem it fit to set aside the impugned orders and remand the matters to the original adjudicating authority to first decide the issue of jurisdiction, after the availability of Supreme Court

decision in the case of ***Mangali Impex*** (supra) and then the merits of the case.

11. In the result, the appeal filed by the assessee-Appellant is allowed by way of remand.

(Operative part of the order was pronounced in the open court on 11.04.2017)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay