CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

DATE OF HEARING : 14.06.2017
DATE OF DECISION : 14.06.2017

S.No.	APPEAL NO.	ARISING OUT OF	APPELLANT	REPRESENTED BY	RESPONDENT	REPRESENTED BY
1.	C/404/2009	O-I-O No. 03/Commr/JMS/2009 dt. 27.02.2009 passed by Commissioner of Customs (Prev), New Delhi	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR	**GMR AVIATION PVT. LTD.**	Sh. S. Vasudevan, Adv.
2.	C/405/2009	O-I-O No. 03/Commr/JMS/2009 dt. 27.02.2009 passed by Commissioner of Customs (Prev), New Delhi	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR	**V.K.RAO, DIRECTOR**	Sh. S. Vasudevan, Adv
3.	C/406/2009	O-I-O No. 03/Commr/JMS/2009 dt. 27.02.2009 passed by Commissioner of Customs (Prev), New Delhi	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR	**M.SUDHAKAR RAO, EX-DIRECTOR**	Sh. S. Vasudevan, Adv
4.	C/407/2009	O-I-O No. 03/Commr/JMS/2009 dt. 27.02.2009 passed by Commissioner of Customs (Prev), New Delhi	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR	**M.R.REDDY, NODAL OFFICER,**	Sh. S. Vasudevan, Adv
5.	C/408/2009	O-I-O No. 03/Commr/JMS/2009 dt. 27.02.2009 passed by Commissioner of Customs (Prev), New Delhi	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR	**PVN VIJAY KUMAR, EX-DIRECTOR**	Sh. S. Vasudevan, Adv
6.	C/409/2009	O-I-O No. 03/Commr/JMS/2009 dt. 27.02.2009 passed by Commissioner of Customs (Prev), New Delhi	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR	**GMR INDUSTRIES LTD.**	Sh. S. Vasudevan, Adv
7.	C/410/2009	O-I-O No. 03/Commr/JMS/2009 dt. 27.02.2009 passed by Commissioner of Customs (Prev), New Delhi	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR	**COL. SANJEEV SETHI, GENERAL MANAGER**	Sh. S. Vasudevan, Adv
8.	C/411/2009	O-I-O No. 03/Commr/JMS/2009 dt. 27.02.2009 passed by Commissioner of Customs (Prev), New Delhi	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR	**A.S. CHERUKUPALLI, DIRECTOR**	Sh. S. Vasudevan, Adv
9.	C/412/2009	O-I-O No. 03/Commr/JMS/2009 dt. 27.02.2009 passed by Commissioner of Customs (Prev), New Delhi	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR	**K.V.K.SESHAVATRAM, EX-DIRECTOR**	Sh. S. Vasudevan, Adv
10.	C/413/2009	O-I-O No. 03/Commr/JMS/2009 dt. 27.02.2009 passed by Commissioner of Customs (Prev), New Delhi	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR	**K.NARAYAN RAO, DIRECTOR**	Sh. S. Vasudevan, Adv
11.	C/414/2009	O-I-O No. 03/Commr/JMS/2009 dt. 27.02.2009 passed by Commissioner of Customs (Prev), New Delhi	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR	**N.V. VARDARAJULU, DIRECTOR**	Sh. S. Vasudevan, Adv
12.	C/573/2009	O-I-O No. 07/Commr/JMS/2009 dt. 24.08.2009 passed by Commissioner of Customs (Prev), New Delhi	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR	**CAPT. DHIRENDRA KUMAR CHAND DIRECTOR OF GVHL**	NONE
13.	C/60/2010	O-I-O No. 23/Commr/HKT/09 dt. 20.11.2009 passed by Commissioner of Customs (Prev), New Delhi	**BHARAT HOTELS LTD.**	Sh. S. Vasudevan, Adv	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR
14.	C/61/2010	O-I-O No. 23/Commr/HKT/09 dt. 20.11.2009 passed by Commissioner of Customs (Prev), New Delhi	**MS. JYOTSNA SURI**	Sh. S. Vasudevan, Adv	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR
15.	C/62/2010	O-I-O No. 23/Commr/HKT/09 dt. 20.11.2009 passed by Commissioner of Customs (Prev), New Delhi	**MS. MADHAV SIKKA,**	Sh. S. Vasudevan, Adv	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR
16.	C/MISC/51122/16 C/480/2010	O-I-O No. 18/Commr/HKC/10 dt. 21.06.2010 passed by Commissioner of Customs (Prev), New Delhi	**PUNJ LLOYD AVIATION LTD.**	Sh. S. Vasudevan, Adv	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR
17.	C/506/2010	O-I-O No. 21/Commr/HKC/10 dt. 30.07.2010 passed by Commissioner of Customs (Prev), New Delhi	**PRIVILEGE AIRWAYS PRIVATE LTD**	Sh. S. Vasudevan, Adv	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR
18.	C/507/2010	O-I-O No. 21/Commr/HKC/10 dt. 30.07.2010 passed by Commissioner of Customs (Prev), New Delhi	**SH SARANG WADHAWAN,DIRECTOR**	Sh. S. Vasudevan, Adv	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR
19.	C/540/2010	O-I-O No. 19/Commr/HKC/10 dt. 12.07.2010 passed by Commissioner of Customs (Prev), New Delhi	**MEGA CORPRATION LTD.**	Sh. S. Vasudevan, Adv	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR
20.	C/541/2010	O-I-O No. 19/Commr/HKC/10 dt. 12.07.2010 passed by Commissioner of Customs (Prev), New Delhi	**SHRI KUNAL LALANI**	Sh. S. Vasudevan, Adv	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR
21.	C/542/2010	O-I-O No. 19/Commr/HKC/10 dt. 12.07.2010 passed by Commissioner of Customs (Prev), New Delhi`	**SHRI ANIL KUMAR SONI,**	Sh. S. Vasudevan, Adv	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR

22.	C/MISC/50285/14 C/644/2010	O-I-O No. 27/Commr/HKC/10 dt. 30.09.2010 passed by Commissioner of Customs (Prev), New Delhi`	**RELIGARE AVIATION LIMITED**	Sh. S. Vasudevan, Adv	**C.C.(PREVENTIVE)**	Sh. R.K. Manjhi, DR
23.	C/MISC/50288/14 C/55833/2013	O-I-A No. CC(A)CUS/480/2012 dt. 29.10.2012 passed by Commissioner of Customs (Appeals), New Delhi`	**Religare Aviation Ltd**	Sh. S. Vasudevan, Adv	**Commissioner of CUSTOMS, New Delhi(prev)**	Sh. R.K. Manjhi, DR
24.	C/224/2012	O-I-O No. 03/SU/Commr/2012 dt. 20.03.2012 passed by Commissioner of Customs(Preventive), New Delhi`	**Chahat Impex**	Sh. Tajindera Singh, Adv	**Commissioner of CUSTOMS,New Delhi(prev)**	Sh. R.K. Manjhi, DR

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

FINAL ORDER NO. 54010-54033/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

All these appeals are filed against the orders passed by the Commissioner of Customs (Preventive), New Delhi.

2. During the course of arguments, the assessee-Appellants' counsel has raised the preliminary plea that the show cause notice in the instant case was issued by the Commissioner of Customs (Preventive). The Hon'ble High Court of Delhi in the case of ***Mangli Impex Vs. UOI dated 03.05.2016*** has observed that the Commissioner of Customs (Preventive)/DRA are 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 Commissioner of Customs (Preventive).

3. On the other hand, learned Departmental Representative, has justified the notice issued by Commissioner of Customs (Preventive) and made a request to decide the matter on merit.

4. We have heard both the parties at length and gone through the material available on record.

5. From the record, it appears that the preliminary issue emerges in the present appeals is regarding the jurisdiction of the Commissioner of Customs (Preventive) Officers to issue the show cause notice under the Customs Act. The assessee-Appellants 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 Commissioner of Customs (Preventive) officers were not proper officers in terms of Section 2(34) of the Customs Act, 1962.

6. 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.

7. It is also noticed that in order to overcome the situation created by the judgment of the Hon'ble Supreme Court in the case of ***Sayed Ali (supra),*** Notification No. 44/2011-Cus (NT) dated July 6, 2011 issued by the CBEC, assigning the functions of the proper officer to various officers (including Additional Director General, DRI)/Commissioner (Preventive) 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/Commissioner (Preventive) were prospectively appointed as 'proper officer' for the purpose of Section 28 of the Customs Act. Hence, from 06.07.2011 ADG-DRI//Commissioner (Preventive) have been empowered to issue demand notice under Section 28.

8. 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//Commissioner (Preventive) with retrospective effect.

9. Later on, i.e. for the period subsequent to the amendment, the matter i.e. the Commissioner of Customs (Preventive) 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 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.

10. 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.

11. 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)].***

12. 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."*

13. 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.

14. In the result, appeal filed by the assessee is allowed by way of remand.

(Dictated & pronounced in the open court)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay