CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 04.07.2017

Sl. No.	Case No	Impugned Order Detail's	Appellant	Represented by (Advocate)	Respondent	Represented by (DR)
1.	C/2119 /2012	OIO-09-SU-COMMR-2012 dated 30/03/2012	R V Solutions	Ms. Jaya Saxena	C.C.-New Delhi(prev)	Shri Govind Dixit
2.	C/2120 /2012	OIO-09-SU-COMMR-2012 dated 30/03/2012	Rajeev Seth Prop	Ms. Jaya Saxena	C.C.-New Delhi(prev)	Shri Govind Dixit
3.	C/2121 /2012	OIO-09-SU-COMMR-2012 dated 30/03/2012	Giriraj Rattan Bagri	Ms. Jaya Saxena	C.C.-New Delhi(prev)	Shri Govind Dixit
4.	C/3330 /2012	OIO-09-SU-COMMR-2012 dated 30/03/2012	Mukesh Kumar	Ms. Jaya Saxena	C.C.-New Delhi(prev)	Shri Govind Dixit
5.	C/3331 /2012	OIO-09/SU/COMMR/2012 dated 30/03/2012	Narendra Narula	Ms. Jaya Saxena	C.C.-New Delhi(prev)	Shri Govind Dixit
6.	C/2190 /2012	OIO-06/RKB/CCE/NCH/2012 dated 29/03/2012	Rajita Herbals Pvt Ltd	Shri S.S. Dabas	C.C.-New Delhi(prev)	Shri Govind Dixit
7.	C/2191 /2012	OIO-06/RKB/CCE/NCH/2012 dated 29/03/2012	Balaji Exports	Shri S.S. Dabas	C.C.-New Delhi(prev)	Shri Govind Dixit
8.	C/2192 /2012	OIO-06/RKB/CCE/NCH/2012 dated 29/03/2012	Nitish Goyal	Shri S.S. Dabas	C.C.-New Delhi(prev)	Shri Govind Dixit
9.	C/2635 /2012	OIO-06-RKB-CCE-NCH-2012 dated 29/03/2012	New Delhi(icd Itc)	Shri S.S. Dabas	Rajita Herbals Pvt Ltd	Shri Govind Dixit
10.	C/2636 /2012	OIO-06-RKB-CCE-NCH-2012 dated 29/03/2012	New Delhi(icd Itc)	Shri S.S. Dabas	Balaji Exports	Shri Govind Dixit
11.	C/2637 /2012	OIO-06-RKB-CCE-NCH-2012 dated 29/03/2012	New Delhi(icd Itc)	Shri S.S. Dabas	Mr Nitish Goyal	Shri Govind Dixit
12.	C/3245 /2012	OIO-04/D-I/2012 dated 19/07/2012	Apex Recycling Pvt Ltd	Shri Pushkar Singh	C.S.T.-Delhi - I	Shri Govind Dixit
13.	C/2102 /2012	OIO-10/2012 dated 31/03/2012	Pgy Associates	Shri Aditya Chaudhary	C.C.-New Delhi(I & G)	Shri R.K. Manjhi
14.	C/2103 /2012	OIO-10/2012 dated 31/03/2012	Yadupati Singhania	Shri Aditya Chaudhary	C.C.-New Delhi(I & G)	Shri R.K. Manjhi
15.	C/2104 /2012	OIO-10/2012 dated 31/03/2012	Kavita Singhania	Shri Aditya Chaudhary	C.C.-New Delhi(I & G)	Shri R.K. Manjhi
16.	C/2105 /2012	OIO-10/2012 dated 31/03/2012	Krishna Kumar Mishra	Shri Aditya Chaudhary	C.C.-New Delhi(I & G)	Shri R.K. Manjhi
17.	C/2106 /2012	OIO-10/2012 dated 31/03/2012	Anil Kumar Agarwal	Shri Aditya Chaudhary	C.C.-New Delhi(I & G)	Shri R.K. Manjhi
18.	C/2516 /2012	OIO-10-12 dated 31/03/2012	Sushila Singhania	Shri Aditya Chaudhary	-New Delhi(icd Itc)	Shri R.K. Manjhi
19.	C/5058 5/2015 B	OIO-52-NLB-COMMR-I-&-G-2014 dated 31/07/2014	Vikram Tokas	None	C.C.-New Delhi(I & G)	Shri Govind Dixit

20.	C/50970/2015	OIO-12-2014-COMMR-CUSTOM dated 29/12/2014	Fairdeal Shipping Agency Pvt Ltd	Shri Arun Goyal	C.C.-Jodhpur	Shri R.K. Manjhi
21.	C/51841/2015	OIO-69-2015-SRB- COMMR -IMPORTS dated 13/02/2015	Gargi Overseas	Shri J.M. Sharma	C.C.-New Delhi(I & G)	Shri R.K. Manjhi
22.	C/51887/2015	OIO-68-2015-SRB-COMMR-IMPORTS dated 12/02/2015	S B Mehta	Ms. Jaya Saxena	C.C.-New Delhi(I & G)	Shri R.K. Manjhi
23.	C/52737/2015	OIO-12-2014-COMMR-CUSTOM dated 29/12/2014	Vinod Kumar Sharma	Shri Arun Goyal	C.C.-Jodhpur	Shri Govind Dixit
24.	C/52770/2015	OIA-CC-A-CUS-ICD-466-2015 dated 17/04/2015	Jang Bahadur Singh Gujral	Shri Subhankar Jha	C C-New Delhi(icd Tkd)	Shri Govind Dixit
25.	C/52885/2015	OIA-CC-A-CUS-ICD-431-2015 dated 13/04/2015	Sukhdev Singh Gujaral	Shri Subhankar Jha	C C-New Delhi(icd Tkd)	Shri R.K. Manjhi
26.	C/53006/2015	OIO-07-2015-AD-COMMR-EXPORT-ICD-TKD dated 11/05/2015	Zen Cargo Movers	Shri Pushkar Singh	C C-New Delhi(icd Tkd)	Shri R.K. Manjhi
27.	C/53495/2015	OIO-07-2015-AD-COMMR-EXPORT-ICD-TKD dated 11/05/2015	Mool Chand Sharma	Shri Pushkar Singh	C C-New Delhi(icd Tkd)	Shri R.K. Manjhi
28.	C/53580/2015	OIO-07-2015-AD-COMMR-EXPORT-ICD-TKD dated 11/05/2015	Om Prakash Maheshwari	Shri Pushkar Singh	C C-New Delhi(icd Tkd)	Shri R.K. Manjhi
29.	C/53995/2015-DB	OIO-07-2015-AD-COMMR-EXPORT-ICD-TKD	Raj Kumar Maheshwari	Shri Pushkar Singh	C C-New Delhi(icd Tkd)	Shri R.K. Manjhi
30.	C/53012/2015	OIO-JOD-CUSTM-PRV-COMMR-03-15 dated 30/01/2015	Deepak Lilaram Asudani	None	C.C.-Jodhpur	Shri S. Nunthuk
31.	C/54319/2015	OIO-DEL-CUSTM-000-COM-15-2015 dated 31/07/2015	Hitesh Kothari	Shri Ankit Daniel	C C-New Delhi(icd Tkd)	Shri Govind Dixit
32.	C/54320/2015	OIO-DEL-CUSTM-000-COM-15-2015 dated 31/07/2015	Jayanthi Bhai Jain	Shri Ankit Daniel	C C-New Delhi(icd Tkd)	Shri Govind Dixit
33.	C/54322/2015	OIO-DEL-CUSTM-000-COM-15-2015 dated 31/07/2015	Avk Plast	Shri Ankit Daniel	C C-New Delhi(icd Tkd)	Shri Govind Dixit
34.	C/54324/2015	OIO-DEL-CUSTM-000-COM-15-2015 dated 31/07/2015	J K Petrochemicals	Shri Ankit Daniel	C C-New Delhi(icd Tkd)	Shri Govind Dixit
35.	C/54414/2015	OIO-07-2015-S-R-B-COMMR dated 30/06/2015	Repro India Pvt Ltd	Shri Dhruv Matta	C.C.-New Delhi(I & G)	Shri R.K. Manjhi
36.	C/53419/2015	OIA-07-2015-SRB-COMMR dated 30/06/2015	Microsoft Corporation India Pvt Ltd	Ms. Pooja Sharma	C.C.-New Delhi(I & G)	Shri Govind Dixit
37.	C/52251/2015	OIA-CC-A-CUS-230-2015 dated 20/02/2015	Raj Kumari Motwani	Shri S.S. Dabas	C.C.-New Delhi(prev)	Shri Govind Dixit
38.	C/52252/2015	OIA-CC-A-CUS-230-2015 dated 20/02/2015	Varun Khurana The Director	Shri S.S. Dabas	C.C.-New Delhi(prev)	Shri Govind Dixit
39.	C/52818/2015	OIA-CC-A-CUS-230-2015 dated 20/02/2015	Medical Engineers India Ltd	Shri S.S. Dabas	C.C.-New Delhi(prev)	Shri R.K. Manjhi

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No. 54791-54829/2017

Per Justice (Dr.) Satish Chandra:

All these appeals are filed against the orders, as above, passed by the Commissioner of Customs, New Delhi.

2. Both the sides agree that the proceedings are initiated by notice issued by officers of DRI / Preventive.

3. 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 Officers of DRI / Preventive. The Hon'ble High Court of Delhi in the case of ***Mangli Impex vs. UOI dated 03.05.2016*** has observed that the DRI / Preventive 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 / Preventive.

4. On the other hand, ld. Counsel for the Department has justified the notice issued by DRI / Preventive and made a request to decide the matter on merit.

5. We have heard both 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. The Tribunal remanded the cases to the original adjudicating authority. The final order of Tribunal in a recent case ***53877-53880/2017*** is as below:

"6.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.*

7. 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.

8. 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 Acts. Hence, from 06.07.2011 ADG-DRI has been empowered to issue demand notice under Section 28.*

9. 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.

10. 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 come 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.*

*11. However, it is further noticed that the said issue was also the subject matter of Hon'ble Bombay 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.*

*12. 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 A49 (SC)].***

*13. 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 A49 (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."***

6. 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."

7. Following the above line of decision, we set aside the impugned order and remand the matter to the original authority for a fresh decision.

[Dictated and Pronounced in the open court]

(V. Padmanabhan)
Technical Member

(Justice Dr. Satish Chandra)
President

Bhanu