CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing: 01.08.2017

Appeal No. C/50175/2015-CU[DB]

[Arising out of the Order-in-Original No. 10-KAM-COMMR-ADJ-2014-15 dated 09/09/2014, passed by the Commissioner of Central Excise, (Prev) New Delhi]

M/s. Booster International … Appellant

Vs.

C.C.E. New Delhi (Prev) ... Respondent

Appearance:

Present Ms. Reena Rawat, Advocate for the appellant
Present Shri Govind Dixit, DR for the respondent

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

FINAL ORDER No. 55708/2017

Per V. Padmanabhan:

The present appeal has been filed against the order in Original No. 10/2014-15 dated 09/09/2014.

2. During course of hearing both the sides agreed that the notice has been issued by the Commissioner of Customs (Prev)/Joint Commissioner of Customs (Prev) which resulted in the impugned orders.

3. In this connection, we note that similar issues have been dealt with in various cases by the Tribunal recently. It is held that the matters have to be remanded back to the original

authority for a decision after the legal issue is settled by the Hon'ble Supreme Court. The decision of the Tribunal in one such case vide Final Order No. 54060-54067/2017 dated 16/06/2017 is reproduced below:

*"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)/DRI 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****."*

4. 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."

5. In the result, appeals filed by the assessee/Department are allowed by way of remand."

6. In line with the above decision of the Tribunal, we remand the matters for fresh decision.

[Dictated and Pronounced in the open court]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

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