IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING: 21/08/2017

Customs Appeal No. C/52216/2014-CU [DB]

[Arising out of the Order in Original No. 64/RKB/CC/NCH/2013 dated 13.12.2013 passed by The Commissioner of Customs (Adjudication) New Delhi.]

ITC Infotech India Ltd. Appellant

Versus

CC, New Delhi Respondents

<u>Appearance</u>

None for the appellant.

Shri Govind Dixit, (DR) – for the Respondents.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No._56261/2017__

<u>Per. S.K. Mohanty :-</u>

1. Heard learned DR for the Revenue. None appeared for the appellant, despite notice.
2. These proceedings were initiated pursuant to the show cause notice issued by the Officers of D.R.I. for the imports made prior to April 2011. In this connection, we are informed that the Jurisdiction of the D.R.I. Officers to act as 'proper officer' for demand proceedings under the Customs Act, 1962 has been a

subject matter of dispute before the High Courts. It has been ruled by Hon'ble Delhi High Court in the case of **Mangali Impex Ltd. vs. Union of India – 2016 (335) E.L.T. 605 (Del.)** that the D.R.I. Officers are not competent to issue the show cause notice for the period prior to 08.04.2011. In similar such cases, various Benches of the Tribunal such as, Delhi, Chennai & Calcutta have set aside the impugned orders and remanded the matter to the original authority for deciding the issue of jurisdiction and thereafter to decide on the merits of the case, upon pronouncement of the judgment by the Hon'ble Supreme Court in the case of Mangali Impex (Supra). For ease of reference, the relevant portion in the decision of the Tribunal in the case of **M/s. HR Electronics Vs. Commissioner Of Customs, New Delhi (I and G) reported in <u>2017-TIOL-2328-CESTAT-DEL</u>** are extracted herein below:-

> *"5. 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)**] = **2011-TIOL-20-SC-CUS**, the DRI 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 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.*

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 with retrospective effect.

9. 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]*** = **2016-TIOL-877-HC-DEL-CUS***, 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)*** *=* **2014-TIOL-1949-HC-MUM-CUS** *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]*** *=*

***2016-TIOL-2789-HC-AP-CUS**, 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 subjudice 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 Mangali 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 Mangali 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 Mangali 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."

4. The Tribunal in **Supro Overseas Pvt. Ltd. & Ors. – 2017-TIOL-2619-CESTAT-MUM** observed as below:-

> "3. In view of the rival submissions as above and also the Tribunal having taken a view that the appeal should go back to the adjudicating authority till the decision of the apex court, it is proper to send back all the appeals to the adjudicating authority who shall pass appropriate order on the basis of outcome of the apex court judgment in **Mangali Impex Case** which has been admitted in Civil Appeal No.20453 of 2016 as reported in **2016 (339) ELT A49 (SC),** granting reasonable opportunity of hearing to both the sides. We may state that when an appeal is admitted by apex court whether the order appealed is stayed or not makes no difference to law since the order appealed is under challenge and the Tribunal should not overreach the jurisdiction of the apex Court as has been held by the apex court in **Union of India Vs. West Coast Paper Mills Ltd. – 2004 (164) ELT 375 (SC) = 2004-TIOL-14-SC-LMT-LB."**

5. In line with the above observations of the Tribunal, we set aside the impugned orders and remand the matters to the Original Authority for deciding the issues involved in the present appeals. *Status quo* shall be maintained in the interim period.

6. In the result, the appeal filed by the appellant is allowed by way of remand.

(Order dictated and pronounced in open court.)

(B. Ravichandran)
Member (Technical)

S.K.Mohanty
Member (Judicial)

Rekha