IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Custroms Appeal No. 53188 -53189 of 2014

[Arising out of Order-in-Original No.20/NLB/Commr/I&G/2014 dated 15.3.2014 passed by the Commissioner of Customs, New Delhi]

M/s. S T Enterprieses **Appellants**
Shri Arun Suri

Vs.

Commissioner of Customs **Respondent**
(I & G), New Delhi

Appearance:
None for the Appellants
Shri Pardeep Juneja, AR for the Respondent

<u>CORAM</u>:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Date of Hearing /decision: 29.08.2017

FINAL ORDER NO. 56315 -56316 /2017

<u>Per Ashok Jindal:</u>

The present appeals are filed against the Order-in-Original No.20/NLB/Commr/I&G/2014 dated 15.3.2014 passed by the Commissioner of Customs, New Delhi.

2. Heard Shri Pardeep Juneja, learned Counsel for the Revenue. he submit that in the instant case, the notice was issued by the Directorate

of Revenue Intelligence, who is not a proper officer for issuing the Show cause notice.

3. In this connection, I 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. 53941-53942 of 2017 dated 12/06/2017 is reproduced below :

> *"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 Directorate of Revenue Intelligence (DRI). The Hon'ble High Court of Delhi in the case of* ***Mangali Impex Ltd. Vs. UOI dated 03.05.2016*** *has observed that the DRI 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.*
>
> *2. On the other hand, learned Counsel for the Department has justified the notice issued by DRI and made a request to decide the matter on merit.*
>
> *3. We have heard both the parties at length and gone through the material available on record.*
>
> *4. 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 (S.C.)],*** *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 (Supra), the provisions of section 28 of the Customs Act, 1962 were amended with effect from 08.04.2011 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 16/09/2011, 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 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 Ltd. vs. Union of India [2016 (335) E.L.T. 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 08/04/2011. 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.*

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) E.L.T. 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) E.L.T. 161 (AP)],*** *taking a view contrary to the one taken by the Hon'ble Delhi High Court.*

10. 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)].***

11. 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 Ltd. Vs. UOI*** *which is stayed by the Hon'ble Supreme Court reported as* ***2016 (339) E.L.T. 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."*

12. 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 Ltd.*** *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.*

*13. In the result, appeals filed by the assessee are allowed by way of remand****”****.*

4. In line with the above decision of the Tribunal, I agree to it. Accordingly, I remand the matter for fresh decision.

(pronounced in the open court)

(Ashok Jindal)
Member(Judicial)

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