CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 08.09.2017

Appeal No. C/664/2010 (DB)
[Arising out of Order in Original No. 26/HKC/Commr/2010 Dated 22/09/2010 passed by Commissioner of Customs (Preventive), New Delhi]

Escorts Ltd. … Appellant

Vs.

CC New Delhi … Respondent

Appearance:

Present Mr. Abhinav Jaganathan, Advocate for the appellant
Present Mr. R.K. Manjhi, DR for the respondent

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

FINAL ORDER No. 56659/2017

Per Justice Dr. Satish Chandra

1. The present appeal is filed against the Order in Original No. 26/2010 dated 22/09/2010.
2. Heard Shri Abhinav Jaganathan, Ld. Counsel for the appellant and Shri R.K. Manjhi, Ld DR for the respondent.
3. During the course of arguments, both parties have agreed that in the instant appeal, the notice was issued by the Commissioner of Customs (Preventive), who is not the competent authority as per the ratio laid down in the Hon'ble Delhi High Court in the case of Mangli Impex. 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.*
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> *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.*
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> *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.

8. Both the parties have agreed to it.

[Order Dictated and Pronounced in the open court]

(V Padmanabhan)
Member (Technical)

(Justice Dr Satish Chandra)
President

Rekha