

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

Date of hearing: 28.11.2017

Application No. C/ROA/50810/2017

Appeal No. C/52121/2014 –EX [DB]

[Arising out of the Order in Original No. 16/2013 dated 27.12.2013 passed by The Commissioner of Customs, ICD, Tughlakabad, New Delhi.]

Jatin Ahuja

... Appellant

Vs.

CC Delhi

... Respondent

Appearance:

Present Shri Summit Sharma, Advocate for the appellant

Present Shri R.K, Majhi, AR for the respondent

Coram: Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Hon'ble Mr. B. Ravichandran, Member (Technical)

FINAL ORDER No. 58216/2017

Per S.K. Mohanty

1. The applicant has filed this miscellaneous application, seeking for restoration of appeal, which was dismissed by the Tribunal vide Final Order Mo. 51401/2015-CU(DB) dated 30/03/2015 in Appeal No. C/52121/2014-CU (DB). The appeal was dismissed on the ground of non compliance of the provisions of Section 35 F of the Central Excise Act, 1944. The Ld. Advocate appearing for the appellant submitted that due to certain confusion, the stay order dated 21/11/2014 was not complied with by the appellant and the amount of Rs. 2 Lakh directed for pre-deposit has already been complied with. He also produced the challan, evidencing the amount deposited by the appellant as per terms of the stay order dated 21/11/2014 passed by this Tribunal. Considering the fact that the appellant has already complied with the stay order dated 21/11/2004, we are of the view that the present application filed

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for restoration of appeal can be considered. Accordingly, the appeal is restored to its original number.

2. Both sides agree that the proceedings initiated in this case were pursuant to the show cause notice issued by the DRI prior to the period April, 2011. Thus, with the consent of both sides, the appeal is taken up for hearing today.
3. Heard both sides.
4. 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 connection with the present appeal, 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 2017-TIOL-2328-CESTAT-DEL** are extracted herein below:-

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- "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

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(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

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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."

5. 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."**

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

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

[Order dictated and pronounced in the open court]

(B. Ravichandran)
Member (Technical)

(S.K.Mohanty)
Member (Judicial)

Rekha