IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No.79420 of 2018

(Arising out of Order-in-Appeal No.Kol/Cus (Port)/AA/1765-1767/2018 dated 07.09.2018 passed by Commissioner (Appeals) of Customs, Kolkata)

CC (Port), Kolkata

15/1 Strand Road, Kolkata-700001

Applicant

VERSUS

M/s Zenith Enterprises
Phase I Babu Jagjivan Ram Nagar, Behind Buddha Temple, Dumping Road,

Mulund (W), Mumbai, Pin-400080

Respondent

WITH

Customs Appeal No.79422 of 2018

(Arising out of Order-in-Appeal No.Kol/Cus (Port)/AA/1765-1767/2018 dated 07.09.2018 passed by Commissioner (Appeals) of Customs, Kolkata)

CC (Port), Kolkata

15/1 Strand Road, Kolkata-700001

Applicant

VERSUS

M/s N.S.Enterprises
411/5,DG-22, Pallika Bhawan, R.K.Puram, Sector 13, New Delhi-110065

Respondent

AND

Customs Appeal No.79426 of 2018

Customs Appeal Nos.79420,79422 & 79426/18

(Arising out of Order-in-Appeal No.Kol/Cus (Port)/AA/1765-1767/2018 dated 07.09.2018 passed by Commissioner (Appeals) of Customs, Kolkata)

CC (Port), Kolkata

15/1 Strand Road, Kolkata-700001

Applicant

VERSUS

M/s S.S. Enterprises
Venkatesh Shanti Building, Balaji Nagar, 150, Feet Road, Near Flyover,

Bhayander (W), Pin-401101

Respondent

APPERANCE :

Shri A.K.Singh, Authorized Representative for the Appellant

None for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR.P.VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.76847-76849/2019

DATE OF HEARING : 25.07.2019
DATE OF DECISION : 25.07.2019

PER P.VENKATA SUBBA RAO :

All these appeals have been filed by the Revenue against the Order-in-Appeal Nos.Kol/Cus (Port)/AA/1765-1767/2018 dated 07.09.2018 passed by the first appellate authority remanding the matter to the original authority with a direction to decide the question of jurisdiction of DRI and thereafter, decide the matter on merit after granting an opportunity of personal hearing and following the principles of natural justice.

2. The respondents, in these cases, are importers of various electrical goods. DRI received the information that the goods were under-valued and investigated the matter. They recorded statements of various persons and concluded that the goods were under-valued in order to evade duty. The Officers of DRI issued show-cause notices which were adjudicated by the original authority, namely, the Additional Commissioner of Customs (Port), Kolkata. In his order, the original authority rejected the values declared by the respondent in their Bills of Entry and confirmed the demand of differential duty. He also ordered confiscation of the goods, which were imported and imposed penalty upon the respondents.

3. Aggrieved by the order of the lower appellate authority, the respondent filed an Appeal before the first appellate authority, who by his Order-in-Appeal No.Kol/Cus (Port)/AA/1765-1767/2018 dated 07.09.2018, did not discuss the merits of the case and has remanded the matters to the original authority directing him to decide whether DRI had jurisdiction to issue the show-cause notice. The Ld. First Appellate Authority, has relied on the judgement of the Hon'ble High Court of Delhi in the case of Mangali Impex Ltd. Vs. Union of India : 2016 (335) ELT 605 (Del.), in which, it was held that the Officers of DRI or the DGCEI, had no power to issue show-cause notices prior to the insertion of Section 28 (11) of the Customs Act, 1962 on 08.04.2011. This order of the Hon'ble High Court of Delhi, has been stayed by the Hon'ble Supreme Court on 07.10.2016 [reported as 2016 (339) ELT A-49 (SC)]. The Hon'ble High Court of Bombay in the case of Sunil Gupga Vs. Union of India : 2015 (315) ELT 167 (Bom.) and Hon'ble High Court of Telangana in the case of Vuppalamritha Magnetic Components Ltd. [2017 (345) ELT 161 (A.P.], have taken a contrary view and held that the Officers of DRI could issue show-cause notices.

4. In some cases, the Tribunal had remanded the matters to the lower appellate authority directing that the matters may be decided on merit after issue of DRI's power to issue show-cause notice is decided by the Hon'ble Apex Court in the case of Mangali Impex Ltd. (supra). The Ld.Commissioner (Appeals) in his order, specifically, relied on the Order passed by this Bench in the case of M/s Eastern Silk Industries Ltd. vide Final Order No.F/O/76222-76226/2017 dated 13.07.2017. The Ld.Commissioner (Appeals) has also relied on the case law in the case of Navneet Kumar & Others Vs. Union of India & Others [2018 (7) TMI 794, in which, the Hon'ble jurisdictional High

Court of Calcutta had decided that the Additional Director of DRI cannot invoke Section 124 of the Customs Act, 1962.

5. Revenue is aggrieved by the impugned order of the Ld.Commissioner (Appeals) remanding the matters to the lower authority without giving any findings on merit of the case. It is the case of the Revenue that the judgement of the Hon'ble High Court of Calcutta in the case of Navneet Kumar (supra), was an order of the Single Bench, which has been subsequently, stayed by the Division Bench of that High Court. Revenue prays that the impugned order may be set aside and the Ld.Commissioner (Appeals) may be directed to decide the issue on merits.

6. We have considered the arguments of the Revenue and perused the records. It is true that the question as to whether the Officers of DRI, can issue show-cause notice for the period prior to 08.04.2011, has been the subject matter of the orders passed by the various High Courts. In the case of Mangali Impex Ltd. (supra), the Hon'ble High Court of Delhi, has held that the Officers of DRI had no such power, while the Hon'ble High Court of Bombay had, on the other hand, held that the Officers of DRI had such power. The jurisdictional High Court of Calcutta in the case of Navneet Kumar & Others (supra), held that the DRI Officers had no power to issue show cause notices and this decision was stayed by the Division Bench of the same High Court. The decision of the High Court of Delhi in the case of Mangali Impex Ltd. (supra), has been stayed by the Hon'ble Supreme Court. In this factual matrix, in several cases, the Tribunal had remanded such matters to the lower authority to decide the matter on merits after the decision by the Hon'ble Apex Court in the case of Mangali Impex Ltd. (supra).

7. Such remand orders have been challenged before the Hon'ble High Court of Delhi in the case of Commissioner of Customs Vs. Arif Khichi [2018 (13) GSTL 407 (Del.) and the Hon'ble High Court has held that the decision of the Hon'ble High Court of Delhi in the case of Mangali Impex Ltd. (supra), has been stayed by the Hon'ble Apex Court and therefore, the Tribunal ought to have decided the issue on merits including the issue of jurisdiction of DRI Officer for issuance of show-cause notice and the Tribunal remanding the matter causes harassment to the assessee and inconvenience to the Department. Thus holding, the Hon'ble High Court of Delhi had directed the Tribunal to recall their appeal in that case and decide the issue on merits

including the jurisdiction issue without being influenced by the aforesaid order of the Hon'ble High Court in the case of Mangali Impex Ltd. (supra).

8. We find that the view taken by the Tribunal in several cases was that since the matter pertaining to Mangali Impex Ltd. (supra) is pending before the Apex Court, the matter should be remanded to the lower appellate authority. This view has been over ruled by the Hon'ble High Court of Delhi. We are of the opinion that the same ratio applies to the judgement of the Hon'ble Single Bench of the Hon'ble Calcutta High Court in the case of Navneet Kumar (supra), which decision has been stayed by the Division Bench. Therefore, without waiting for the final decision by the Hon'ble Supreme Court in the case of Mangali Impex Ltd. (supra), the matter has to be decided on merits either by the adjudicating/appellate authority or by the Tribunal.

9. In view of the above, we find that the impugned order passed by the first appellate authority remanding the matter to the lower authority is not correct and needs to be set aside and the matter has to be examined on merits by the first appellate authority as well as on the question of jurisdiction of DRI Officer to issue show-cause notice following the judgement of the Hon'ble High Court of Delhi in the case of Arif Khichi (supra).

10. In view of the above, the impugned order is set aside and the appeals filed by the Revenue are allowed and the Commissioner (Appeals) is directed to decide the issue on merits.

(Operative part of the order was pronounced in the open court)

Sd/

(P. K. CHOUDHARY)
Member (Judicial)

Sd/

(P.V.SUBBA RAO)
Member (Technical)

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