IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. C/1046,1047,1106/2009

(Arising out of Order-in-Original No. CAO No. 118/2009/CAC/CC/MS dt. 29/07/2009 passed by the Commissioner of Customs (Adj.), Mumbai)

Harish F. Sawlani : **Appellant**
Sawlani Exports
Murli W. Dialani

VS

Commissioner of Customs (Prev.) Mumbai : **Respondent**

Appearance

Shri Anil Balani, Advocate for Appellant
Shri M.K. Mall, Asstt. Commr. (A.R) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri Raju, Member (Technical)

Date of hearing : 22/02/2018
Date of pronouncement : 24/05/2018

ORDER NO. A/86567-86569/2018

Per : Ramesh Nair

The present appeals have been filed against Order-in-original dt. 19.07.2009 passed by the Commissioner of Customs (ADJ), New Custom House, Ballard Estate, Mumbai. The show cause notice dt. 30.04.1997 was issued by the Commissioner of Customs (Preventive).

2. We find that in the case of Mangli Impex Vs. UOI 2016 (335) ELT 605 (DEL) the Hon'ble High Court of Delhi has held that the Preventive Commissioner of Customs has no jurisdiction to issue show cause notice. The said judgment of Delhi High Court has been

stayed by the Hon'ble Supreme Court on 01.08.2016 as reported in 2016 (339) ELT A49 (SC). The Principal Bench of this Tribunal and other benches have remanded such matters on jurisdictional issue to the original authority to pass appropriate order after outcome of the judgment in Apex Court keeping open for argument by both the sides on all issue arising out of show cause notice.

3. The revenue has contended that the Hon'ble High Court of Andhra Pradesh in case of Vuppalamritha Magnetic Components 2017 (345) ELT 161 (AP) has dissented from the High Court judgment in Mangli impex case. Further that the Hon'ble High Court of Mumbai in case of Sunil Gupta 2015 (315) ELT 167 (BOM) has held that ADG/DRI is competent to issue SCN and the appeal against the same has been dismissed by the Apex Court on grounds of time bar.

4. Looking to the above situation and contrary judgments of the Hon'ble High Court and in view of the fact that the issue is subjudice before the Apex Court, we find it appropriate to set aside the impugned order and remand back the matter to the adjudicating authority to first decide the issue of jurisdiction on the basis of judgment of the Hon'ble Supreme Court in the Mangli Impex case supra as and when it is decided and then the merits of the case.

5. The appeals filed by all the Appellants are allowed by way of remand.

(Pronounced in court on 24/05/2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

SM.