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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2629/2017 and CM No. 14286/2017

SUNIL GUPTA ..... Petitioner

Through: Mr. A. K. Prasad and Mr. Priyanka Goel, Advocates.

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr. Anil Dabas, Advocate for R-1.
Mr. Sanjeev Narula, Sr. Standing Counsel with Mr. Abhishek Ghai, Advocate for CBEC.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% **17.04.2017**

1. What is listed today for hearing is CM No. 14285/2017 which is an application by the Petitioner for the impleadment of the Commissioner of Customs (Export), Air Cargo Complex, Sahar, Mumbai-400099 as a party.

2. However, with the consent of the parties the main writ petition is itself taken up for hearing.

3. The background to the present writ petition is that the Applicant was issued a show cause notice (SCN) dated 5th February 2009, under Section 28 (1) of the Customs Act 1962 (CA), by the Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit, alleging evasion of customs duty to the tune of Rs.712.73 crores through imports of electronic goods and

components in the name of dummy importers.

4. The Petitioner filed Writ Petition No. 12153 of 2012 before the High Court of Bombay praying for the setting quashing of the said SCN. The petitioner also challenged the constitutional validity of the amendment to Section 28 of the CA by which sub-section (11) was inserted. That writ petition was dismissed by the Bombay High Court by a detailed judgment dated 3rd November 2014. The Bombay High Court sustained the constitutional validity of sub-section (11) of Section 28 of the CA by which the officers DRI had been declared 'proper officers' for the purposes *inter alia* of adjudication of SCNs issued under the CA.

5. The Petitioner then filed SLP (Civil) No. (cc No. 18877/2016) which dismissed by the Supreme Court on 17th October 2016 on the ground of delay. Therefore, *qua* the Petitioner the judgment dated 3rd November 2014 of the Bombay High Court attained finality.

6. Meanwhile, on 3rd May 2016, the Division Bench of this Court in a detailed judgment in a batch of cases including W.P. (C) No. 441 of 2013 (***Mangali Impex Ltd. v. Union of India***) disagreed with the Bombay High Court and declared sub-section (11) of Section 28 of the CA to be *ultra vires* the CA. The Union of India (UOI) challenged the said decision by filing SLP (C) No. 20453 of 2016 in the Supreme Court of India. By order dated 19th October 2016 while issuing notice in the SLP (*titled as Union of India and Ors. v. Mangali Impex*), the Supreme Court directed that the operation of the decision of this Court shall remain stayed.

7. The Central Board of Excise and Customs (CBEC) issued an

Instruction dated 28th December 2016 whereby it was decided that all the SCNs issued prior to 6th July 2011 and pending adjudication should be transferred to the 'Call book' pending disposal by the Supreme Court of the above SLP filed by the UOI. However, within a week thereafter on 3rd January 2017 another instruction was issued by the CBEC on the basis of the advice of the Solicitor General of India that the earlier Instruction dated 28th December 2016 stood withdrawn. It was now directed that the SCNs that were kept in the 'call book' are to be taken out from the 'call book' immediately and proceeded with in accordance with law.

8. The present writ petition was filed by the Petitioner challenging the subsequent instruction dated 3rd January 2017.

9. As far as the Petitioner is concerned, having not been successful in challenging Section 28 (11) of the CA as amended, and the decision dated 3rd November 2014 of the Bombay High Court dismissing his writ petition having attained finality with the dismissal of the Petitioner's SLP by the Supreme Court on 17th October 2016, neither the Instruction dated 29th June 2016 nor the subsequent Instructions dated 28th December 2016 would make any difference. For that matter, even the Instruction dated 3rd January 2017 does not contradict the situation arising from the order of the Supreme Court dismissing the Petitioner's SLP. In other words, there is no impediment with the adjudication proceedings *qua* the Petitioner proceeding in accordance with law.

10. In the peculiar facts concerning the Petitioner, as noticed hereinbefore, none of the reliefs sought in the main petition can be

granted. This order will, however, not affect the challenge by another person to the validity of the impugned instruction dated 3rd January 2017 in accordance with law.

11. The petition and the application are accordingly dismissed. The next date of hearing stands cancelled.

S. MURALIDHAR, J

NAJMI WAZIRI, J

APRIL 17, 2017
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