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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 20th November, 2017

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\+ **CUSAA 57/2017**

VIPUL OVERSEAS PVT. LTD ..... Appellant

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

versus

COMMISSIONER OF CUSTOMS & ORS. ..... Respondents

Through : Mr. Sanjeev Narula, SSC for Customs with Mr.Abhshek Ghai, Advocate.

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\+ **CUSAA 58/2017**

SHRI. SURENDER GARG ..... Appellant

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

versus

COMMISSIONER OF CUSTOMS. & ORS. ..... Respondents

Through : Mr. Sanjeev Narula, SSC for Customs with Mr.Abhshek Ghai, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE PRATHIBA M. SINGH

SANJIV KHANNA, J.(ORAL)

On the last date of hearing, we had passed the following order in the aforesaid appeals :

"2. Learned counsel for the appellants submits that the grounds of appeal raised before the Tribunal did not relate to rate of duty and hence, these writ petitions would be maintainable before this Court.

> *3. Learned counsel for the appellants submits that the matter should be examined by the Tribunal on merits including the contention of the appellants that an officer of the Directorate of Revenue Intelligence could not have issued the show cause notice. It is submitted that the Tribunal had the jurisdiction to decide the aforesaid aspect uninfluenced by the judgment of this court in* ***Mangli Impex Limited v. Union of India 2016 (335) ELT 605 (Del.)****, operation of which has been stayed by the Supreme Court.*
>
> *4. Learned counsel for the respondents submits that he wants to obtain instructions before he makes any submission before the court.*
>
> *5. Re-list these appeals on 20th November, 2017".*

2. Learned counsel for the respondents has obtained instructions and states that they have no objection, if the remand order is set aside and Tribunal is requested to decide the issue on merits without taking into consideration the decision of the Delhi High Court in ***Mangli Impex Limited v. Union of India 2016 (335) ELT 605 (Del.)***, which is stayed by the Supreme Court.

3. A copy of the said letter has been shown to the learned counsel for the appellants, who states that he does not have any objection.

4. In view of statements made, we frame the following substantial question of law:

> Whether the Customs, Excise and Service Tax Appellate Tribunal ('CESTAT') was justified and correct in law in passing an order of remand to the

> original adjudicating authority to first decide the issue of jurisdiction, after decision of the Supreme Court in Civil Appeal preferred against the decision of Delhi High Court in ***Mangli Impex Limited v. Union of India 2016 (335) ELT 605 (Del.)***?

5. The undisputed position is that two show cause notices dated 10th April, 2008 were issued to the appellants by the Directorate of Revenue Intelligence ('DRI' for short) and original adjudication order was passed on 14th October, 2014. The final order was challenged before the CESTAT, who have vide impugned order dated 14th July, 2017, remanded the matter back to the Adjudicating Authority to await the decision of the Supreme Court in ***Mangli Impex Limited (supra)***. The appellants and respondents have assertively highlighted that the original order was passed after more than 6 ½ years. Thus, remand to the original adjudicating authority at this stage, they submit, would cause prejudice and harassment to the appellants and respondents. The submission is that the contentions of the appellants should be decided on merits by the CESTAT including imposition of penalty and right of the DRI to issue show cause notice. The appellants accept that the adjudication would be uninfluenced by the judgment in the case of ***Mangli Impex Limited (supra)***, operation of which has been stayed by the Supreme Court. In other words, the Tribunal would independently apply its mind on the question of jurisdiction.

6. In view of the aforesaid position, the substantial question of law is answered in favour of the appellants and the order of the Tribunal dated 6th July, 2017 is set aside. The Tribunal will decide the appeals on merits, including the question of jurisdiction of the officers of DRI to issue the show cause notice, without being influenced by the decision of the Delhi High

Court in the case of ***Mangli Impex Limited (supra)***, which has been stayed by the Supreme Court.

7. We clarify that we have not expressed any opinion on the merits of these appeals or on the procedure that the Tribunal should adopt.

8. These appeals are disposed of in the above terms. There would be no order as to costs.

SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

NOVEMBER 20, 2017

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