$~4

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

\+ CUSAA 67/2017

FORECH INDIA PVT. LTD ..... Appellant

Through: Mr.Karan Sachdev and Mr.Raghav Khurana, Advocates.

versus

COMMISSIONER OF CUSTOMS INLAND CONTAINER DEPOT,TUGHLAKABAD, NEW DELHI ..... Respondent

Through: Mr.Amit Bansal and Mr.Akhil Kulshrestha, Advocates.

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

O R D E R

% **13.12.2017**

On the last date of hearing, the following substantial question of law was framed:-

> "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.)?"

2. Learned counsel for the respondent accepts that the issue raised in the present case is covered by a decision of this Bench dated 20th November, 2017 in CUSAA No.57/2017 ***Vipul Overseas Pvt. Ltd. Vs. Commissioner of Customs & Ors.***

3. It was recorded in the said order that the respondent-Revenue had no objection if the remand order passed by the Tribunal was set aside with a request to the Tribunal to decide the issue on merit without taking into consideration the decision of the Delhi High Court in ***Mangli Impex Limited Vs. Union of India*** 2016 (335) ELT 605 (Del.) which has been stayed by the Supreme Court.

4. For the reasons set out and stated in the said order, we answer the question of law in favour of the appellant with a direction to the Tribunal to decide the appeal on merits including the question of imposition of penalty and the right of Directorate of Revenue Intelligence who issued show cause notices.

5. The said adjudication would be without being influenced by the judgment in the case of ***Mangli Impex Limited*** (supra).

6. In other words, the Tribunal would independently apply its mind on the question of jurisdiction.

7. We clarify that we have not expressed any opinion on the merit or on the procedure that the Tribunal should adopt. No Costs.

SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

DECEMBER 13, 2017

mamta