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

+ W.P.(C) 10466/2017

MOHMMED IRFAN MUNSHI

..... Petitioner

Through Ms. Dharita P. Malkan, Mr. Purvish J. Malkan & Ms. Deepa Gosain, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr. Kirtiman Singh, Standing Counsel, Mr. Prateek Dhanda & Mr. Waize Ali Noor, Advocates for UOI.

Mr. Satish Aggarwala & Mr. Vineet Sharma, Advocates for respondent No. 2-DRI.

Mr. Sanjeev Narula, Sr. Standing Counsel & Mr. Abhishek Ghai, Advocate for respondent Nos. 3 and 4.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

ORDER

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24.11.2017

Counsel for the petitioner accepts that the judgment of this Court in *Mangali Impex Limited and Others versus Union of India*, 2016 (335) ELT 605 (Del.) has been stayed by the Supreme Court. She has drawn our attention to the order dated 24th April, 2017 passed by a Division Bench of this Court in Writ Petition (Civil) No. 346/2017, *Kishore Ratilal Dhakan and Others versus Union of India, Ministry of Finance through: its Secretary and Others*. She states that similar order may be passed in the present writ petition and the same may be disposed of.

2. We are inclined to record that as the decision in *Mangali Impex*

Limited (supra) is stayed, the said decision cannot be relied upon by the petitioner till the Supreme Court decides the issue. The petitioner, however, is entitled to raise all contentions and issues, including challenge to the show cause notice before the authorities.

3. Learned counsel for the respondents have pointed out that in the present case the show cause notice is dated 12th November, 2013 and the same was issued after the amendment to Section 28(11) of the Customs Act, 1962 with effect from 16th September, 2011. Counsel for the petitioner refutes the same and submits that in the present case the alleged default period is prior to 16th September, 2011. These are aspects and matters, which the petitioner to raise and for the authorities to decide.

4. Learned counsel for the petitioner states that in case the Supreme Court upholds the decision in the case of **Mangali Impex Limited**, she would be entitled to rely upon the same. In case of a favourable decision, it is open to the petitioner to rely upon the same and it is equally open to the respondents to point out that the said decision may not be applicable. We clarify that no other point or issue is raised by the counsel for the petitioner.

With the aforesaid observations, the writ petition is dismissed.

SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

NOVEMBER 24, 2017
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