**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CUSAP No. 28 of 2018 (O&M)
Date of decision: 28.8.2018

Commissioner of Customs .. Appellant

vs

Suresh Apparels Pvt. Ltd. .. Respondent

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Amit Rawal**

Present: Mr. Anshuman Chopra, Advocate for the appellant.

Rajesh Bindal, J.

The Revenue is in appeal against the order dated 20.07.2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, (for short “the Tribunal”) in appeal No. C/50533/2015, vide which the order passed by the Commissioner has been set aside and the matter has been remitted back to the Adjudicating Authority for fresh decision.

For the view we are taking, to avoid unnecessary harassment to the assessee and delay in disposal of the case, we do not deem it appropriate to issue notice to the assessee, as in our view, the order being passed is not adverse to him. Still, we grant liberty to the assessee to move application for recalling of the order in case he is aggrieved of the same.

Learned counsel for the revenue submitted that the Tribunal should not have passed the impugned order setting aside the order passed by the Commissioner (Appeals) and remanding the case back to the jurisdictional adjudicating authority for decision afresh once it was admitted that the issue in dispute is pending consideration before Hon'ble the

Supreme Court against the views expressed by the Delhi High Court in *Mangali Impex Limited vs Union of India* 2016 (335) ELT 605 (Del.). He further submitted that once the legal issue involved in the matter was to be decided keeping in view the judgment of Hon'ble the Supreme Court in *Mangali Impex Limited's* case (supra), there was no need to remand the case back to the Adjudicating Authority, as in that process, the litigation will start from Adjudicating Authority afresh, whereas it can be decided by the Tribunal after the judgment of Hon'ble the Supreme Court *Mangali Impex Limited's* case (supra). Operation of the judgment of Delhi High Court in *Mangali Impex Limited*'s case (supra) has also been stayed by Hon'ble the Supreme Court. Reference has also been made to order passed by Delhi High Court in CUSAA No.57 of 2017 titled as *Vipul Overseas Private Limited vs Commissioner of Customs and others,* decided on 20.11.2017, where identical orders passed by the Tribunal remanding cases to the Adjudicating Authority were set aside and the matters were directed to be decided on merits by the Tribunal.

After hearing learned counsel for the revenue, we find merit in the submissions made by them. Once the legal issue, which is subject matter of appeal before the Tribunal, is pending consideration before Hon'ble the Supreme Court, the Tribunal itself should have decided the cases on merits after the decision of Hon'ble the Supreme Court instead of remanding those cases back to the Adjudicating Authority. The process adopted by the Tribunal apparently is to dispose of the cases pending before it without application of mind. That approach should have been avoided. Even the order passed by the Tribunal only states that the Adjudicating Authority shall decide the matters afresh after decision of Hon'ble the Supreme Court in *Mangali Impex Limited*'s case (supra). In fact, vide similar orders, the Tribunal had disposed of more than 50 cases.

For the reasons mentioned above, the appeal is allowed. The impugned order passed by the Tribunal is set aside. The matter is remitted back to the Tribunal to be decided on merits after decision of Hon'ble the Supreme Court in *Mangali Impex Limited*'s case (supra), however, with liberty to the assessee to move application before this Court in case he is aggrieved of the order passed.

(Rajesh Bindal)
Judge

28.8.2018 (Amit Rawal)
nr Judge

Whether speaking/ reasoned Yes/No
Whether Reportable Yes/No