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

\+ CUSAA 60/2018, 62/2018

THE COMMISSIONER OF CUSTOMS ..... Appellant

Through Mr. Sanjeev Narula, Sr. Standing Counsel with Mr. Abhishek Ghai, Advocate for Customs.

Versus

SAP INDIA PVT LTD ..... Respondent

Through Mr. Yogendra Aldak, Addvocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE DEEPA SHARMA

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

% **03.04.2018**

<u>CM No.12378/2018 in CUSAA 60/2018</u>
<u>CM No. 12380/2018 in CUSAA 62/2018</u>

Exemption allowed subject to all just exceptions.

<u>CUSAA 60/2018, 62/2018</u>

With the consent of the counsel for the parties, the following substantial question of law is 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.)?"

Counsel for the respondent states that the impugned order may be quashed and the matter may be remanded to the Tribunal for fresh decision without expressing any opinion on merits. Counsel for the parties rely on orders dated 20th November, 2017 passed in CUSAA 57/2017, ***Vipul Overseas Private Limited versus Commissioner of Customs and Others*** and CUSAA 58/2017, ***Shri. Surender Garg versus Commissioner of Customs and Others*** and order dated 13th December, 2017 passed in CUSAA 67/2017, ***Forech India Private Limited versus Commissioner of Customs Inland Container Depot, Tughlakabad, New Delhi.***

Accordingly, the impugned order challenged in these appeals, remanding the matter to the adjudicating authority to await the judgement of the Supreme Court in the appeal preferred against the decision in ***Mangli Impex Limited v. Union of India*** 2016 (335) ELT 605 (Del) is set aside.

The appeals preferred before the Tribunal are restored to their original position. The Tribunal would decide the appeals on merits including the question of jurisdiction of the officer of the Directorate of Revenue Intelligence who had issued show cause notices. The said issue would be examined by the Tribunal without being influenced by the decision of the Delhi High Court in the case of ***Mangli Impex Limited*** (supra). We clarify that we have not expressed any opinion on merits of the appeals or on the procedure that the Tribunal should adopt and follow.

Question of law is accordingly answered. The appeals are disposed of in the aforesaid terms. There would be no order as to costs.

SANJIV KHANNA, J.

DEEPA SHARMA, J.

APRIL 03, 2018/MR