

\$~26

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CUSAA 61/2018**
COMMISSIONER OF CUSTOMS (IMPORT & GENERA)
..... 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

ORDER
03.04.2018

%

CM No. 12379/2018

Exemption allowed subject to all just exceptions.

CUSAA 61/2018

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