$~41to 43, 47 & 46

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

\+ CUSAA Nos. 102/2018, 103/2018, 104/2018, 106/2018

COMMISSIONER OF CUSTOMS ..... Appellant
Through Mr. Sanjeev Narual and Ms. Anumita Chandra, Advocates.

versus

SAP INDIA PVT LTD. ..... Respondent
Through Mr. L. Badri Narayanan, Advocate with Mr. Karan Sachdev and Mr. Yogedra Aldak, Advocates.

CUSAA 105/2018

COMMISSIONER OF CUSTOMS (IMPORT & GENERA) ..... Appellant
Through Mr. Sanjeev Narula and Ms. Anumita Chandra, Advocates.

versus

SAP INDIA PVT LTD ..... Respondent
Through Mr. L. Badri Narayanan, Advocate with Mr. Karan Sachdev and Mr. Yogedra Aldak, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

O R D E R

% 16.04.2018

C.M. No.14543/2018 in CUSSA 102/2018
C.M. No.14544/2018 in CUSSA 103/2018
C.M. No.14546/2018 in CUSSA 104/2018
C.M. No.14713/2018 in CUSSA 106/2018
C.M. No.14712/2018 in CUSSA 105/2018

Exemption allowed, subject to all just exceptions.

CUSSA 102/2018
CUSSA 103/2018
CUSSA 104/2018
CUSSA 106/2018
CUSSA 105/2018

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.

CHANDER SHEKHAR, J.

APRIL 16, 2018
NA