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

\+ CUSAA 193/2018, C.M. APPL.36352/2018, 36353/2018 & 36354/2018

DONYIO POLO TIMBERS PVT. LTD ..... Appellant
Through : Sh. Kunal Prakash, Advocate.

versus

COMMISSIONER OF CUSTOMS ..... Respondent
Through : Sh. Sonu Bhatnagar, Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R
% 07.09.2018

C.M. APPL. 36353/2018 (for condonation of delay in refilling) IN CUSAA 193/2018

For the reasons mentioned in the applications, the application is allowed.

C.M. APPL. 36352/2018 (for condonation of delay in filling) IN CUSAA 193/2018

In view of the orders passed today in C.M. Appl.36353/2018, the application stands disposed of.

C.M. APPL. 36354/2018 (for exemption) IN CUSAA 193/2018

Allowed, subject to all just exceptions.

CUSAA 193/2018

In this appeal, the Revenue's grievance is that the Customs, Excise and Service Tax Appellate Tribunal (hereafter "CESTAT") remanded the issues for reconsideration by the concerned Commissioner in view of the previous judgment of this Court in *M/s. Mangli Impex Limited v. Union of India and Ors.* 2016 (335) ELT 605 (Del.). This was on account of a dichotomy of judicial opinion with respect to the competence and jurisdiction under the amended Section 28 of the Customs Act, 1962 – one view holding that no jurisdiction laid with the Directorate of Revenue Intelligence (hereafter "DRI") and the other view endorsed in a subsequent judgment of this Court in *Vipul Overseas Pvt. Ltd. v. Commissioner of Customs & Ors. and connected cases* [Cus.AA. Nos.57-58/2017, decided on 20.11.2017].

Given that all these issues are pending for consideration before the Supreme Court, this Court in another order [*Forech India Pvt. Ltd. v. Commissioner of Customs, Inland Container Depot, Tughlakabad, New Delhi* [Cus. AA. 67/2017, decided on 13.12.2017)], disposed of the appeal in the following terms:

> *"3. 1t was recorded in the said order that the respondent-Revenue had no objection if the remand order passed by the Tribunal was set aside with a request to the Tribunal to decide the issue on merit without taking into consideration the decision of the Delhi High Court in Mangli lmpex Limited v. Union of India 2016 (335) ELT 605 (Del.) which has been stayed by the Supreme Court.*
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> *4. For the reasons set out and stated in the said order, we answer the question of law in favour of the appellant with a direction to the Tribunal to decide the appeal on merits including the question of imposition of penalty and*

the right of Directorate of Revenue Intelligence who issued show cause notices.

5. The said adjudication would be without being influenced by the judgment in the case of Mangli lmpex Limited (supra).

6. In other words, the Tribunal would independently apply its mind on the question of jurisdiction."

Having considered the submissions of the parties and also the materials on record, this Court is of the opinion that an identical approach is necessary in this case. Accordingly, following the order in *Forech India (supra)*, this appeal is allowed in part and the CESTAT would independently apply its mind to the question of jurisdiction and also decide the appeal on merits – including the aspect of imposition of penalty, if any.

The appeal is allowed in part in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 07, 2018/ajk