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

\+ CUSAA 146/2018, CM APPL. 23955/2018

COMMISSIONER OF CUSTOMS (EXPORT) ..... Appellant
Through: Mr. Amit Bansal, Sr. Standing Counsel.

versus

TEXCOMASH EXPORT ..... Respondent
Through: Mr. Tarkeshwar Nath, Advocate.

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

O R D E R

% **19.09.2018**

CM APPL. 23955/2018 (for *condonation*)in CUSAA 146/2018

Issue notice.

Mr. Tarkeshwar Nath, Advocate. accepts notice.

For the reasons stated in the application, the same is allowed.

CUSAA 146/2018

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 *Mangli Impex Limited v. Union of India* 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. & Ors. v. Commissioner of Customs & Ors.* (Cus. A.A. No. 57 & 58 of 2017, dated 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. A.A. No. 67/2017 dated 13.12.2017)], this Court disposed of the appeals 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 Vs. Union of India 2016 (335) ELT 605 (Del.) which has been stayed by the Supreme Court.*
> *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 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.

List on 10.10.2018 before the Tribunal.

Order *dasti* to the parties.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 19, 2018/akv