$~39, 40, 41, 46, 47, 48

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

Date of Order: August 03, 2018

\+ CUSAA 168/2018, C.M. Appl. No. 30946-30947/2018
PR.COMMISSIONER OF CUSTOMS ..... Appellant
versus

COL. SANJEEV SETHI ..... Respondent

\+ CUSAA 169/2018, C.M. Appl. No. 30948-30949/2018
PR.COMMISSIONER OF CUSTOMS ..... Appellant
versus
K.NARAYAN RAO ..... Respondent

\+ CUSAA 170/2018, C.M. Appl. No. 30953-30954/2018
PR. COMMISSIONER OF CUSTOMS, PREVENTIVE COMMISSIONERATE ..... Appellant
versus

K V K SESHAVATRAM, ... Respondent

\+ CUSAA 171/2018, C.M. Appl. No. 30955-30956/2018
PR.COMMISSIONER OF CUSTOMS ..... Appellant
versus

PVN VIJAY KUMAR ..... Respondent

\+ CUSAA 172/2018, C.M. Appl. No. 30957-30958/2018
PR.COMMISSIONER OF CUSTOMS ..... Appellant
versus
M.SUDHAKAR RAO ..... Respondent

\+ CUSAA 173/2018, C.M. Appl. No. 30959-30960/2018
PR.COMMISSIONER OF CUSTOMS ..... Appellant
versus

N.V.VARDARAJULU ..... Respondent

Counsel for the petitioner:

Mr. Mr. Harpreet Singh, Senior Standing Counsel with Mr. Suresh Chaudhary, Advocate for appellant in all appeals.

Counsel for the respondent:

Mr. Mr. Yogendra Aldak, Mr. Karan Sachdev, Advocates in all the appeals.

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

O R D E R

% **03.08.2018**

S. RAVINDRA BHAT, J. (Oral)

C.M. Appl. No. 30947/2018 (Exemption) in CUSAA 168/2018
C.M. Appl. No. 30949/2018 (Exemption) in CUSAA 169/2018
C.M. Appl. No. 30954/2018 (Exemption) in CUSAA 170/2018
C.M. Appl. No. 30956/2018 (Exemption) in CUSAA 171/2018
C.M. Appl. No. 30958/2018 (Exemption) in CUSAA 172/2018
C.M. Appl. No. 30960/2018 (Exemption) in CUSAA 173/2018

Exemption allowed subject to all just exceptions.

Applications stand disposed of.

C.M. Appl. No. 30946/2018 (Delay) in CUSAA 168/2018
C.M. Appl. No. 30948/2018 (Delay) in CUSAA 169/2018
C.M. Appl. No. 30953/2018 (Delay) in CUSAA 170/2018
C.M. Appl. No. 30955/2018 (Delay) in CUSAA 171/2018
C.M. Appl. No. 30957/2018 (Delay) in CUSAA 172/2018
C.M. Appl. No. 30959/2018 (Delay) in CUSAA 173/2018

Heard.

For the reasons stated in the applications, the same are allowed and the delay in filing the accompanying appeal is condoned. Applications stand disposed of.

<u>CUSAA 168/2018, CUSAA 169/2018, CUSAA 170/2018, CUSAA 171/2018, CUSAA 172/2018, CUSAA 173/2018</u>

In these appeals, 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 appeals are 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 appeals are allowed in part in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

AUGUST 03, 2018
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