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

+ **CUSAA 253/2018 & CM APPL. 41380/2018**

COMMISSIONER OF CUSTOMS, Appellant
Through: Mr. Harpreet Singh, Senior Standing
Counsel with Ms. Suhani Mathur,
Advocates

versus

NIKITA OVERSEAS, Respondent
Through: Ms. Vidushi Shubham, Advocate

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
11.12.2018

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1. The question urged by the appellants in these appeals is as under:-

“Whether the Customs, Excise & Service Tax Appellate Tribunal (hereinafter ‘CESTAT’) was justified in remanding the matter for adjudication to the concerned official to first decide the issue of jurisdiction after the appeal pending in the Supreme Court against the reported judgment in the case of Mangli Impex Limited vs. Union of India, 2016 (339) ELT 605 (Del.) is decided?”

2. Ms. Vidushi Shubham, Advocate appears on behalf of the respondents.

3. It is submitted, at the outset, by learned counsel for the appellants that in the identical circumstances, where a similar issue was sought to be urged, this Court had passed an order in a batch of appeals [*Commissioner of*

Customs (General) vs. SAP India Pvt. Ltd., CUSAA 40/2018 and other connected matters decided on 02.04.2018].

4. The Court had then directed as follows:-

“Accordingly, the impugned order challenged in these appeals, remanding the matter to the adjudicating authority to await the judgment of the Supreme Court in the appeal preferred against the decision in Mangli Impex Limited vs. 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.”

5. Following the above decision, the impugned order is hereby set aside and the matters are remitted to the CESTAT, which shall proceed to examine and decide the merits of the appeals. The respondent/assessee’s right to contend that the show cause notice issued in this case were legally untenable, in view of the decision of this Court in *Mangli Impex* (supra), are kept intact. In other words, the Tribunal may hear the parties on the merits of the case as well as with respect to the issue of jurisdiction, if necessary, on account of *Mangli Impex* (supra) and record separate findings.

The findings with respect to the lack of jurisdiction, if any, based on the reasoning in *Mangli Impex* (supra), would be subject to final outcome of the proceedings in the Supreme Court. The Court, at the same time, like in the other cases, expresses no opinion on the merits or procedure that the Tribunal should adopt and follow.

6. The Tribunal is directed to issue reasonable notice to the assesseees for hearing the appeal before it.

7. The appeal is partly allowed in the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

DECEMBER 11, 2018

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