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

\+ CUSAA 27/2019

PR.COMMISSIONER OF CUSTOMS, ... Appellant
Through: Ms.K.Enatoli Sema & Mr.Amith J, Advocates

versus

CHAHAT IMPEX, ... Respondent
Through: Ms.Ria Chanda, Advocate

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

O R D E R

% **13.02.2019**

CM APPL.2358/2019

For the reasons stated in the application, delay in filing the appeal is condoned.

The application is disposed of.

CUSAA 27/2019

1. The question urged by the appellant in this appeal 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.Ria Chanda, Advocate appears on behalf of the respondent.

3. It is submitted, at the outset, by learned counsel for the appellant 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.*
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> *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 Implex 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.*
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> *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 appeal. 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 assessee for hearing the appeal before it.

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

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 13, 2019
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