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$~157, 159 to 161 & 163

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

\+ CUSAA 185/2019, C.M. No. 24620/2019 (delay)

PR. COMMISSIONER OF CUSTOMS ..... Appellant
Through: Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur and Mr. Ankit Singh, Advocates.

versus

BANSIDHAR PANDA CHAIRMAN M/S INDIAN METAL AND FERRO ALLOYS LTD. ..... Respondent
Through: Mr. Rahul Satija, Advocate.

AND

\+ CUSAA 187/2019, C.M. No. 24937/2019 (delay)

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

versus

INDIAN METAL AND FERRO ALLOYS LTD. ..... Respondent
Through: Mr. Rahul Satija, Advocate.

AND

\+ CUSAA 188/2019, C.M. No. 24938/2019 (delay)

PR. COMMISSIONER OF CUSTOMS ..... Appellant
Through: Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur and Mr. Ankit Singh, Advocates.

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versus

RAJEEV LALA SR. MANAGER M/S INDIAN METAL AND FERRO ALLOYS LTD. ..... Respondent
Through: Mr. Rahul Satija, Advocate.

AND

\+ CUSAA 189/2019, C.M. No. 25107/2019 (delay)

PR. COMMISSIONER OF CUSTOMS ..... Appellant
Through: Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur and Mr. Ankit Singh, Advocates.

versus

BAIJAYANT PANDA, VICE CHIARMAN M/S INDIAN METAL AND FERRO ALLOYS LTD. ..... Respondent
Through: Mr. Rahul Satija, Advocate.

AND

\+ CUSAA 193/2019, C.M. No. 26345/2019 (delay)

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

versus

INDIAN METAL AND FERRO ALLOYS LTD. ..... Respondent
Through: Mr. Rahul Satija, Advocate.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE ASHA MENON

(7)

<u>ORDER</u>

% **27.08.2019**

1. Mr. Rahul Satija, Advocate states that he has already entered appearance on behalf of the respondents in the present appeals but seeks further time to file his power of attorney. He requests that orders on the present appeals may be deferred as the judgment in the case of <u>Mangli Impex vs. Union of India</u> reported as **2016 (335) ELT 605 (Del.)** has been challenged and is under consideration of the Supreme Court in a pending appeal. In support of the said submission, he relies on para 9.3 of the Master Circular dated 10.3.2017 titled "Show Cause Notice, Adjudication and Recovery" that deals with "Call-Book Cases", i.e. cases that "cannot be adjudicated due to certain specified reasons and adjudication is to be kept in abeyance". Learned counsel also refers to the order dated 25.05.2017, passed by a co-ordinate Bench in **W.P.(C) No. 4438/2017**, entitled <u>BSNL vs. UOI & Ors.</u> to urge that this Court should await the outcome of the appeal filed by the UOI before the Supreme Court against the judgment in <u>Mangli Impex (supra)</u>.

2. On the other hand, Mr. Harpreet Singh, learned counsel for the appellants submits that subsequent to the order dated 25.05.2017 in the captioned petition, several orders have been passed by co-ordinate Benches including order dated 20.11.2017 in <u>Vipul Overseas Pvt. Ltd. vs. Commissioner of Customs</u> reported as **2018 (359) ELT 646 (Del.)**, order dated 13.02.2017 in **CUS.AA 67/2017** in <u>Forech India Pvt. Ltd. vs. Commissioner of Customs, Inland Container Depot Tuglakabad, New Delhi</u>

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and order dated 17.07.2018 in **CUS.AA 99/2018** entitled Commissioner of Customs vs. Gurbinder Pal Singh wherein co-ordinate Benches have adopted a uniform approach of restoring the appeals filed before the CESTAT for a fresh adjudication on merits, uninfluenced by the judgment in the case of Mangli Impex (supra). He also points out that the presiding Judge of the Division Bench that had passed the order in BSNL (supra) has also subsequently followed the view expressed by the co-ordinate Benches in Vipul Overseas (supra) and Forech India Pvt. Ltd. (supra), by passing orders on similar lines in **CUS.AA 192/2019** in Commissioner of Customs (Imports) vs. M/s. Mondes Overseas, decided on 28.05.2019 and in several other appeals.

3. We are inclined to agree with the submission made by learned counsel for the appellant that in the interest of consistency and to avoid uncertainty, a uniform approach ought to be adopted and similar orders ought to be passed in the present appeals as have been passed in Vipul Overseas (supra), Forech India Pvt. Ltd. (supra) and Mondeo Overseas (supra).

4. For purposes of ready reference, the order dated 20.11.2017 passed in Vipul Overseas (supra) is reproduced herein below:-

> *"On the last date of hearing, we had passed the following order in the aforesaid appeals :*
>
> > *"2. Learned counsel for the appellants submits that the grounds of appeal raised before the Tribunal did not relate to rate of duty and hence, these writ petitions*

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would be maintainable before this Court.

> *3. Learned counsel for the appellants submits that the matter should be examined by the Tribunal on merits including the contention of the appellants that an officer of the Directorate of Revenue Intelligence could not have issued the show cause notice. It is submitted that the Tribunal had the jurisdiction to decide the aforesaid aspect uninfluenced by the judgment of this court in* ***Mangli Impex Limited v. Union of India 2016 (335) ELT 605 (Del.),*** *operation of which has been stayed by the Supreme Court.*
>
> *4. Learned counsel for the respondents submits that he wants to obtain instructions before he makes any submission before the court.*
>
> *5. Re-list these appeals on 20th November, 2017".*

2. Learned counsel for the respondents has obtained instructions and states that they have no objection, if the remand order is set aside and Tribunal is requested to decide the issue on merits without taking into consideration the decision of the Delhi High Court in ***Mangli Impex Limited v. Union of India 2016 (335) ELT 605 (Del.),*** *which is stayed by the Supreme Court.*

3. A copy of the said letter has been shown to the learned counsel for the appellants, who states that he does not have any objection.

4. In view of statements made, we frame the following substantial question of law:

> *Whether the Customs, Excise and Service Tax Appellate Tribunal ('CESTAT') was justified and correct in law in passing an order of remand to the original adjudicating*

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authority to first decide the issue of jurisdiction, after decision of the Supreme Court in Civil Appeal preferred against the decision of Delhi High Court in ***Mangli Impex Limited v. Union of India 2016 (335) ELT 605 (Del.)?***

5. *The undisputed position is that two show cause notices dated 10th April, 2008 were issued to the appellants by the Directorate of Revenue Intelligence ('DRI' for short) and original adjudication order was passed on 14th October, 2014. The final order was challenged before the CESTAT, who have vide impugned order dated 14th July, 2017, remanded the matter back to the Adjudicating Authority to await the decision of the Supreme Court in* ***Mangli Impex Limited (supra).*** *The appellants and respondents have assertively highlighted that the original order was passed after more than 6 ½ years. Thus, remand to the original adjudicating authority at this stage, they submit, would cause prejudice and harassment to the appellants and respondents. The submission is that the contentions of the appellants should be decided on merits by the CESTAT including imposition of penalty and right of the DRI to issue show cause notice. The appellants accept that the adjudication would be uninfluenced by the judgment in the case of* ***Mangli Impex Limited (supra),*** *operation of which has been stayed by the Supreme Court. In other words, the Tribunal would independently apply its mind on the question of jurisdiction.*

6. *In view of the aforesaid position, the substantial question of law is answered in favour of the appellants and the order of the Tribunal dated 6th July, 2017 is set aside. The Tribunal will decide the appeals on merits, including the question of jurisdiction of the officers of DRI to issue the show cause notice, without being influenced by the decision of the Delhi High Court in the case of* ***Mangli Impex Limited (supra),*** *which has been stayed by the Supreme Court.*

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> 7. *We clarify that we have not expressed any opinion on the merits of these appeals or on the procedure that the Tribunal should adopt.*
>
> 8. *These appeals are disposed of in the above terms. There would be no order as to costs."*

5. Following the above order, the present appeals are allowed. The appeals preferred before the Customs Excise and Service Tax Appellate Tribunal (in short **'CESTAT'**) are restored for a fresh consideration. CESTAT is directed to independently adjudicate upon the question of jurisdiction and decide the said appeals on merits including the aspect of imposition of penalty, if any, uninfluenced by the judgment in Mangli Impex (supra). The Tribunal is directed to give a prior notice to the parties before proceeding to hear the appeals on merits.

6. The appeals are allowed on the above terms along with the pending applications.

HIMA KOHLI, J

Asha Menon
ASHA MENON, J

AUGUST 27, 2019
ap/ajk