IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

C.M.A.No.1808 of 2018

The Commissioner of Customs,
Chennai II Commissionerate,
Custom House,
No.60, Rajaji Salai,
Chennai 600 001. ... Appellant

Vs.

M/s.Box Corrugators and Offset printers,
No.1-B, Sector 1,
Govindapura Industrial Estate,
Bhopal,
Madhya Pradesh 462 023. ... Respondent

Appeal filed to set aside the Final Order No.42279 of 2017 dated 05.10.2017 passed by CESTAT, South Zonal Bench, Chennai.

For Appellant : Mr.A.P.Srinivas
For Respondent : Mr.P.Sridharan

J U D G M E N T
(Delivered by DR.VINEET KOTHARI, J.)

The Revenue has filed the present Appeal against the order of the learned CESTAT dated 5 October 2017, allowing the Appeal with the following observations:-

> 7. Later on, i.e. for the period subsequent to the amendment, the matter i.e. the DRI officers having the proper jurisdiction to issue the SCN or not had came up before the Honble Delhi High Court in the case of Mangali Impex vs. Union of India [2016 (335) ELT 605 (Del.)], and the High Court inter alia, held that even the new inserted section 28 (11) does not empower either the officers of DRI or the DGCEI to issue the SCN or adjudicate for the period prior to 8.4.2011. Thus, it is seen that the said order of the Honble Delhi High Court is in favour of the assessee and against the Revenue.

8. However, it is further noticed that the said issue was also the subject matter of Honble Mumbai High Court in the case of Sunil Gupta vs. Union of India [2015 (315) ELT 167 (Bom) as also of the Honble High Court of Telangana and Andhra Pradesh in the case of Vuppalamritha Magnetic Components Ltd. vs. DRI (Zonal Unit), Chennai [2017 (345) ELT 161 AP], taking a view contrary to the one taken by the Honble Delhi High Court.

9. Being conflicting decisions of various High Courts (Supra), finally the matter reached to Honble Supreme Court who on 07.10.2016 granted the stay of operation of the judgment passed by the High Court of Delhi. Thus the issue is subjudice before the Honble Supreme Court [2016-TIOL-173-SC-CUS / 2016 (339) ELT A 49 (SC)].

10. It may be mentioned that recently, the Honble High Court of Delhi in the case of BSNL Vs. UOI vide writ petition No. C/4438/2017 and CM No. 19387/2017 has dealt with the identical issue where the notice was also issued by DRI. The Honble High Court of Delhi has considered the judgment in the case of Mangli Impex Vs. UOI which is stayed by the Honble Supreme Court reported as 2016 (339) ELT A 49 (SC). Finally the Honble High Court has granted liberty to the petitioner by observing that petitioner is permitted to review the challenge depending on the outcome of the appeals filed by the UOI in the Supreme Court against the judgment of the Court in the case of Mangli Impex Ltd.

11. By following the ratio laid down by the Honble High Court of Delhi in the case of BSNL (Supra) as well as by considering totality of facts and circumstances, we set aside the impugned order and remand the matter to the original adjudicating authority to first decide the issue of jurisdiction after the availability of Honble Supreme Court decision in the case of Mangli Impex and then on merits of the case but by providing an opportunity to the assessee of being heard. Till the final decision, the status quo will be maintained.

12. The impugned order is set aside and both the appeals are allowed by way of remand to the adjudicating authority to decide the issue afresh

after the judgment of the Honble Supreme Court in the case of Mangli Impex (supra).

2. Since the issue relating to jurisdiction of DRI Officials to issue show cause notice to the Assessee in such cases is said to be pending before the Hon'ble Supreme Court in the case of Mangli Impex vs. Union of India, in which the Hon'ble Supreme Court has granted stay order, as reported in 2016(335) ELT 605 (Del.)], and the said Special Leave Petition is stated to be pending before the Hon'ble Supreme Court; that status having been checked up by us on the official website of the Hon'ble Supreme Court today and further, in view of the fact that the learned Tribunal has clearly protected the interest of both the Revenue as well as the Assessee by directing the Assessing Authority to keep the matter pending and maintain status quo till the Hon'ble Supreme Court decides the appeal of the Revenue in the case of Mangli Impex, filed against the decision of the Delhi High Court, we do not find any reason to interfere with the decision of the Tribunal, as in our opinion, no question of law arises for consideration in this appeal. Accordingly, we dispose of the appeal, with no order as to costs.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To

The Commissioner of Customs,
Chennai II Commissionerate,
Custom House,
No.60, Rajaji Salai,
Chennai 600 001

+1 CC to Mr. Lakshmi Narayanan, Advocate sr 3955.
+1 CC to Mr.A.P.Srinivas, Advocate sr 4623.





EV(CO)
SP(28/02/2020)