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

\+ CUSAA 4/2020

COMMISSIONER OF CUSTOMS ..... Appellant

Through: Mr. Harpreet Singh & Mr. Ankit Singh, Advocates.

versus

M/S INTERGLOBE ENTERPRISES LTD. ..... Respondent

Through: Mr. Karan Sachdev, Ms. Avisha Khatri & Mr. Kunal Kapoor, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **19.02.2020**

C.M. No. 5403/2020

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

C.M. No.5404/2020

Issue notice. Learned counsel for the respondent accepts notice.

For the reasons stated in the application, the delay of 728 days in re-filing the appeal is condoned.

The application stands disposed of.

C.M. No. 5402/2020

Issue notice. Learned counsel for the respondent accepts notice.

For the reasons stated in the application, the delay of 3 days in re-filing the appeal is condoned.

The application stands disposed of.

CUSAA 4/2020

Issue notice. Learned counsel for the respondent accepts notice.

With consent, we have heard learned counsels and proceed to dispose of the present appeal.

The limited grievance of the appellant in the present appeal 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, 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 material 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 appeal is 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 appeal is allowed in part in the above terms.

It goes without saying that the Tribunal shall proceed in the matter only after issuance of notice to the respondent.

VIPIN SANGHI, J

SANJEEV NARULA, J

FEBRUARY 19, 2020
B.S. Rohella