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

% **Date of decision: 28.03.2022**

+ **CUSAA 20/2021**

PR. COMMISSIONER OF CUSTOMS ......Appellant

Through Mr Harpreet Singh, Senior Standing Counsel with Ms Suhani Mathur, Advocate.

versus

KUNAL LALANI ......Respondent

Through Ms Avisha Khatri, Advocate.

+ **CUSAA 21/2021**

PR. COMMISSIONER OF CUSTOMS ......Appellant

Through Mr Harpreet Singh, Senior Standing Counsel with Ms Suhani Mathur, Advocate.

versus

M/S MEGA CORPORATION LTD. ......Respondent

Through Ms Avisha Khatri, Advocate.

+ **CUSAA 22/2021**

PR. COMMISSIONER OF CUSTOMS ......Appellant

Through Mr Harpreet Singh, Senior Standing Counsel with Ms Suhani Mathur, Advocate.

versus

PUNJ ALLOYED AVIATION LTD. ......Respondent

Through Ms Avisha Khatri, Advocate.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE POONAM A. BAMBA
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):-

CM No.13411/2021 in CUSAA No.20/2021
CM No.13413/2021 in CUSAA No.21/2021

1. The above-captioned applications have been filed on behalf of the appellant under section 130(2A) of the Customs Act, 1962 [in short "the Act"], seeking condonation of delay in filing the above-captioned appeals.

2. Ms Avisha Khatri, who appears on behalf of the respondents, says that she has no objection to the delay being condoned, as the question of law that was raised in the instant appeals, already stands decided by a coordinate bench of this Court in other matters.

3. Accordingly, the prayer made in the above-captioned applications are allowed and the delay is condoned.

4. The above-captioned applications are, accordingly, disposed of.

CUSAA No.20/2021 & CM No.24959/2021[*Application filed by the applicant seeking permission to bring on record additional facts and submissions*]
CUSAA No.21/2021 & CM No.24960/2021[*Application filed by the applicant seeking permission to bring on record additional facts and submissions*]
CUSAA No.22/2021 & CM No.13663/2021[*Application filed by the applicant seeking permission to bring on record additional facts and submissions*]

5. These are the appeals preferred by the revenue, under Section 130 of the Act, against the order dated 14.06.2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal bench, New Delhi [in short, “CESTAT”] in a batch of matters.

5.1. We are informed by the counsel for the parties that the operative directions are contained in paragraph 13 of the impugned order. For the sake of convenience, the same is extracted hereafter:

> ***"13. By following the ratio laid down by the Hon'ble 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 Hon'ble 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."***

5.2. As is evident from the extract above, the CESTAT has set aside the order assailed, and remanded the matter to the adjudicating authority for determination of the issue concerning jurisdiction, albeit, after the Supreme Court renders a decision in a matter which travelled from this Court. The judgment, which stands assailed in the Supreme Court, was rendered in the case of ***Mangli Impex Limited vs. Union of India & Ors.***, 2016 (335) ELT 605 (Del.).

5.3. Counsel for the parties inform us that the Supreme Court has stayed the operation of the judgment rendered by this Court in ***Mangli Impex Limited case***.

5.4. We are also informed by the learned counsel for the parties that, in several cases, which followed the ratio laid down in ***Mangli Impex Limited case***, whether they were appeals preferred by the assessee or the revenue, the coordinate benches of this Court have set aside the orders of the CESTAT, and remanded the matters for adjudication of the appeals on merit.

5.5. In this behalf, our attention has been drawn to the order dated 20.11.2017, passed in CUSAA No.57/2017, titled ***Vipul Overseas Pvt. Ltd. Vs. Commissioner of Customs & Ors.***; order dated 13.12.2017, passed in

CUSAA No.67/2017, titled ***Forech India Pvt. Ltd. Vs. Commissioner of Customs Inland Container Depot, Tughlakabad, New Delhi*** and order dated 23.05.2018, passed in CUSAA No.16/2018, titled ***Commissioner of Customs vs. Arif Khichi***.

5.6. The question of law framed in the above-mentioned matters read as follows:

> *"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 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.)**?"*

5.7. It is not disputed that the same substantial question of law arises for consideration in the instant appeals as well.

6. Accordingly, the order of the CESTAT dated 14.06.2017, impugned in the above-captioned appeals, is set aside.

6.1. The CESTAT is directed to decide the appeals on merits, including the question of jurisdiction of Commissioner of Customs (Preventive)/Directorate of Revenue Intelligence (DRI) i.e., whether the Commissioner of Customs (Preventive)/DRI is competent to issue the show cause, *albeit*, without being influenced by the decision rendered by this Court in ***Mangli Impex Limited case*****;** the operation of which is stayed by the Supreme Court ?

7. Needless to add, we have not expressed any opinion on merits. The CESTAT will be at liberty to take a view, one way or the other, on the merits of the case.

8. The above-captioned appeals are disposed of in the aforesaid terms. Consequently, pending applications shall stand closed.

9. There shall be no order as to costs.

RAJIV SHAKDHER, J

POONAM A. BAMBA, J

MARCH 28, 2022/pmc

Click here to check corrigendum, if any