IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Decided on: December 04, 2024

1. **CWP-11553-2007 (O&M)**

Messrs Gold Star Industries
…...Petitioner

Versus

Union of India and others
…...Respondents

2. **CWP-11565-2007 (O&M)**

Messrs Jindal Fine Industries
…...Petitioner

Versus

Union of India and others
…...Respondents

3. **CWP-11680-2007 (O&M)**

Messrs Jagraon Exports
…...Petitioner

Versus

Union of India and others
…...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

HON'BLE MR. JUSTICE SANJAY VASHISTH

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Present: None for the petitioner (in CWP-11553-2007).

Mr. Surjeet Bhadu, Advocate,
for the petitioner(s)
(in CWP-11565-2007 & CWP-11680-2007).

Ms. Anju, Advocate, for
Mr. Sourabh Goel, Senior Standing Counsel,
for the respondents/Revenue.

Mr. Ajay Kalra, Senior Standing Counsel,
for the Customs, CBIC/respondents.

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SANJAY VASHISTH, J.

1. By this common order three writ petitions, i.e. CWP Nos. 11553, 11565 and 11680, all of 2007, would get disposed of, as the broad facts and issues involved therein are similar.

For brevity, facts in brief are being referred from CWP No. 11565 of 2007.

2. Petitioner Company, namely, Messrs Jindal Fine Industries, Campa Cola Lane, Dhandari Kalan, G.T. Road, Ludhiana, initially approached this Court by filing CWP No. 11565 of 2007, for issuance of direction to respondent No. 2 - Director General, Directorate of Revenue Intelligence, New Delhi, and respondent No. 3 – Joint Director, Directorate of Revenue Intelligence (Regional Unit), Ludhiana, to release the documents/files/computer etc., which were taken into possession/custody by preparing a Panchnama in pursuance to the search conducted on 15.09.2005, by claiming that the proceedings initiated by the official respondents is contrary to the provisions of the Customs Act, 1962, because no legal sanction has been taken before starting the investigation sought to be carried out. Therefore, the seized documents and articles are required to be handed over to the petitioner company as retention of the same is illegal.

3. Petitioner company (in CWP No. 11565 of 2007) is a small scale industry engaged in the manufacture and export of bicycles and its components. It is also member of the Engineering Exporters Association of India, Ludhiana, the Engineering Export Promotion Council and the

Federation of Indian Export Organisations, who look after the interests of the small scale industries like the petitioner company.

4. On 15.09.2005, respondent No. 3 – Joint Director, Directorate of Revenue Intelligence (Regional Unit), Ludhiana, conducted a search on the premises of the petitioner company and prepared a Panchnama (Annexure P-1), showing therein recovery of files, documents, one Laptop and one CPU. The petitioner company was issued summons dated 16.09.2005 (Annexure P-2), requiring it to furnish purchase records and further records pertaining to exports. In compliance to the said requisition, the petitioner company submitted required records, vide letter dated 16.09.2005 and also submitted bank drafts dated 16.09.2005, to the tune of Rs.30,00,000/-.

5. Petitioner company also pleaded that being member of the aforementioned Association forming part of the unorganized sector and small scale industries, involved in the manufacture and export of bicycles and their components, the members in Ludhiana region have been earning foreign exchange to the tune of Rs. 1,000/- crores annually, besides generating, directly and indirectly, much needed employment for over 1,50,000 families. Members of the Association have been exporting the bicycle components by availing the benefit of Duty Free Replenishment Certificate (DFRC Scheme), and the DFRC licences are issued only in respect of export products covered under the Standard Input-Output Norms (SION), as notified by the Directorate General of Foreign Trade.

The main allegation of the Directorate of Revenue Intelligence for conducting the search and subsequently issuing notice is that the petitioner company had made a wrong declaration in regard to the input used in the commodity, which according to the petitioner company is misconceived and against the policy issued by the Government of India.

6. In similar manner, the premises of the petitioner companies in other two writ petitions were searched on 07.09.2005 (in CWP No. 11553 of 2007) and 15.09.2005 (in CWP No. 11680 of 2007) and their documents, files and computers etc. were taken into possession/custody.

7. It has also come on record that subsequently the petitioner companies in all the three writ petitions were also issued show cause notices dated 27.07.2007 (in CWP No. 1153 of 2007); dated 29.09.2007 and 27.05.2008 (in CWP No. 11565 of 2007), and dated 06.08.2007 (in CWP No. 11680 of 2007) by the officers of the Directorate of Revenue Intelligence.

8. After issuance of notice of motion and filing of reply by the respondents, a co-ordinate Division Bench of this Court passed interim order that no coercive steps will be taken for recovery of the amount which is claimed by the respondents as refund.

On 13.12.2007, when these writ petitions came up for hearing, the following order was passed by the co-ordinate Division Bench of this Court:-

"C.W.P. Nos. 11553, 11565 and 11680 of 2007

Present: Mr. R.S. Rai, Sr. Advocate, with
Mr. Gautam Dutt, Advocate, for the petitioner

Mr. Sanjeev Kaushik, Advocate, for the respondents.

After hearing the learned counsel for the parties, we find that in view of reply filed by respondent No. 4, show cause notice issued by D.R.I. (respondent No. 3), would require to be examined in detail. The matter cannot be disposed of at the motion hearing. Therefore, we admit the writ petition. However, the petitioner shall furnish a surety bond to the satisfaction of Joint Director, Directorate of Revenue Intelligence, Ludhiana in the sum equivalent to the one mentioned in the show cause notice.

Interim directions to continue.

A photo-copy of this order be placed on the file of each case.

Sd/-
(M.M. Kumar)
Judge

Sd/-
(Rakesh Kumar Jain)
Judge

Dec 13, 2007"

9. When these writ petitions came up for consideration before this Court on 15.07.2024, it was noticed that the prayers made in these writ petitions are not with regard to show cause notice(s) issued by the Directorate of Revenue Intelligence. Accordingly, liberty was granted to the petitioner companies to move appropriate amendment application(s).

It is worth mentioning here that in compliance to the order dated 15.07.2024, passed by this Court, the petitioner companies in CWP Nos. 11565 and 11680 of 2007 have got amended their respective writ petitions by moving application(s). However, neither any application seeking amendment of the writ petition has been moved by the petitioner company in CWP No. 11565 of 2007, nor anyone has put in appearance on its behalf today.

The prime ground taken for challenging the show cause notices by amending the writ petitions is that there is no jurisdiction with the officers of D.R.I. who have issued the impugned show cause notices.

10. Today at the time of hearing of the writ petitions, learned counsel for the respondents while referring to the judgment dated 07.11.2024, passed by the Hon'ble Apex Court in Review Petition No. 400 of 2021 in Civil Appeal No. 1827 of 2018, titled as **Commissioner of Customs v. M/s Canon India Pvt. Ltd., 2024 (11) TMI 391 – Supreme Court (LB) : 2024 INSC 854 : 2024 SCC OnLine SC 3188 : Law Finder Doc Id #2662349**, submitted that in accordance with the findings recorded therein, further hearing in these writ petitions cannot be continued because the show cause notice(s) issued to the petitioner companies by the D.R.I. are required to be adjudicated by the 'proper officer' in accordance with law. Thus, it is submitted that these writ petition may be disposed of accordingly.

11. Mr. Surjeet Bhadu, learned counsel for the petitioner(s) in CWP Nos. 11565 and 11680 of 2007, is not in a position to controvert the submission made by learned counsel for the respondents.

12. Having heard learned counsel for the parties and gone through the record with their able assistance, we find that the question in dispute is

no longer *res integra* and the same has been finally settled by the Hon'ble Apex Court vide judgment dated 07.11.2024, rendered in the case of **M/s Canon India Pvt. Ltd. (supra)**, wherein it has been concluded as under:-

> *"**F. CONCLUSION***
>
> *168. In view of the aforesaid discussion, we conclude that:*
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> *(i) DRI officers came to be appointed as the officers of customs vide Notification No. 19/90-Cus (N.T.) dated 26.04.1990 issued by the Department of Revenue, Ministry of Finance, Government of India. This notification later came to be superseded by Notification No. 17/2002 dated 07.03.2002 issued by the Department of Revenue, Ministry of Finance, Government of India, to account for administrative changes.*
>
> *(ii) The petition seeking review of the decision in Canon India (supra) is allowed for the following reasons:*
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> *a. Circular No. 4/99-Cus dated 15.02.1999 issued by the Central Board of Excise & Customs, New Delhi which empowered the officers of DRI to issue show cause notices under Section 28 of the Act, 1962 as well as Notification No. 44/2011 dated 06.07.2011 which assigned the functions of the proper officer for the purposes of Sections 17 and 28 of the Act, 1962 respectively to the officers of DRI were not brought to the notice of this Court during the proceedings in Canon India (supra). In other words, the judgment in Canon India (supra) was rendered without looking into the circular and the notification referred to above thereby seriously affecting the correctness of the same.*
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> *b. The decision in Canon India (supra) failed to consider the statutory scheme of Sections 2(34) and 5 of the Act, 1962 respectively. As a result, the decision erroneously recorded the finding that since DRI officers were not entrusted with the functions of a proper officer for the purposes of Section 28 in accordance with Section 6, they did not possess the jurisdiction to issue show*

cause notices for the recovery of duty under Section 28 of the Act, 1962.

c. The reliance placed in Canon India (supra) on the decision in Sayed Ali (supra) is misplaced for two reasons - first, Sayed Ali (supra) dealt with the case of officers of customs (Preventive), who, on the date of the decision in Sayed Ali (supra) were not empowered to issue show cause notices under Section 28 of the Act, 1962 unlike the officers of DRI; and secondly, the decision in Sayed Ali (supra) took into consideration Section 17 of the Act, 1962 as it stood prior to its amendment by the Finance Act, 2011. However, the assessment orders, in respect of which the show cause notices under challenge in Canon India (supra) were issued, were passed under Section 17 of the Act, 1962 as amended by the Finance Act, 2011.

(iii) This Court in Canon India (supra) based its judgment on two grounds: (1) the show cause notices issued by the DRI officers were invalid for want of jurisdiction; and (2) the show cause notices were issued after the expiry of the prescribed limitation period. In the present judgment, we have only considered and reviewed the decision in Canon India (supra) to the extent that it pertains to the first ground, that is, the jurisdiction of the DRI officers to issue show cause notices under Section 28. We clarify that the observations made by this Court in Canon India (supra) on the aspect of limitation have neither been considered nor reviewed by way of this decision. Thus, this decision will not disturb the findings of this Court in Canon India (supra) insofar as the issue of limitation is concerned.

(iv) The Delhi High Court in Mangali Impex (supra) observed that Section 28(11) could not be said to have cured the defect pointed out in Sayed Ali (supra) as the possibility of chaos and confusion would continue to subsist despite the introduction of the said section with retrospective effect. In view of this, the High Court declined to give retrospective operation to Section 28(11) for the period prior to 08.04.2011 by harmoniously construing it with Explanation 2 to Section 28 of the Act, 1962. We are of the considered view that the decision in Mangali Impex (supra) failed to take into account the policy being followed by the Customs department since

1999 which provides for the exclusion of jurisdiction of all other proper officers once a show cause notice by a particular proper officer is issued. It could be said that this policy provides a sufficient safeguard against the apprehension of the issuance of multiple show cause notices to the same assessee under Section 28 of the Act, 1962. Further, the High Court could not have applied the doctrine of harmonious construction to harmonise Section 28(11) with Explanation 2 because Section 28(11) and Explanation 2 operate in two distinct fields and no inherent contradiction can be said to exist between the two. Therefore, we set aside the decision in Mangali Impex (supra) and approve the view taken by the High Court of Bombay in the case of Sunil Gupta (supra).

(v) Section 97 of the Finance Act, 2022 which, inter-alia, retrospectively validated all show cause notices issued under Section 28 of the Act, 1962 cannot be said to be unconstitutional. It cannot be said that Section 97 fails to cure the defect pointed out in Canon India (supra) nor is it manifestly arbitrary, disproportionate and overbroad, for the reasons recorded in the foregoing parts of this judgment. We clarify that the findings in respect of the vires of the Finance Act, 2022 is confined only to the questions raised in the petition seeking review of the judgment in Canon India (supra). The challenge to the Finance Act, 2022 on grounds other than those dealt with herein, if any, are kept open.

(vi) Subject to the observations made in this judgment, the officers of Directorate of Revenue Intelligence, Commissionerates of Customs (Preventive), Directorate General of Central Excise Intelligence and Commissionerates of Central Excise and other similarly situated officers are proper officers for the purposes of Section 28 and are competent to issue show cause notice thereunder. Therefore, any challenge made to the maintainability of such show cause notices issued by this particular class of officers, on the ground of want of jurisdiction for not being the proper officer, which remain pending before various forums, shall now be dealt with in the following manner:

a. Where the show cause notices issued under Section 28 of the Act, 1962 have been challenged before the High Courts directly by way of a writ petition, the respective High Court shall dispose of such writ petitions in accordance with the observations made in this judgment and restore such notices for adjudication by the proper officer under Section 28.

b. Where the writ petitions have been disposed of by the respective High Court and appeals have been preferred against such orders which are pending before this Court, they shall be disposed of in accordance with this decision and the show cause notices impugned therein shall be restored for adjudication by the proper officer under Section 28.

c. Where the orders-in-original passed by the adjudicating authority under Section 28 have been challenged before the High Courts on the ground of maintainability due to lack of jurisdiction of the proper officer to issue show cause notices, the respective High Court shall grant eight weeks' time to the respective assessee to prefer appropriate appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT).

d. Where the writ petitions have been disposed of by the High Court and appeals have been preferred against them which are pending before this Court, they shall be disposed of in accordance with this decision and this Court shall grant eight weeks' time to the respective assessee to prefer appropriate appeals before the CESTAT.

e. Where the orders of CESTAT have been challenged before this Court or the respective High Court on the ground of maintainability due to lack of jurisdiction of the proper officer to issue show cause notices, this Court or the respective High Court shall dispose of such appeals or writ petitions in accordance with the ruling in this judgment and restore such notices to the CESTAT for hearing the matter on merits.

f. Where appeals against the orders-in-original involving issues pertaining to the jurisdiction of the proper officer to issue show cause notices under Section 28 are pending before the CESTAT, they shall now be *decided in accordance with the observations made in this decision.*

169. In view of the aforesaid, we allow the Review Petition No. 400/2021 titled Commissioner of Customs v. M/s Canon India Pvt. Ltd. and the connected Review Petition Nos. 401/2021, 402/2021 and 403/2021 insofar as the issue of jurisdiction of the proper officer to issue show cause notice under Section 28 is concerned. As discussed, the findings of this Court in Canon India (supra) in respect of the show cause notices having been issued beyond the limitation period remain undisturbed.

170. We set aside the decision of the High Court of Delhi rendered in the case of Mangali Impex (supra) and uphold the view taken by the High Court of Bombay in the case of Sunil Gupta (supra). We also uphold the constitutional validity of Section 97 of the Finance Act, 2022.

171. The Registry shall take steps to list the connected civil appeals and writ petitions before the appropriate Bench and they shall be disposed in terms of the observations made in this judgment.

172. The review petitions are accordingly disposed of."

[emphasis added]

13. Keeping in view the order passed by the Supreme Court in M/s Canon India Pvt. Ltd. (supra), the DRI officer would be held to be a 'proper officer' for issuing of notice and conducting of investigation. Accordingly, the contention of the petitioner(s) that the DRI officer would have no jurisdiction, cannot be accepted. We, therefore, reject the same and direct the DRI to proceed ahead and pass appropriate orders.

If the petitioners are still aggrieved keeping in view the orders passed by the Supreme Court, they would be free to file appeal before the appellate authority, in accordance with law.

14. Accordingly, all the writ petitions are disposed of in the above terms.

Pending miscellaneous application(s), if any, shall also stand disposed of.

(SANJAY VASHISTH)	**(SANJEEV PRAKASH SHARMA)**
JUDGE	**JUDGE**

December 04, 2024	Whether speaking/reasoned?	Yes/No
Pkapoor	Whether reportable?	Yes/No