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

\+ **W.P.(C) 3560/2025 & CM APPL. 16639/2025**

M/S GRID INDUSTRIES PVT. LTD. & ORS. .....Petitioners

Through: Mr. Deepak Gandhi, Mr. Riccky Chaudhary & Mr. Prateek Bhadana, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS ADJUDICATION, DELHI ZONE .....Respondent

Through: Mr. Anurag Ojha, Senior Standing Counsel with Mr. Shubham Kumar & Mr. Dipak Raj, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% **21.03.2025**

1. This hearing has been done through hybrid mode.

CM APPL. 16640/2025 (for exemption)

2. Allowed, subject to all just exceptions. The application is disposed of.

W.P.(C) 3560/2025 & CM APPL. 16639/2025

3. The challenge in the present petition has been raised to the effect that the Show Cause Notice *(hereinafter 'SCN')* which was given to the Petitioners on 11th December, 2020 vide F.NO. DRI/AZU/CI/ENQ.-26/2019 is *non est* and can no longer be adjudicated by the Adjudicating Authority in view of the substantial delay beyond the period prescribed under Section 28(9) and 28(9A) of the Customs Act, 1962 *(hereinafter 'The Act').*

4. Mr. Gandhi ld. Counsel for the Petitioners submits that the Adjudicating Authority has not obtained extension which it ought to have obtained if it intended to decide the SCN on merits.

5. It is further submitted that irrespective of the decision in ***Canon India Private Limited v. Commissioner of Customs, (2021) 18 SCC 563*** *(hereinafter "Canon - I")* and in ***Review Petition No. 400/2021*** titled ***Commissioner of Customs v. M/s Canon India Private Limited*** *(hereinafter "Canon - II"),* without obtaining extension, the time period which is prescribed under Section 28(9) of the Act cannot be violated. Thus, this issue, according to him, ought to be adjudicated by the Adjudicating Authority as a preliminary issue without going into the merits.

6. On the other hand, Mr. Ojha, ld. Counsel appearing for the Customs Department submits that the Petitioners had challenged the issuance of the SCN and thereafter, the notice of personal hearing as also the Order-in-Original which was earlier passed on 6th July, 2022. Such challenge was made before the Customs, Excise and Service Tax Appellate Tribunal *(hereinafter 'CESTAT')* and the CESTAT had granted interim stay of the adjudication proceedings. In the meantime, the Central Board of Indirect Taxes and Customs circular had also been issued that the review petition in ***Canon-II*** is pending before the Supreme Court.

7. After the decision in ***Canon-II*** by the Supreme Court, the Adjudicating Authority had given a notice of personal hearing to the Petitioners. Thus, there is no violation of the limitation period under Section 28(9). In fact, it is his submission that Section 28(9A) would apply to the present proceedings.

8. The prayer in this writ petition is that the SCN proceedings ought to be declared as *non est* and the preliminary objection should be decided first by the Adjudicating Authority.

9. In the opinion of this Court, there are various issues that arise in this matter:-

i. Whether the SCN can be decided beyond the prescribed period under Section 28(9) of the Act and whether any of the reasons specified in Section 28(9A) would also be applicable?

ii. Whether the power of the DRI officials existed in the light of the ***Canon-II*** decision of the Supreme Court?

iii. Whether the demands in terms of the SCN are liable to be confirmed on merits?

10. In the opinion of this Court, considering the fact that for the last five years, there have been two writ petitions arising from one SCN before this Court and one appeal before the CESTAT, the entire matter deserves to be comprehensively adjudicated by the Adjudicating Authority.

11. The ***Canon-II*** judgment makes it clear now that the DRI officials are proper officers and in terms of Para 168 of the decision of the Supreme Court, the matter deserves to proceed both on the preliminary objection and on merits.

12. In the opinion of this Court, piecemeal adjudication is causing confusion in the present petition. Accordingly, the preliminary objections and the response of the Petitioners on merits to the SCN shall be adjudicated together and a comprehensive order shall be passed by the Adjudicating Authority. Rights and remedies of both parties are left open.

13. The petition is, accordingly, disposed of. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J

RAJNEESH KUMAR GUPTA, J

MARCH 21, 2025*kk/ss*