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

\+ **W.P.(C) 6821/2021&CM APPL. 5410/2025**

M/S SWATCH GROUP (INDIA) PVT LTD .....Petitioner

Through: Mr. Yogendra Aldak, Adv.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Harpreet Singh, Sr. Standing Counsel along with Mr. Jai Ahuja, Ms. Suhani Mathur, Adv. (M: 9811253531)

Mr. Ritwik Saha, and Mr. Umang Misra, Advs. for Mr. Aditya Singla SSC CBIC. (M: 8851493323)

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% 21.02.2025

1. This hearing has been done through hybrid mode.

2. The present petition has been filed under Article 226 of the Constitution of India challenging the impugned show cause notice dated 21st November, 2019 (hereinafter "*impugned SCN*") issued by the Respondent No. 2 - Directorate of Revenue Intelligence, Lucknow Zonal Unit.

3. In the present petition, one of the main grounds for challenge of the impugned SCN is that the same has not been issued by a proper officer in terms of the Section 28 of the Customs Act, 1962 (hereinafter "*the Act*").

4. On 27th August, 2021, notice was issued in this petition and the matter was tagged along with a batch of matters raising similar issues. The pleadings were directed to be completed.

5. The batch matters were considered on 13th July, 2022 and the Court was informed that one of the issue *qua* jurisdiction of DRI to issue SCN

arising in the said batch matters is covered by the judgement of the Supreme Court in ***Cannon India Private Limited v. Commissioner of Customs, 2021 SCC OnLine SC*** (hereinafter "*Cannon - I*"). However, it was submitted that a ***Review Petition No. 400/2021*** titled ***Commissioner of Customs v. M/s Canon India Private Limited*** (hereinafter "*Cannon - II*") was pending against the said decision.

6. On 15th March, 2023 the matters were again taken up for hearing and the Court was informed that the Act has been amended *vide* the Finance Act, 2022 which came into effect from 30th March, 2022. It was submitted by the parties that Section 97 of the Act, as amended, would validate various actions which would have been invalid in view of the decision of the Supreme Court in ***Cannon-I***. The vires of Finance Act, 2022 is under challenge before the Supreme Court in ***Union of India & Ors. v. Aspam Petrochem Pvt. Ltd., Civil Appeal No. 6142/2019.*** The said order dated 15th March, 2023 reads as under:

> *"1. One of the issues that arises in this batch of petitions is regarding the jurisdiction of the DRl Officials to issue a show cause notice or pass any adjudication orders. The said issue is covered by the decision of the Supreme Court in Canon India Private Limited v. Commissioner of Customs: 2021 SCC OnLine SC 200. It is stated that the Act was subsequently amended by the Finance Act, 2022, which came into effect from 30.03.2022.*
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> *2. In terms of Clause 97 of the said Act, various actions which would have been invalid in view of the decision of the Supreme Court in Canon India Private Limited v. Commissioner of Customs {supra) have been validated. It is pointed out that several writ petitions have been filed before the Supreme Court challenging*

the constitutional validity of the Finance Act, 2022 pursuant to the liberty granted by the Supreme Court in terms of the order dated 09.05.2022 passed in Civil Appeal No.6142/2019 captioned Union of India & Ors. v. Aspam Petrochem Pvt. Ltd. and other connected matters.

3. The learned counsel appearing for the Revenue submits that they have instructions to state that the Revenue is filing a transfer petition seeking transfer of matters pending in various High Courts to the Supreme Court for being tagged along with Union of India & Ors. v. Aspam Petrochem Pvt. Ltd. (supra). They request for an adjournment.

4. In view of the above, the hearing of these batch of petitions is adjourned to 20.07.2023."

7. Pursuant to the order dated 15th March, 2023, on 25th September, 2023 the batch matters were adjourned *sine die* with liberty to mention the matters once the Transfer Petition before the Supreme Court challenging the validity of the Finance Act, 2022 is under consideration. The said order dated 25th September, 2023 reads as under:

> *"1. We are informed that the Transfer Petition has now been fixed for 03 November 2023.*
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> *2. In view of the above, the batch shall stand adjourned sine die with liberty reserved to learned counsels for parties to mention once the Transfer Petition has been disposed of."*

8. Thereafter, the Supreme Court passed the judgment in ***Canon - II*** on 7th November, 2024. Accordingly, the present application ***CM APPL.5410/2025*** has been filed by the Petitioner praying for disposal of the

present petition in terms of the directions passed by the Supreme Court in ***Cannon-II***. The relevant observations and directions of the the Supreme Court in ***Cannon-II*** are as under:

> *"168. In view of the aforesaid discussion, we conclude that: [...]*
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> *(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.*
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> *(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:*
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> *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.

[...]

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."

9. It is submitted by ld. Counsels for the parties that the present petition will be covered by *Paragraph 168(vi)(a)*. Accordingly, in view of the above directions passed by the Supreme Court the Petitioner is relegated to appear before the concerned Adjudicating Authority for decision on the impugned SCN in accordance with law.

10. The Petitioner shall be given an opportunity to file a reply and a personal hearing shall also be afforded by the concerned Adjudicating Authority.

11. The Court notices that the remaining matters in the connected batch of writ petitions which were adjourned *sine die* on 25th September, 2023 could also be decided on the basis of the decision of the Supreme Court in ***Cannon - II***.

12. Accordingly, let all the matters as contained in the order dated 25th September, 2023, the lead matter being ***W.P.(C) 8750/2021*** titled ***M/s Yukti***

Exports v. Union of India & Ors. be listed before the Court on 12th March, 2025.

13. The Registry shall issue notice on the e-mail addresses of the ld. Counsels for the parties whose names may be appearing in the *vakalatnama* in the said batch matters.

14. Mr. Harpreet Singh, ld. SSC and the Counsels for the Petitioner who are also appearing in the batch matters shall also inform their colleagues who are Counsels in the batch matters of the order passed today.

15. Mr. Harpreet Singh, ld. SSC shall also give a list of all the matters which would be covered by the directions of the Supreme Court in ***Cannon - II*** apart from the said batch matters so that the same can also be listed on the said date.

16. Let a notice be published in the Cause List requesting Counsels to inform the Registry by 7th March 2025 giving details of any other matters which would be covered by the decision of the Supreme Court in ***Review Petition No. 400/2021*** titled ***Commissioner of Customs v. M/s Canon India Private Limited***. If such details are received, Registry may issue notice in those matters also for 12th March, 2025.

17. The writ is disposed of in these terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

FEBRUARY 21, 2025/*MR/ms*