$~33 to 36

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

% ***Date of decision:27th May, 2025***

\+ **W.P.(CRL) 992/2021, CRL.M.A. 7509/2021 (for interim relief), CRL.M.A. 16155/2023 (for interim directions), CRL.M.A. 16188/2023 (for impleadment)**

KRISHAN KUMAR BANSAL (IN CUSTODY)(THROUGH HIS BROTHER DINESH BANSAL)
S/o Sh. P.D. Bansal .....Petitioner

Through: Mr. Priyadarshi Manish, Ms. Anjali Jha Manish, Mr. Shreyansh Kushwaha, Mr. Paras Aneja, Ms. Madhuri Malegaokar and Mr. Aman Ahluwalia, Advocates.

versus

1. UNION OF INDIA
Through Revenue Secretary .....Respondent No.1

2. ADDITIONAL DIRECTOR GENERAL,
Directorate of Revenue Intelligence ....Respondent No.2

3. DEPUTY DIRECTOR
Directorate of Revenue Intelligence ....Respondent No.3

4. SENIOR INTELLIGENCE OFFICER
Directorate of Revenue Intelligence ...Respondent No.4

Through: Ms. Shruti Goel, Advocate.
Mr. Aditya Singla, SSC with Mr. Umang Misra, Mr. Siddharth Saxena, Ms. Shreya Lamba, Advocates for Department.

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\+ **W.P.(CRL) 1297/2021, CRL.M.A. 11031/2021 (stay)**

SANDEEP SHARMA

Partner of M/s S.M.International .....Petitioner

Through: Mr. Naveen Malhotra and Mr. Ritvik Malhotra, Advocates.

versus

1. DIRECTOR GENERAL
Directorate of Revenue Intelligence .....Respondent No.1

2. SENIOR INTELLIGENCE OFFICER
Directorate of Revenue Intelligence ....Respondent No.2

3. ADDITIONAL DIRECTOR GENERAL
Directorate of Revenue Intelligence ....Respondent No.3

4. COMMISSIONER OF CUSTOMS ....Respondent No.4

Through: Mr. Aditya Singla, SSC with Mr. Umang Misra, Mr. Siddharth Saxena, Ms. Shreya Lamba, Advocates for Department.

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\+ **<u>W.P.(CRL) 1556/2021, CRL.M.A. 13088/2021 (stay)</u>**

MANOJ KUMAR
Partner of M/s S.M. International .....Petitioner

Through: Mr. Priyadarshi Manish, Ms. Anjali Jha Manish, Mr. Shreyansh Kushwaha, Mr. Paras Aneja, Ms. Madhuri Malegaokar and Mr. Aman Ahluwalia, Advocates.

versus

1. DIRECTOR GENERAL
Directorate of Revenue Intelligence .....Respondent No.1

2. SENIOR INTELLIGENCE OFFICER
Directorate of Revenue Intelligence .....Respondent No. 2

Through: Mr. Aditya Singla, SSC with Mr.

Umang Misra, Mr. Siddharth Saxena, Ms. Shreya Lamba, Advocates for Department.

36
+ **W.P.(CRL) 2536/2021, CRL.M.A. 20477/2021 (for interim relief), CRL.M.A. 16969/2022 (for vacation of stay)**

INDERPAL SINGH
S/o Sh. Harmohinder Singh .....Petitioner
Through: Counsel for Petitioner (appearance not given)

versus

1. UNION OF INDIA
Through Revenue Secretary .....Respondent No.1

2. ADDITIONAL DIRECTOR GENERAL
Directorate of Revenue Intelligence ...Respondent No.2

3. DEPUTY DIRECTOR
Directorate of Revenue Intelligence ...Respondent No.3

4. SENIOR INTELLIGENCE OFFICER
Directorate of Revenue Intelligence ...Respondent No.4
Through: Mr. Aditya Singla, SSC with Mr. Umang Misra, Mr. Siddharth Saxena, Ms. Shreya Lamba, Advocates for Department.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (*oral*)

1. The aforesaid four Writ Petitions under Article 226 of the Constitution of India, 1950 read with Section 482 of the Code of Criminal Procedure, 1973 have been filed for quashing of Summons issued by the

Respondent No. 2 (DRI) under Section 108 of the Customs Act, 1962.

2. In the light of the observations made by the Apex Court in the Case of *Commissioner of Customs vs. M/s Canon India Pvt. Ltd.*, reported as 2024 INSC 854, it has been held that Directorate of Revenue Intelligence (DRI) in the absence of conferment of power of being "*proper officer*" could not have initiated proceedings under Section 104 of Customs Act, 1962 and arrested the Petitioner on 01.04.2021.

3. ***Learned counsel on behalf of the Respondents*** has submitted that the Judgment of *Canon India*, (*supra*) has been reviewed by the Apex Court *vide* Review Petition No. 400/2021 in Civil Appeal No. 1827/2018 *vide* Judgment dated 07.11.2024 and the aforesaid four Petitions be accordingly disposed of, in terms of the final Order of the Apex Court.

4. ***Learned counsel for the Petitioners*** also submits that the Writ Petitions be disposed of accordingly.

5. Submissions heard and the record perused.

6. In the Review Petition in *Canon India*, (*supra)*, the Apex Court has concluded thus:

> "…….
>
> *(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, Commissionerate of Customs (Preventive), Directorate General of Central Excise Intelligence and Commissionerate 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)***

…….”

7. In the light of the aforesaid conclusion of the Apex Court in the Review Petition, it is hereby observed that DRI Officers were *the "Proper Officers"* for the purpose of Section 28 Customs Act, 1962 and were

competent to issue the Show Cause Notices thereunder. Therefore, the present Petitions are hereby disposed of with the directions that the Notices are restored for the purpose of adjudication by the Proper Officers under Section 28 Customs Act, 1962.

8. Further, the Orders passed by the Adjudicatory Authority under Section 28 Customs Act, 1962, may be challenged by way of Appeal before the Customs Excise and Services Tax Appellate Tribunal (*for short "CESTAT"*), which are under challenge before this Court on the ground of maintainability due to lack of jurisdiction of Proper Officer to issue Show Cause Notices. Eight weeks time is granted to the Petitioners, to prefer their appropriate Appeal before the CESTAT.

9. With these directions, the Writ Petitions are hereby disposed of. Pending Applications also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 27, 2025/RS