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

+ **W.P.(C) 10369/2022 & CM APPL. 54877/2023**

THE FERRY INTERNATIONALPetitioner

Through: Mr. Vivek Sood, Sr. Adv. with
Ms. Seema Bingani, Ms. AnasZaidi &
Ms. RasneetKaur, Advs.

versus

UNION OF INDIA AND ORSRespondents

Through: Mr. Vikrant N. Goyal, Mr. Kunal
Dixit, Mr. Piyush Wadhwa, Mr. Nitin
Mishra & Mr. JeetChakraborty,
Advocate for R-1, R-4 & R-5
Mr. Satish Kumar, Senior Standing
Counsel for R-6 & R-7

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

ORDER

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04.12.2025

1. This hearing has been done through hybrid mode.
2. The present Petition has been filed, *inter alia*, challenging various summons issued by the Directorate of Revenue Intelligence (hereinafter “DRI”) Officials dated 15th November, 2021, 13th January, 2022 and 7th June, 2022. Certain other reliefs in respect of the classification of the handicraft articles made of stone and marbles have also been raised.
3. The impugned summons were issued by the DRI under Section 108 of the Customs Act, 1962. However, the primary contention that the Petitioner raised in this writ petition was in respect of the jurisdiction of DRI Officials as ‘proper officers’ to conduct proceedings under Section 28 of the Customs



Act, 1962. Reliance was placed on the Supreme Court decision in *Canon India Pvt. Ltd. v. Commissioner of Customs, 2021 (18) SCC 563* (hereinafter '*Canon-I*'), which had held that DRI Officials were not '*proper officers*' for the purpose of Customs Act, 1962.

4. However, the decision in *Canon-I* has been reviewed in *Review Petition (Civil) No. 400/2021* titled '*Commissioner of Customs v. M/s Canon India Private Limited*', (hereinafter, '*Canon-II*'), wherein, the Supreme Court has held as under:

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

(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. ”



5. In terms of the above decision, the Supreme Court held that the DRI Officials would be proper officials and hence, would be entitled to issue summons under the provisions of the Customs Act. The challenge in this petition in respect of this issue would therefore, no longer sustain.

6. Insofar as, the alleged demand raised against the Petitioner as submitted by Mr. Vivek Sood, Id. Sr. Counsel is concerned, the said demand is issued under Section 28(4) and 28AAA of the Customs Act, which read as under:

“28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

28AAA. Recovery of duties in certain cases.—(1) Where an instrument issued to a person has been obtained by him by means of—

(a) collusion; or

(b) wilful mis-statement; or

(c) suppression of facts,

for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), by such person or his agent or employee and such



instrument is utilised under the provisions of this Act or the rules made or notifications issued thereunder, by a person other than the person to whom the instrument was issued, the duty relatable to such utilisation of instrument shall be deemed never to have been exempted or debited and such duty shall be recovered from the person to whom the said instrument was issued:

Provided that the action relating to recovery of duty under this section against the person to whom the instrument was issued shall be without prejudice to an action against the importer under section 28.

[...]

(2) Where the duty becomes recoverable in accordance with the provisions of sub-section (1), the person from whom such duty is to be recovered, shall, in addition to such duty, be liable to pay interest at the rate fixed by the Central Government under section 28AA and the amount of such interest shall be calculated for the period beginning from the date of utilisation of the instrument till the date of recovery of such duty.

(3) For the purposes of recovery under sub-section (2), the proper officer shall serve notice on the person to whom the instrument was issued requiring him to show cause, within a period of thirty days from the date of receipt of the notice, as to why the amount specified in the notice (excluding the interest) should not be recovered from him, and after giving that person an opportunity of being heard, and after considering the representation, if any, made by such person, determine the amount of duty or interest or both to be recovered from such person, not being in excess of the amount specified in the notice, and pass order to recover the amount of duty or interest or both and the person to whom the instrument was issued shall repay the amount so specified in the notice within a period of thirty days



from the date of receipt of the said order, along with the interest due on such amount, whether or not the amount of interest is specified separately.

(4) Where an order determining the duty has been passed under section 28, no order to recover that duty shall be passed under this section.

(5) Where the person referred to in sub-section (3) fails to repay the amount within the period of thirty days specified therein, it shall be recovered in the manner laid down in sub-section (1) of section 142”

7. The said demand under Section 28(4) and 28AAA of the Customs Act is in the nature of advisement to the Petitioner for paying the said amount failing which notice to Show Cause would be liable to be issued. This is also evident from the language of the particular communication from the Commissioner of Customs, Audit Commissionerate, Nhava Sheva sent sometime in October, 2019, which has been relied upon by the Petitioner:

“ Therefore, in terms of the provisions of section 28(4) or 28AAA of the Customs Act, 1962, **you are advised to pay** the undue MEIS benefit amounting to INR 65,54,175/- (Rupees Sixty Five Lakh Fifty Four Thousand One Hundred and Seventy Five only) as detailed in Annexure-A, which has been wrongly claimed by you, along with applicable interest within 15 days of receipt of this letter.”

8. The demand has therefore not yet fructified against the Petitioner in accordance with law. The matter still is at the stage of investigation.

9. Further, *vide* order dated 14th February, 2023, it has been clearly recorded as under:

“1. The applicant / petitioner has filed the above-



captioned application (CM No.7301/2023) praying that the summons dated 02.02.2023 issued by the Directorate of Revenue Intelligence (hereafter 'DRI') under Section 108 of the Customs Act, 1962 be stayed.

2. Mr. Sood, learned senior counsel for the applicant / petitioner, contends that the principal challenge in the present petition is regarding the competence of the officer of the DRI to issue such summons. He states that the above captioned petition as well as other petitions involving the same controversy are now listed on 25.05.2023. He states that in the meanwhile if the respondents are permitted to proceed with the summon, it would render the petition infructuous.

3. The petitioner has also filed an application (CM No.7358/2023) praying that a direction be also issued to the department to take evidence through video-conferencing.

4. Mr. Singla, learned counsel appearing for the DRI, states that a similar application (CM No.2550/2023) praying that the evidence be taken through video-conferencing was dismissed as withdrawn on 20.01.2023.

5. Insofar as the prayer for stay of summons is concerned, he submits that it is a contentious issue and after the amendment introduced by the Finance Act, 2022, officers of the DRI would be proper officers for the purpose of Customs Act, 1962 including issuance of summons under Section 108 of the said Act. He fairly states that this issue is pending consideration in the batch of matters, which are now listed on 25.05.2023. He states on instructions that at this stage the department does not desire to take any coercive steps but merely seeks to record the petitioner's statement during business hours.



6. In view of the said clarification, this Court does not consider it necessary to pass any order staying the summon at this stage. The petitioner shall cooperate with the department for recording the statement.”

10. In terms of the above order, the Department primarily requires the Petitioner to co-operate in the investigation and make his statement which would be recorded during business hours. The matter being one related to classification, there ought not to be any apprehension of arrest if the Petitioner cooperates. In this regard, it would be relevant to consider the decision of the Supreme Court in W.P. (Cri.) 336/2018 titled Radhika Agarwal vs. Union of India wherein the Supreme Court has analysed the powers of arrest under the Customs Act, 1962 and CGST Act, 2017. The relevant portion of the said decision reads as under:

42. Section 104(1) stipulates that arrests may be made if a customs officer, empowered by general or special order of the Principal Commissioner of Customs or Commissioner of Customs, has “reasons to believe” that an offence has been “committed” in terms of Section 132 or Section 133 or Section 135 or Section 135-A or Section 136 of the Customs Act. Thus, Section 104(1), effectively incorporates safeguards similar to those outlined in Section 19(1) of the PML Act. The semantical distinction, however, between Section 19(1) and Section 104(1), is twofold: first, Section 104(1) does not explicitly stipulate the requirement of a customs officer having “material in their possession”; and second, Section 104(1) does not explicitly state that the customs officer must reasonably believe that the arrestee is “guilty of an offence”. Instead, Section 104(1) states that the customs officer must have “reasons to believe” that the arrestee has “committed an offence”.



43. We are of the opinion that there is substantively no difference between a person being guilty of an offence and a person committing an offence. In a catena of judgments of this Court, it has been held that words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary.⁴⁶ Applying these principles to the present case, the Cambridge Dictionary defines “guilty party” as “someone who has done something wrong or who has ‘committed’ a crime”. According to the Oxford Dictionary, the etymology of “guilty” also traces back to the Old English Period (pre-1150), referring in the context of law to someone who “has ‘committed’ some specified offence”. Thus, when we apply a plain language interpretation, a person being “guilty” of an offence and a person “committing” an offence is self-same and identical insofar as Section 19(1) vis-à-vis Section 104(1) is concerned.

44. The Code also uses the terms interchangeably. For instance, Section 173 of the Code, relating to filing of a chargesheet, stipulates in subsection (2)(i)(d) that the police officer must state in the chargesheet, “whether any offence appears to have been ‘committed’ and, if so, by whom”. Would this then mean that chargesheet, a prosecution document based on which a court takes cognisance of a matter, does not relate to the guilt of a person? Naturally, such an interpretation would lead to anomalous circumstances and hence cannot be sustained.

45. Secondly, the fact that Section 104(1) does not explicitly require a customs officer to have “material in their possession” does not imply that a customs officer can conclude that an offence has been



committed out of thin air or mere suspicion. The threshold for arrest under Section 104(1) of the Customs Act is higher than that under Section 41 of the Code. Section 41 allows the police to arrest a person without a warrant, if a “reasonable complaint has been made”, or “credible information has been received”, or “a reasonable suspicion exists” that the person has committed a cognizable offence. In contrast, Section 104(1) sets a higher threshold, stipulating that a customs officers may only arrest a person if they have “reasons to believe” that a person has committed an offence. A person is said to have a “reason to believe” a thing, if they have sufficient cause to believe that thing but not otherwise.⁴⁷ This represents a more stringent standard than the “mere suspicion” threshold provided under Section 41.

46. Thirdly, given the framework of the Customs Act, which explicitly classifies offences into bailable and non-bailable, as well as cognizable and noncognizable, the “reasons to believe” must reflect these classifications when justifying an arrest. The reasoning must weigh in why an arrest is being made in a specific case, particularly given the specific severity assigned to the offence by the legislature. The reasoning must also state how the monetary thresholds outlined in the Act are met. Subclauses (b) to (d) of Section 104(4) provide monetary thresholds for cognizable offences, while subclauses (a) and (c) to (e) of Section 104(6) provide those for non-bailable offences. The “reasons to believe” must include a computation and/or an explanation, based on factors such as the goods seized, from which a conclusion of guilt can be drawn. This level of detail is crucial, as it facilitates judicial review of the exercise of the power to arrest. The department’s authority to arrest under Section 104 hinges on satisfying these statutory thresholds.



47. Moreover, the framework of the Customs Act clearly reflects the legislative intent to establish a distinct and unique procedure for the exercise of arrest powers by a customs officer. For example, Section 104(4), specifies only 4 categories of offences as cognizable, outlined under sub-sections (a) to (d). Section 104(5) clarifies that all other offences under the Customs Act are noncognizable in nature, meaning that arrests for these offences cannot be made without a warrant. We have cautioned in *Arvind Kejriwal (supra)* how the unbridled exercise of the power to arrest without a warrant can result in arbitrariness and errors in decision making process. A similar error made by a customs officer can lead to a frustration of the constitutional and statutory rights of the arrestee.

48. For the aforesaid reasons, we do not find any inconsistency between Section 19(1) of the PML Act and Section 104(1) of the Customs Act. We are of the opinion that principles and ratio developed in the case of *Arvind Kejriwal (supra)*, and the principles specifically discussed and delineated in paragraphs 30 to 45 of this judgment, are equally applicable to the power of arrest under Section 104 of the Customs Act. The respondent authorities are, therefore, directed to comply with the mandate of this judgment and that of *Arvind Kejriwal (supra)*.

[...]

63. The Central Board of Indirect Taxes and Customs (GST-Investigation Wing), has accepted the said position vide circular dated 17.08.2022, the relevant portion of which reads as under:

“ F.No. GST/INV/Instructions/2021-22
GST-Investigation Unit 17th August
2022 Instruction No. 02/2022-23 [GST



– Investigation] Subject: Guidelines for arrest and bail in relation to offence punishable under the CGST Act, 2017 – reg. Hon'ble Supreme Court of India in its judgment dated 16th August, 2021 in Criminal Appeal No. 838 of 2021, arising out of SLP (Crl.) No. 5442/2021, has observed as follows:

“We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.”

3. Conditions precedent to arrest: 3.1 Sub-section (1) of Section 132 of CGST Act, 2017 deals with the punishment for offences specified therein. Sub-section (1) of Section 69 gives the power to the Commissioner to arrest a person where



he has reason to believe that the alleged offender has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of Section 132 which is punishable under clause (i) or clause (ii) of subsection (1), or subsection (2) of the Section 132 of CGST Act, 2017. Therefore, before placing a person under arrest, the legal requirements must be fulfilled. The reasons to believe to arrive at a decision to place an alleged offender under arrest must be unambiguous and amply clear. The reasons to believe must be based on credible material. 3.2 Since arrest impinges on the personal liberty of an individual, the power to arrest must be exercised carefully. The arrest should not be made in routine and mechanical manner. Even if all the legal conditions precedent to arrest mentioned in Section 132 of the CGST Act, 2017 are fulfilled, that will not, ipso facto, mean that an arrest must be made. Once the legal ingredients of the offence are made out, the Commissioner or the competent authority must then determine if the answer to any or some of the following questions is in the affirmative:

3.2.1 Whether the person was concerned in the nonbailable offence or credible information has been received, or a reasonable suspicion exists, of his having been so concerned?

3.2.2 Whether arrest is necessary to ensure proper investigation of the



offence?

3.2.3 Whether the person, if not restricted, is likely to tamper the course of further investigation or is likely to tamper with evidence or intimidate or influence witnesses?

3.2.4 Whether person is mastermind or key operator effecting proxy/ benami transaction in the name of dummy GSTIN or non-existent persons, etc. for passing fraudulent input tax credit etc.?

3.2.5 As unless such person is arrested, his presence before investigating officer cannot be ensured.

3.3 Approval to arrest should be granted only where the intent to evade tax or commit acts leading to availment or utilization of wrongful Input Tax Credit or fraudulent refund of tax or failure to pay amount collected as tax as specified in sub-section (1) of Section 132 of the CGST Act 2017, is evident and element of mens rea / guilty mind is palpable.

3.4 Thus, the relevant factors before deciding to arrest a person, apart from fulfillment of the legal requirements, must be that the need to ensure proper investigation and prevent the possibility of tampering with evidence or intimidating or influencing witnesses exists.

3.5 Arrest should, however, not be resorted to in cases of technical nature i.e. where the demand of tax is based on a difference of opinion regarding interpretation of Law. The prevalent



practice of assessment could also be one of the determining factors while ascribing intention to evade tax to the alleged offender. Other factors influencing the decision to arrest could be if the alleged offender is co-operating in the investigation, viz. compliance to summons, furnishing of documents called for, not giving evasive replies, voluntary payment of tax etc.”

64.5 The aforesaid directions in the Circular/instruction should be read along with the specific directions outlined in the earlier judgments of this Court and the present judgment.
xx xxxx”

11. Accordingly, subject to the Petitioner co-operating and appearing before the Department for making statement during business hours, no coercive steps of arrest shall be taken against the proprietor of the Petitioner, i.e., Mr. Rohit Goyal. However, if there is no cooperation, the Department would be entitled to take coercive measures in accordance with law.
12. After recording the statements and concluding the investigation, a Show Cause Notice shall be issued, if required, to the Petitioner in respect of the demands that are sought to be raised.
13. Upon such notice being issued, the Petitioner shall file a reply and a personal hearing shall also be afforded to the Petitioner. The Show Cause Notice shall then be decided in accordance with law.
14. It is made clear that this court has not considered the merits or the contentions of either of the parties.
15. All rights and remedies are left open.



16. The petition along with pending application(s), if any, is disposed of in the above terms.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

DECEMBER 4, 2025/tg/msh