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

\+ **CUSAA 81/2022 & CM APPL. 30315/2022**

PRINCIPAL COMMISSIONER OF CUSTOMS (PREVENTIVE) ..... Appellant

Through: Ms. Anushree Narain, SSC with Mr. Ankit Kumar, Adv.

versus

AJIT SINGH ..... Respondent

Through: Appearance not given.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

ORDER

% **08.04.2025**

1. This hearing has been done through hybrid mode.

2. The present Appeal is part of a batch of Appeals that were filed under Section 130 of the Customs Act, 1962 (*hereinafter, 'the Act')*, seeking quashing of the Final Order of Customs Excise & Service Tax Appellate Tribunal *(hereinafter, CESTAT)* dated 06th January, 2022 *(hereinafter, the impugned order)* in ***Customs Appeal No.50401 of 2019***.

3. While passing the Impugned Order, reliance was primarily placed by CESTAT upon 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 refund proceedings under Section 28 of the Act.

4. In light of this, CESTAT had quashed the Order-in-Original dated 31st December, 2013, by following the decision in ***Canon-I,*** holding that DRI officers were not proper officers under Section 2(34) of the Act.

5. However, the ***Canon-I*** decision has been reviewed in ***Review Petition***

(Civil) No. 400/2021 titled ***'Commissioner of Customs v. M/s Canon India Private Limited'***, *(hereinafter, 'Canon-II')*.

6. In ***Canon-II,*** 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."

7. In view of the decision of the Supreme Court in ***Canon-II,*** the present appeal is allowed and the Impugned Order is set aside. Accordingly, the matter is remanded back to CESTAT in terms of para 168(vi)(e) of ***Canon-II***.

8. Customs Appeal No. ***50401/2019*** is restored to its original position before CESTAT and the same shall be adjudicated in accordance with law.

9. Accordingly, list before the CESTAT on 22nd July, 2025.

10. A copy of this order be communicated to the Registrar, CESTAT.

11. The present appeal is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J

RAJNEESH KUMAR GUPTA, J

APRIL 8, 2025/*Rahul/ss*