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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 8th April, 2025*+ **W.P.(C) 14392/2021****M/S MAHALAXMI JEWEL EXPORTS & ORS.Petitioners**Through: Dr. G K Sarkar, Ms. Malabika Sarkar
and Mr. Prashant Srivastava,
Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Harpreet Singh, Senior Standing
Counsel with Ms. Suhani Mathur, Mr.
Jai Ahuja, Advocate.**CORAM:****JUSTICE PRATHIBA M. SINGH****JUSTICE RAJNEESH KUMAR GUPTA****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner- M/s Mahalaxmi Jewel Exports under Article 226 of the Constitution of India seeking quashing of the proceedings initiated by Respondent No. 2– Additional Director General, Directorate of Revenue Intelligence upon issuance of the Show Cause Notice DRI F. No. DRI/HQ-GI/338/VI/ENQ-12/INT-NIL/2016 dated 9th June, 2017, as also the consequent Order-in-Original No. 48/Commr./Noida-Cus/2018-19 dated 29th March, 2019 passed by Respondent No. 3– Principal Commissioner of Customs.
3. The brief background is that the Petitioner No.1 had established SEZ unit in SEZ Noida. Various obligations had been imposed on the Petitioner No.1, which according to the DRI, were not complied with.



4. A search was conducted at the premises of Petitioner No.1 on the ground of alleged mis-declaration in export consignments and diversion of duty free gold. The Show Cause Notice dated 9th June, 2017 was issued raising a demand to the tune of Rs.1,29,71,040/-. The same culminated in the Order-in-Original dated 29th March, 2019 by which various penalties were imposed on the Petitioners.

5. The gold to the tune of 41.15 kg was also directed to be confiscated, though redemption was permitted upon payment of Rs.2,77,75,000/- in case of Petitioner No.1. Insofar as the second firm namely M/s Mine O Gold is concerned, the penalties of Rs.4 crores were imposed on the firm and its proprietor including confiscation of 1 kg gold with an option of redemption. Further directions were also issued.

6. This order was challenged before CESTAT, Allahabad on various grounds. Vide order dated 17th November, 2021, a pre deposit amount was directed to be paid by the CESTAT, Allahabad.

7. In the meantime, the decision in ***Canon India Pvt. Ltd. v. Commissioner of Customs, 2021 (18) SCC 563*** (hereinafter '*Canon-I*') was issued, holding that the DRI officials do not have jurisdiction to conduct search and seizure as they are not proper officers. The Petitioner, who was directed to make pre-deposit relied upon ***Canon-I*** and withdrew the appeal before the CESTAT, Allahabad with liberty to approach this Court by way of a writ petition.

8. Recently, ***Canon-I*** has been reviewed by the Supreme Court in ***Review Petition (Civil) No. 400/2021*** titled '***Commissioner of Customs v. M/s Canon India Private Limited***', ('*Canon-II*'), the following findings have been rendered by the Supreme Court:

***“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. ”

9. In view of the decision of the Supreme Court in **Canon-II**, the Defect Diary No. 70578/2019 is restored to its original number before CESTAT, Allahabad. Accordingly, the matter is remanded back to CESTAT in terms of para 168(vi)(c).

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

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

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

APRIL 8, 2025/nd/ss