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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 7th August, 2025

+ W.P.(C) 13527/2019

TARA INTERNATIONAL

.....Petitioner

Through: Mr. Akhil Krishan Maggu, Adv.

versus

DIRECTORATE OF REVENUE INTELLIGENCE (DRI)
GOVERNMENT OF INDIA AND ORS.RespondentsThrough: Mr. Aditya Singla, SSC, CBIC, with
Mr. Ritwik Saha, and Mr. Akhil
Sharma, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed, *inter alia*, challenging the impugned Demand-cum-Show Cause Notice dated 30th July, 2019 (hereinafter “*impugned SCN*”) issued by the Directorate of Revenue Intelligence (hereinafter “*DRI*”).
3. The brief facts of the case are that the Petitioner had imported ‘*cashew husk*’ against various bills of entries and had availed exemption under **Notification No. 46/2011-Customs** dated 1st June, 2011 (hereinafter “*subject notification*”) between the years 2016 to 2018. In 2018, an investigation was conducted by the DRI officials in respect of the said import and various statements of the Petitioner were also recorded. It is stated that the Petitioner had requested the DRI officials to conduct a consultation in terms of the Pre-Notice Consultation Regulations, 2018 (hereinafter “*the Regulations*”) issued by the Central Board of Indirect Taxes. The Petitioner is aggrieved by the fact



that despite the said request DRI had issued the impugned SCN. The stand of the DRI was that the Petitioner was not entitled to exemption under the subject notification. Thereafter, the Petitioner is stated to have written several letters seeking relevant documents as also had made representations seeking withdrawal of the impugned SCN on the ground that the consultation in terms of the Regulations was not undertaken. However, since no action was taken, the present writ petition was filed seeking the following prayers:

“On the basis of the aforementioned premises, it is respectfully prayed, that this Hon'ble Court may be pleased to direct the Respondents through:

(a) A Writ of Certiorari quashing the impugned Show-cause Notice dated 30.07.2019 issued by the Respondent No.2 to be adjudicated by Respondent No.3;

(b) A Writ of Mandamus directing the Respondents R1,R2 & R3 to follow the law and procedure in respect of pre-show cause consultation with the Petitioner prior to initiation of the lis by way of a formal show-cause notice;

(c) A writ of Prohibition restraining the Respondent No.3 from proceeding with the impugned Show-cause Notice, during the pendency of the present Writ Petition.

(d) A writ of Mandamus directing Respondent No. 4 to ensure execution of Para No. 5 of its master circular No. 1053/2/2017-CX dated 10-3-17 and Para 3(1) of Notification No.29/2018-Customs(N.T.) dated 2.04.2018 by the Respondents R1,R2 & R3.

(e) Ad-interim orders in terms of prayer (a),(b),(c) and (d) above and

(f) Any further or other relief as this Hon'ble Court may deem fit and proper as per the facts and circumstances of the case.”

4. In the writ petition, notice was issued on 28th December, 2019. Thereafter, the present petition was listed on 13th July, 2022 along with several matters wherein an issue was raised in respect of the decision of the Supreme Court in *Canon India Private Limited v. Commissioner of Customs, 2021 SCC*



Online SC 20 (hereinafter “*Canon - I*”) wherein it was held that the DRI officials are not ‘*proper officers*’ under Section 28 of the Customs Act, 1962. The Court was informed that a review petition against the said decision was pending before the Supreme Court.

5. Accordingly, the Petitioner had filed an application being ***CM Appl. 39178/2022*** seeking amendment of the present writ petition. The Petitioner had raised another ground of challenge to the impugned SCN *i.e.*, that the DRI officials are not proper officers for issuance of the impugned SCN. The said application was allowed on 6th September, 2022.

6. It is also noted that during pendency of the present petition the Order-in-Original has also been passed on 30th December, 2020. In terms of the said order, the exemption claimed by the Petitioner has been denied and along with demand for applicable customs duty, penalty has also been imposed against the Petitioner.

7. The Court has perused the amended writ placed on record by the Petitioner and the two main grounds raised therein are:

- i. That the DRI officials are not proper officers; and
- ii. That the consultation process to be conducted prior to issuance of the impugned SCN, in terms of the Regulations, was not conducted and hence the impugned SCN itself deserves to be quashed.

8. In support of the second ground the Petitioner has placed upon the decision of the Co-ordinate Bench of this Court in ***Amadeus India Pvt. Ltd. v. Principal Commissioner, Central Excise, Service Tax and Central Tax Commissionerate, W.P.(C) 914/2019***.

9. The Court has heard the parties and perused the documents placed on record. The issue whether DRI officials are ‘*proper officers*’ or not was initially



decided by the Supreme Court in *Canon-I (supra)*. Thereafter, a review against *Canon-I* was considered by the Supreme Court and the decision was passed in *Review Petition No. 400 of 2021* titled *Commissioner of Customs vs. M/s. Canon India Pvt. Ltd.* (hereinafter “*Canon-II*”). In *Canon-II*, it has been categorically held that the DRI officials would be ‘proper officers’ for purposes of Section 28 of the Customs Act. The relevant portion of the judgment in *Canon-II* reads 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 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) 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 appeal 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."

10. Thus, in view of the above, this issue stands settled and no longer requires be adjudicated.

11. Coming to the second issue raised by the Petitioner in respect of pre-notice consultation under the Regulations, the Order-in-Original has been passed during the pendency of the present writ. In the said Order-in-Original, the contention of the Petitioner in respect of the pre-notice consultation process has been considered in the following terms:

"11. The Noticee vide their letter dated 06.11.2019 referred their earlier correspondence dated



26/08/2019, 28/08/2019 & 21/10/2019 (all addressed to the DRI) and requested for 'pre show cause notice consultations' by the Adjudicating Authority as mandatory, prior to issue of SCN and drew attention to The Hon'ble Delhi High Court's decision in the case of Amadeus India Pvt. Ltd. vs. Principal Commissioner Central Excise vide order in W.P. (C) 914/2019 & CM APPL. 4124/2019 dated 08.05.2019, wherein the Hon'ble HC has set aside the SCN issued without pre SCN consultation being contrary to the instructions of the CBEC. In view of TARC Recommendation and the decision of Hon'ble HC (supra), the notice requested the Additional Director General, DRI to withdraw the present SCN and forward the case to the proper Authority of Customs through which the goods were imported for Pre Show Cause Notice consultation.

[...]

24. The noticee has contended that the SCN has been issued without pre SCN consultations mandated as per various instructions of CBEC/CBIC in compliance of Tax Administration Reform Commission's (TARC) recommendation. I find this argument without any legal backing, as the present show cause notice has not been issued under section 28(1) but has been issued under Section 28(4) of Customs Act 1962, invoking extended period, and under said Section 28(4) there is no provision for pre SCN consultation."

As can be seen from the above, a clear reasoning has been given by the Adjudicating Authority as to why the pre-SCN consultation notice is not to be given.

12. This Order-in-Original which has been passed by the Adjudicating Authority is an order which is appealable before the Customs, Excise & Service Tax Appellate Tribunal (hereinafter "CESTAT") under Section 129A of the Customs Act. Thus, if the Petitioner is aggrieved by the said order, it is free to avail of the appellate remedy.

13. The issues raised on the question of jurisdiction relating to DRI officials



being the proper officer has been adjudicated by the Supreme Court in ***Canon-II***. Insofar as the issue *qua* pre-notice consultation process under the Regulations is concerned, the Petitioner is free to raise the same before the CESTAT.

14. The appeal may now be filed challenging the Order-in-Original dated 30th December, 2020 before CESTAT, on or before 30th September, 2025 in which case it shall not be dismissed on the ground of limitation and shall be adjudicated on merits.

15. It is made clear that the period during which the present writ petition remained pending, benefit of the same shall be given to the Petitioner.

16. Further, the pre-deposit to be made by the Petitioner before the CESTAT shall be strictly in terms of Section 129E(i) of the Customs Act.

17. The petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

18. All rights and contentions of the parties are left open.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

AUGUST 7, 2025/kp/msh