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

Date of Decision: 16th September, 2025

\+ **CUSAA 157/2025, CM APPL. 58587/2025 & CM APPL. 58588/2025**

M/S SAP INDIA PRIVATE LIMITED .....Appellant

Through: Mr. Kunal Kapoor, Mr. Yatharth Tripathi, Advs.

versus

COMMISSIONER OF CUSTOMS (IMPORT) NEW CUSTOMS HOUSE NEAR IGI AIRPORT NEW DELHI .....Respondent

Through: Mr. Aakarsh Srivastava, SSC.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 58588/2025 (for exemption)

2. Allowed, subject to all just exceptions. The application is disposed of.

CM APPL. 58587/2025 (for delay)

3. This is an application seeking condonation of delay in filing the appeal challenging the impugned order of Customs Excise & Service Tax Appellate Tribunal *(hereinafter 'CESTAT').*

4. The reasons given in the application have been perused by the Court. Similar cases have already been considered, and delay has been condoned in the same. Accordingly, the delay of 2795 days in filing the present appeal is condoned.

5. The application is disposed of.

CUSAA 157/2025

6. This appeal has been filed by the Appellant under Section 130 of the

Customs Act, 1962, challenging the impugned order passed by Customs Excise and Service Tax Appellate Tribunal *(hereinafter 'CESTAT')* dated 17th July 2017 by which the CESTAT had remanded the matters to the Adjudicating Authority to await the decision in ***Union of India & Ors. vs. Mangli Impex Limited, Special Leave Petition (C) No. 20453 of 2016.***

7. Similar appeals have already been considered by this Court in a number of matters. The decision on '*proper officer'* has now been rendered by the Supreme Court in ***Canon India (P) Ltd. v. Commr. of Customs, (2021) 18 SCC 563***, (hereinafter, '*Canon-I*') wherein it was held that the Directorate of Revenue Intelligence (hereinafter, *'DRI'*) officials are not *'proper officers'* under Section 28 of the Customs Act, 1962. 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, 1962. 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 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."

8. In view thereof, the question of proper officer no longer remains to be adjudicated. Accordingly, the appeal would have to be heard by the CESTAT on merits.

9. Such a course of action has been adopted by this Court in several other appeals, including in ***Commissioner of Customs vs. Sanjay Sachdeva (CUSAA 173/2022), Commissioner of Customs vs. Rohit Kumar Chartered Engineer, (CUSAA 175/2022), Commissioner of Customs vs. Do Throng Hieu and Other, (CUSAA 176/2022)*** and various other appeals.

10. Accordingly, this appeal is allowed. The impugned order is aside. The respective appeal listed below is restored to their original positions before CESTAT.

11. The details of the said appeals are as under:

CUSAA No.	Impugned order date	CESTAT Appeal No.
CUSAA 157/2025	17th July, 2017	C/50641/2014-Cus.

12. The above appeal as listed before CESTAT shall now be decided on merits.

13. List before CESTAT on 8th October 2025.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

SEPTEMBER 16, 2025
Rahul/Ck