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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CUSAA 169/2025**

SARVATRA INTERNATIONALAppellant

Through: Mr. Prem Ranjan Kumar, Adv.

versus

THE PRINCIPAL COMMISSIONER OF
CUSTOMS

.....Respondent

Through: Mr. Anurag Ojha, SSC with Mr. Dipak
Raj, Mr. Gomini Rajpur, Mr. Ram
Avtar Neem and Ms. Zuby Naaz,
Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

ORDER

% **19.11.2025**

1. This hearing has been done through hybrid mode.

CM APPL. 72579/2025

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

CM APPL. 72578/2025

3. This is an application for seeking condonation of delay in filing the appeal. For the reasons stated in the application, the delay is condoned. The application is disposed of.

CUSAA 169/2025

4. The present appeal has been filed by the Appellant under Section 130 of the Customs Act, 1962 assailing two orders passed by Customs, Excise & Service Tax Appellate Tribunal (*hereinafter*, 'CESTAT') dated 29th January, 2025 and 22nd August, 2025 (*hereinafter*, 'impugned orders').

5. A brief background of the Appellant's case is that four consignments



of Polyester Knitted Fabrics were imported by Appellant in February/March, 2009. The concerned officials of Special Investigation and Intelligence Branch, Commissioner of Customs, ICD Tughlakabad, New Delhi (*hereinafter*, 'SIIB') had examined the goods and came to the conclusion that the goods were not Polyester Knitted Fabrics, but were rather Polyester Cut Pile Fabrics.

6. The SIIB had then got the samples tested and pursuant thereto, the goods were seized under Section 110 of the Customs Act, 1962. Thereafter, the goods bearing Bill of Entry No. 769991 were provisionally released subject to payment of Customs Duty of Rs. 47,89,393/- and furnishing of Indemnity Bond of Rs. 52,03,499/- with Bank Guarantee of 25% of the value of the said goods.

7. Similarly, in respect of the Bill of Entry No. 776711 also, the provisional release was permitted, subject to payment of Rs. 15,59,363/- and furnishing of Indemnity Bond of Rs. 16,94,191/- with Bank Guarantee of 25% of the Bond amount.

8. Further, the statement of the proprietors of the Petitioner was also recorded, in terms of Section 108 of the Customs Act, 1962.

9. On the basis of the investigation conducted, Show Cause Notice dated 15th July, 2009 was issued to the Appellant, to which a reply dated 28th August, 2009 was also filed by the Appellant. The Appellant had also requested for re-testing of the samples, before the Adjudicating Authority.

10. The Adjudicating Authority decided the matter *vide* Order-in-Original dated 21st April, 2010. The said order was appealed to the CESTAT.

11. The CESTAT *vide* order dated 11th October, 2017 had remanded the matter to the Adjudicating Authority, in view of the decision of this Court in



Mangli Impex v. Union of India 2016 SCC Online Del 2597.

12. The order dated 11th October, 2017 passed by the CESTAT was challenged by the Department and *vide* order dated 05th November, 2019, this Court directed as under:

“6. Accordingly, following the order passed in the case of Vipul Overseas (supra), the impugned order dated 11.10.2017 passed by the CESTAT is quashed and set aside. Customs Appeal No. C/352/2010 is restored to its original position, for the CESTAT to dispose the same afresh, uninfluenced by the decision in the case of Mangli Impex (supra).

7. Before proceeding to decide the captioned appeal, the CESTAT shall ensure service of notice upon the respondent.

8. The present appeal is allowed and disposed of on the above terms alongwith the pending application.”

13. Upon remand by this Court, the matter is stated to be pending before CESTAT, and was awaiting the decision of the Supreme Court in ***Review Petition No. 400 of 2021*** titled ***Commissioner of Customs vs. M/s. Canon India Pvt. Ltd.***

14. The decision in ***Review Petition No. 400 of 2021*** titled ***Commissioner of Customs vs. M/s. Canon India Pvt. Ltd.*** was rendered on 06th November, 2024, where the Supreme Court held that the SIIB and DRI Officers are proper officers in the following terms:

“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.”

15. Thereafter, the matter was listed on 07th January before the CESTAT and on 6th January, an adjournment was sought by the Petitioner/Appellant. However, the said adjournment request was not acceded to and the impugned order dated 29th January, 2025 was passed.

16. The Appellant then sought recalling of the impugned order dated 29th January, 2025, however, the same was also rejected *vide* the impugned order dated 22nd August, 2025. In the said impugned order, the CESTAT also recorded that the Appellant failed to even file the written submissions.

17. The argument on behalf Mr. Prem Ranjan Kumar, Id. Counsel for the Appellant is two fold:

(i) That an opportunity may be granted to the Appellant, before CESTAT, to enable him to make his submissions, so that CESTAT can consider the matter comprehensively on merits.

(ii) That the written submissions were not filed, due to an inadvertent mistake by the Appellant.

18. The Court has considered the matter. The Appeals from CESTAT are



entertainable only if a *substantial question of law* is being raised.

19. In the present case, the question as to whether re-testing of the sample of goods ought to be permitted, and whether there is any merit in the application for it to be moved for retesting, would have to be considered by the CESTAT on merits. The same does not find any mention or discussion in the impugned orders.

20. There is no doubt that there has been laxity on behalf of the Appellant as well, by not filing the written submissions and by repeatedly seeking adjournments before the CESTAT.

21. Be that as it may, in order to meet the ends of justice, this Court is of the opinion that an opportunity can be granted to the Appellant to appear before CESTAT, and argue its Appeal on merits, after filing the written submissions. In the connected matter, **CUSAA 165/2025** titled “***Sarvatra International Vs. The Principal Commissioner of Customs***” Rs.25,000/- costs has already been imposed on the Petitioner.

22. The Appellant shall appear on 15th December, 2025 before CESTAT.

23. After filing the written submissions, the matter shall be heard on merits, and orders shall be passed in accordance with law.

24. All rights and remedies of the parties are left open.

25. The petition is disposed of in these terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

NOVEMBER 19, 2025/kp/ck