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

Date of Decision: 16th May, 2025

+ **CUSAA 131/2022**

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT AIR
CARGO COMPLEX NEW DELHIAppellant

Through: Mr. Anurag Ojha, Senior Standing
Counsel with Mr. Subham Kumar and
Mr. Dipak Raj, Advocates.

versus

TOYOTA MATERIAL HANDLING INDIA PRIVATE LIMITED

.....Respondent

Through: Mr. Yogendra Aldak and Mr. Kunal
Kapoor, Advocates.

46

+ **CUSAA 134/2022 & CM APPL. 40459/2022**

PR. COMMISSIONER OF CUSTOMS (IMPORT) AIR CARGO
COMPLEX, NEW DELHIAppellant

Through: Mr. Anurag Ojha, Senior Standing
Counsel with Mr. Subham Kumar and
Mr. Dipak Raj, Advocates.

versus

SUNIL KUMAR SHARMARespondent

Through: Mr. Yogendra Aldak and Mr. Kunal
Kapoor, Advocates.

47

+ **CUSAA 37/2023**

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT AIR
CARGO COMPLEX NEW DELHIAppellant

Through: Mr. Anurag Ojha, Senior Standing
Counsel with Mr. Subham Kumar and
Mr. Dipak Raj, Advocates.



versus

TOYOTA MATERIAL HANDLING INDIA PRIVATE LIMITED

.....Respondent

Through: Mr. Yogendra Aldak and Mr. Kunal Kapoor, Advocates.

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 appeals under Section 130 of the Customs Act 1962 are filed by the Appellant assailing final order nos. 50061-50063/2022 dated 24th January, 2022 (hereinafter '*impugned orders*') passed by Customs, Excise & Service Tax Appellate Tribunal, New Delhi (hereinafter '*CESTAT*') in Customs Appeals No. 51136, 50948 and 50949 of 2020. *Vide* the impugned orders the CESTAT had followed the decision in Canon India Pvt. Ltd. v. Commissioner of Customs, 2021 (18) SCC 563 (hereinafter '*Canon-I*') and had held that the DRI officers would not be proper officers for the purpose of Customs Act, 1962.
3. However, the review petition against Canon-I being Review Petition (Civil) No. 400/2021 was pending before the Supreme Court when the impugned orders were passed. Even an adjournment was sought on the said ground, however the same was rejected by the CESTAT. The relevant paras are extracted hereunder :-

*“8. It would thus be seen that the Supreme Court in **Canon India** held that the entire proceedings initiated by the Additional Director General, DRI by issuance of a show cause notice was without any authority of law and was, therefore, liable to be set aside.*



16. *The show cause notice dated 30.01.2009 issued by the Principal Additional Director General, DRI under Section 28 of the Customs Act is, therefore, without jurisdiction as the said officer was not **the proper officer** and, therefore all proceedings undertaken by the Department on this show cause notice is, therefore, without jurisdiction. The order dated 29.05.2020 passed by the Principal Commissioner, therefore, cannot be sustained.*

17. *The submission advanced by the learned authorised representative appearing for the Department that the hearing of this appeal should be deferred till the review petition filed by the Department in **Canon India** is decided was considered by the Karnataka High Court in **Mohan C. Suvarna** and rejected.*

18. *In this view of the matter, it would not be necessary to examine the issues raised on the merits of the appeal.*

19. *Thus, Customs Appeal No. 50948 of 2020 and 50949 of 2020 filed by the assessee are allowed and Customs Appeal No. 51136 of 2020 filed by the Department is dismissed.”*

4. The assessee’s appeals were consequently allowed.

5. As of today, the decision in the Review Petition (Civil) No. 400/2021 titled ‘Commissioner of Customs v. M/s Canon India Private Limited’, (hereinafter, ‘Canon-II’) has now been rendered by the Supreme Court, wherein the Supreme Court has categorically held that DRI Officers would be ‘proper officers’ for the purposes of the Customs Act, 1962.

6. The observations in Canon-II 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 above, the matter would have to be relegated to CESTAT for re-adjudication on merits. Therefore ***Customs Appeal Nos. 50948/2020*** and ***50949/2020*** and ***51136/2020*** are restored to their original positions before CESTAT. Parties to appear before the CESTAT on 16th July, 2025.
8. The matter shall now proceed on merits after taking into consideration the decision in ***Canon-II***.
9. The appeals are allowed in the above terms.
10. The appeals are disposed of. Pending application(s), if any, also stand disposed of.

**PRATHIBA M. SINGH
JUDGE**

**RAJNEESH KUMAR GUPTA
JUDGE**

MAY 16, 2025/nd/Ar.