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

Date of decision: 6th October, 2025

+ **CUSAA 15/2021 & CM APPL. 10496/2021**

COMMISSIONER OF CUSTOMS, INLAND CONTAINER DEPOT
(EXPORT) TUGHLAKABAD, DELHIAppellant

Through: Mr. Harpreet Singh, SSC with Ms.
Suhani Mathur, Mr. Jai Ahuja, Mr.
Sanidhya Sharma, Mr. Akshya Saxena
& Ms. Shivali Saxena, Advs.

versus

SUDHIR GULATI

.....Respondent

Through:

Mr. Bharat Bhushan, Ms. Nidhi Gupta
& Mr. Anujay Mishra, Advs.

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 appeal has been filed by the Appellant under Section 130 of the Customs Act, 1962, *inter alia*, challenging the impugned final order dated 24th July, 2017 (hereinafter, '*impugned order*') passed by Customs, Excise & Service Tax Appellate Tribunal (hereinafter, '*CESTAT*') wherein, the issue relating to Directorate Of Revenue Intelligence (hereinafter, '*DRI*') Officers being '*proper officers*' or not, has been considered.
3. The impugned order was passed following the order bearing no. 54480-54514/2017 passed by CESTAT on 29th June, 2017 in ***Jetlite(India) Ltd. & Ors. Vs. Commissioner of Customs (I&G), New Delhi & Ors.***, wherein it had directed as under:



“3. In this connection, we note that similar issues have been dealt with in various cases by the Tribunal recently. It is held that the matters have to be remanded back to the original authority for a decision after the legal issue is settled by the Hon'ble Supreme Court. The decision of the Tribunal in one such case vide Final Order No. 53941-53942 of 2017 dated 12/06/2017 is reproduced below:

*"During the course of arguments, the appellant's counsel has raised the preliminary plea that the show cause notice in the instant case was issued by the Directorate of Revenue Intelligence(DRI). The Hon'ble High Court of Delhi in the case of **Mangali Impex Ltd. Vs. UOI dated 03.05.2016** has observed that the DRI is not competent to issue the show cause notices. Hence, the request is being made to set aside the present proceedings where the notice was issued by the DRI.*

2. On the other hand, Learned Counsel for the Department has justified the notice issued by DRI and made a request to decide the matter on merit.

3. We have heard both the parties at length and gone through the material available on record.

*4. From the record, it appears that the preliminary issue emerges in the present appeal is regarding the jurisdiction of the DRT Officers to Issue the show cause notice under the Customs Act. The assessee-Appellant had taken a stand that in terms of the Hon'ble Apex Court decision in the case of **Commissioner of Customs vs. Sayed Ali, 2011 (265) 17 (S.C)**. the DRI officers were not proper officers in terms of section 2(34) of the Customs Act, 1962.*

5. It is also seen that after the declaration of law by the Hon'ble Supreme Court (Supra), the provisions of section 28 of the Customs Act,



1962 were, amended with effect from 08.04.2011 vide Finance Act, 2011.

6. It is also noticed that in order to overcome the situation created by the judgment of Hon'ble Supreme Court in the case of Sayed Ali (*supra*), Notification No. 44/2011-Cus (NT), dated July 5, 2011 was issued by the CBEC, assigning the functions of the proper officer to various officers (Including Additional Director General, DRI) mentioned in the notification, for the purposes of Section 28 of the Act. Thus, w.e.f. July 6 2011, the Additional Director General, DRI was prospectively appointed as proper officer for the purpose of Section 28 of the Customs Act, Hence, from 06/07/2011 ADG-DRI has been empowered to issue demand notice under Section 28.

7. Subsequently, sub-Section (11) was inserted under Section 28 of the Customs (Amendment and Validation) Act, 2011 dated 16/09/2011, assigning the functions of proper officers to various DRI officers with retrospective effect.

8. Later on, i.e. for the period subsequent to the amendment, the matter i.e. the DRI officers having the proper jurisdiction to issue the SCN or not had come up before **the Hon'ble Delhi High Court in the case of Mangali Impex Ltd. vs. Union of India [2016 (335) E.L.T 605 (Del)]** and the High Court Inter-alia, held that even the new inserted Section 28 (11) does not empower either the officers of DRI or the DGCEI to issue the SCN for the period prior to 08/04/2011 Thus, It is seen that the said order of the Hon'ble Delhi High Court is in favour of the assessee and against the Revenue.

9. However, It is further- noticed that the said Issue was also the subject matter of Hon'ble Mumbai High Court in the case of **Sunil Gupta**



vs. Union of India [2015 (315) E.L.T. 167 (Bom) as also of the Hon'ble High Court of Telangana and Andhra Pradesh in the case of Vuppalamritha Magnetic Components Ltd. vs. DRT (Zonal Unit), Chennai [2017 (345) E.L.T. 161 (AP)], taking a view contrary to the one taken by the Hon'ble Delhi High Court.

10. Being conflicting decisions of various High Courts (Supra), finally the matter reached to Hon'ble Supreme Court who on 07/10/2016 granted the stay of operation of the judgment passed by the High Court of Delhi, Thus the issue is sub-judice before the Hon'ble Supreme Court [2016-TIOL-173-SC-CUS/2016 (339) ELT A 49 (SC)]

*11. It may be mentioned that recently, the Hon'ble High Court of Delhi In the case of BSNL Vs. UOI vide writ petition no. C/4438/2017 and CM No. 19387/2017 has dealt with the identical issue where the notice Was also issued by DRI. The Hon'ble High Court of Delhi has considered the judgment in the case of **Mangali Impex Ltd. Vs. UOI** which is stayed by the Hon'ble Supreme Court reported as **2016 (339) E.L.T. A 49 (SC)**. Finally the Hon'ble High Court has granted liberty to the petitioner by observing that "petitioner is permitted to review the challenge depending on the outcome of the appeals filed by the UOI in the Supreme 'Court against the judgment of the Court in the case of Mangali Impex Ltd. "*

*12. By following the ratio laid down by the Hon'ble High Court of Delhi In the case of **BSNL (Supra)** as well as by considering totality of facts and circumstances, we set aside the impugned order and remand the matter to the original adjudicating authority to first decide the issue of jurisdiction after the availability of*



Hon'ble Supreme Court decision in the case of Mangali Impex Ltd. and then on merits of the case but by providing an opportunity to the assessee of being heard. Till the final decision, the status quo will be maintained.

13. In the result, appeals filed by the assessee are allowed by way of remand".

4. In line with the above decision of the Tribunal, we remand the matters for fresh decision."

4. In the impugned order, the CESTAT has merely followed its own earlier order in ***Jetlite (supra)***. The impugned order dated 24th July 2017 reads as under:

"3. In view of the fact that the matter adjudicated in the present impugned order against the main importer, M/s Sri Sai Sathvik Impex (P) Ltd. has already been set aside by the Tribunal, we are of the view that these appeals should also be allowed in line with the order dated 29.6.2017 passed by the Tribunal. Accordingly, we remand the matter to the adjudicating authority for a fresh decision. The appeals are allowed by way of remand"

5. The question that was raised in ***Mangali Impex Ltd. Vs. Union of India [2016(335) E.L.T. 605 (Del.)]*** finally came to be decided by the Supreme Court in ***Canon India Pvt. Ltd. v. Commissioner of Customs, 2021 (3) DWI 384*** (hereinafter '*Canon-I*'), initially, where the Supreme Court held as under:

"14. It is well known that when a statute directs that the things be done in a certain way, it must be done in that way alone. As in this case, when the statute directs that "the proper officer" can determine duty not levied/not paid, it does not mean any proper officer but that proper officer alone. We find it completely impermissible to allow an officer, who has not passed the original order of assessment, to re-open the assessment on the grounds that the duty was not paid/not levied, by the original



officer who had decided to clear the goods and who was competent and authorised to make the assessment. The nature of the power conferred by Section 28 (4) to recover duties which have escaped assessment is in the nature of an administrative review of an act. The section must therefore construed as conferring the power of such review on the same officer or his successor or any other officer who has been assigned the function of assessment. In other yards., an officer who did the assessment, could only undertake re assessment [which is involved in Section 28 (4)].

15. It is obvious that the re-assessment and recovery of duties i.e. contemplated by Section 28(4) is by the same authority and not by any superior authority such as Appellate or Revisional Authority. It is, therefore, clear to us that the Additional Director General of DRI was not "the" proper officer to exercise the power under Section 28(4) and the initiation of the recovery proceedings in the present case is without any jurisdiction and liable to be set aside."

6. A review petition was filed against the order in *Canon-I vide Review Petition (Civil) No. 400/2021* titled *Commissioner of Customs v. M/s Canon India Private Limited* in which the Supreme Court held as under:

“168. In view of the aforesaid discussion, we conclude that:

(i) DRI officers came to be appointed as the officers of customs vide Notification No. 19/90-Cus (N.T.) dated 26.04.1990 issued by the Department of Revenue, Ministry of Finance, Government of India. This notification later came to be superseded by Notification No. 17/2002 dated 07.03.2002 issued by the Department of Revenue, Ministry of Finance, Government of India, to account for administrative changes.

(ii) The petition seeking review of the decision in *Canon India (supra)* is allowed for the following reasons:

a. Circular No. 4/99-Cus dated 15.02.1999 issued by the Central Board of Excise & Customs, New Delhi which empowered the officers of DRI to issue show cause notices under Section 28 of the Act, 1962 as well as Notification No. 44/2011 dated 06.07.2011 which assigned the functions of the proper officer for the purposes of Sections 17 and 28 of the Act, 1962 respectively to the officers



of DRI were not brought to the notice of this Court during the proceedings in **Canon India** (supra). In other words, the judgment in **Canon India** (supra) was rendered without looking into the circular and the notification referred to above thereby seriously affecting the correctness of the same.

b. The decision in **Canon India** (supra) failed to consider the statutory scheme of Sections 2(34) and 5 of the Act, 1962 respectively. As a result, the decision erroneously recorded the finding that since DRI officers were not entrusted with the functions of a proper officer for the purposes of Section 28 in accordance with Section 6, they did not possess the jurisdiction to issue show cause notices for the recovery of duty under Section 28 of the Act, 1962.

c. The reliance placed in **Canon India** (supra) on the decision in **Sayed Ali** (supra) is misplaced for two reasons – first, **Sayed Ali** (supra) dealt with the case of officers of customs (Preventive), who, on the date of the decision in **Sayed Ali** (supra) were not empowered to issue show cause notices under Section 28 of the Act, 1962 unlike the officers of DRI; and secondly, the decision in **Sayed Ali** (supra) took into consideration Section 17 of the Act, 1962 as it stood prior to its amendment by the Finance Act, 2011. However, the assessment orders, in respect of which the show cause notices under challenge in **Canon India** (supra) were issued, were passed under Section 17 of the Act, 1962 as amended by the Finance Act, 2011.

(iii) This Court in **Canon India** (supra) based its judgment on two grounds:

(1) the show cause notices issued by the DRI officers were invalid for want of jurisdiction; and (2) the show cause notices were issued after the expiry of the prescribed limitation period. In the present judgment, we have only considered and reviewed the decision in **Canon India** (supra) to the extent that it pertains to the first ground, that is, the jurisdiction of the DRI officers to issue show cause notices under Section 28. We clarify that the observations made by this Court in **Canon India** (supra) on the aspect of limitation have neither been considered nor reviewed by way of this decision. Thus, this decision will not disturb the findings of this Court in **Canon India** (supra) insofar as the issue of limitation is concerned.



(iv) The Delhi High Court in **Mangali Impex** (supra) observed that Section 28(11) could not be said to have cured the defect pointed out in **Sayed Ali** (supra) as the possibility of chaos and confusion would continue to subsist despite the introduction of the said section with retrospective effect. In view of this, the High Court declined to give retrospective operation to Section 28(11) for the period prior to 08.04.2011 by harmoniously construing it with Explanation 2 to Section 28 of the Act, 1962. We are of the considered view that the decision in **Mangali Impex** (supra) failed to take into account the policy being followed by the Customs department since 1999 which provides for the exclusion of jurisdiction of all other proper officers once a show cause notice by a particular proper officer is issued. It could be said that this policy provides a sufficient safeguard against the apprehension of the issuance of multiple show cause notices to the same assessee under Section 28 of the Act, 1962. Further, the High Court could not have applied the doctrine of harmonious construction to harmonise Section 28(11) with Explanation 2 because Section 28(11) and Explanation 2 operate in two distinct fields and no inherent contradiction can be said to exist between the two. Therefore, we set aside the decision in **Mangali Impex** (supra) and approve the view taken by the High Court of Bombay in the case of **Sunil Gupta** (supra).

(v) Section 97 of the Finance Act, 2022 which, inter-alia, retrospectively validated all show cause notices issued under Section 28 of the Act, nor is it manifestly arbitrary disproportionate and overbroad, for the reasons recorded in the foregoing parts of this judgment. We clarify that the findings in respect of the vires of the Finance Act, 2022 is confined only to the questions raised in the petition seeking review of the judgment in **Canon India** (supra). The challenge to the Finance Act, 2022 on grounds other than those dealt with herein, if any, are kept open.

(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.”

7. The question therefore, as to whether the DRI Officers are proper officers or not, stands decided in the decision in *Canon-II* and the decision in *Mangali Impex Ltd. (Supra)* would no longer be good law.
8. Under these circumstances, the present appeal deserves to be allowed and is accordingly allowed. The appeal no. being *C/434/2011* before CESTAT is restored to its original position.
9. Both parties shall appear before CESTAT. After considering the facts as to whether the main matter is before CESTAT or before the Adjudicating Authority, CESTAT shall pass appropriate orders in accordance with law.
10. List before CESTAT on 25th November, 2025.
11. The appeal is allowed. Pending applications, if any, are disposed of.

**PRATHIBA M. SINGH
JUDGE**

**SHAIL JAIN
JUDGE**

OCTOBER 6, 2025/pd/ck/hp