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

Date of Decision: 12th March, 2025

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W.P.(C) 9159/2021

M/S SKECHERS SOUTH ASIA PVT LTD Petitioner

Through: Mr. Yogendra Aldak, Mr. Karan Sachdev, Mr. Kunal Kapoor and Mr. Yatharth Tripathi, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Aditya Singla, SSC CBIC, Ms. Arya Suresh Nair & Ms. Medha Navami, Advs. (M: 7558898905)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. This writ petition is part of a batch of petitions that were filed under Article 226 of the Constitution of India, praying for a direction to quash refund proceedings initiated by the Directorate of Revenue Intelligence ('DRI') officials against the Petitioner/s on the ground that DRI officials lack jurisdiction under Section 28 of the Customs Act, 1962. Reliance was primarily placed on the Supreme Court decision in *Canon India Pvt. Ltd. v. Commissioner of Customs, 2021 (3) DWI 384* (hereinafter '*Canon-I*'), which had held that DRI Officials were not '*proper officers*' for the purpose of refund proceedings under Section 28. The operative portion of the *Canon-I (Supra)* reads 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.**”

3. However, vide order dated 25th September, 2025, the predecessor bench of this Court had adjourned this batch of matters *sine die* upon being informed that the Respondent/Department had preferred a review petition against the decision in ***Canon-I vide Review Petition (Civil) No. 400/2021*** titled ‘***Commissioner of Customs v. M/s Canon India Private Limited***’.



4. Today, the Court is informed that said review petition has been finally decided by the Supreme Court *vide* its judgment dated 7th November, 2024 and the operative portion reads 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.”

5. A common issue raised in all these writ petitions, including the present one, pertains to the jurisdiction of the DRI officials to issue show cause notices or pass adjudication orders. However there are various other issues that have been raised in some matters, which are not common across all petitions. Accordingly, in each of these matters, the Court will have to determine whether they are liable to be disposed of in light of the Supreme Court's decision in ***Canon - II (Supra)*** or if any outstanding issues remain to be adjudicated.

6. Accordingly, the Court proceeds to consider each of the matters.

7. In the present petition, the show cause notice dated 17th November 2017 issued by the DRI, Lucknow Zonal Unit is challenged. This SCN would be covered by directions given in paragraph 168(vi)(a) of the ***Canon-II (Supra)***.

8. Accordingly, the proceedings in the show cause notice under challenge dated 17th November 2017 shall now proceed before the



adjudicating authority in accordance with law.

9. Since the writ petition was pending for a long period, the Petitioner is afforded 60 days to file a reply to the show cause notice. The opportunity of a personal hearing shall be granted to the Petitioner and the show cause notice shall then be adjudicated.

10. The petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MARCH 12, 2025

dj/Ar.

(Corrected and Released on :21st March 2025)