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

Date of decision: 12th September 2025

+ **CUSAA 128/2025, CM APPL.55656/2025 & CM APPL.55657/2025**

M/S MICROSOFT CORPORATION (INDIA)
PRIVATE LTD.

.....Appellant

Through: Mrs. Nisha Bagchi, Sr. Adv. with Mr.
Pooja Sharma and Mr. Tarun Kumar
Sobti, Adv. (M:995821866)

versus

COMMISSIONER OF CUSTOMS (IMPORT)Respondent

Through: Mr. Gibran Naushad, SSC with Mr.
Harsh Singhal and Mr. Suraj Shekhar
Singh, Adv.

38 WITH

+ **CUSAA 143/2025, CM APPL.57838/2025 & CM APPL.57839/2025**

M/S MICROSOFT CORPORATION (INDIA)
PRIVATE LIMITED

.....Appellant

Through: Mrs. Nisha Bagchi, Sr. Adv. with Mr.
Pooja Sharma and Mr. Tarun Kumar
Sobti, Adv.

versus

COMMISSIONER OF CUSTOMS (IMPORT)Respondent

Through: Mr. Gibran Naushad, SSC with Mr.
Harsh Singhal and Mr. Suraj Shekhar
Singh, Adv.

39 AND

+ **CUSAA 144/2025, CM APPL.57857/2025 & CM APPL.57858/2025**

M/S MICROSOFT CORPORATION (INDIA)
PRIVATE LIMITED

.....Appellant

Through: Mrs. Nisha Bagchi, Sr. Adv. with Mr.
Pooja Sharma and Mr. Tarun Kumar



Sobti, Advs.

versus

COMMISSIONER OF CUSTOMS(IMPORT)Respondent
Through: Mr. Gibran Naushad, SSC with Mr.
Harsh Singhal and Mr. Suraj Shekhar
Singh, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL.55657/2025 in CUSAA 128/2025

CM APPL.57839/2025 in CUSAA 143/2025

CM APPL.57858/2025 in CUSAA 144/2025

2. Allowed, subject to all just exceptions. The applications are disposed of.

CM APPL.55656/2025 in CUSAA 128/2025

CM APPL.57838/2025 in CUSAA 143/2025

CM APPL.57857/2025 in CUSAA 144/2025

3. These are applications seeking condonation of delay in filing the appeals challenging the impugned order of Customs Excise & Service Tax Appellate Tribunal (*hereinafter* 'CESTAT').

4. The reasons given in the applications have been perused by the Court. Similar cases have already been considered, and delay has been condoned. Ld.Counsel for the Respondent submits that the delay in these cases is substantial and some costs ought to be imposed.

5. Accordingly, subject to costs of Rs.10,000/- being deposited in each of the matters with Delhi High Court Bar Association Natural Calamities Relief



Fund, as an assistance to victims of the Punjab Floods, within two weeks, delay in filing the appeals is condoned. The details of the said fund is as under:

- ***Account Name: DHCBA Natural Calamities Relief Fund.***
- ***UCO Bank Account No.: 15530110174395***
- ***IFSC Code: UCBA0001553***
- ***Branch Address: Delhi High Court***

6. The applications are disposed of.

CUSAA 128/2025

CUSAA 143/2025

CUSAA 144/2025

7. These appeals have been filed by the Appellants under Section 130 of the Customs Act, 1962, challenging the impugned orders passed by ‘CESTAT’ dated 3rd July 2017 and 30th June 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.***

8. 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."

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

10. 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.

11. Accordingly, these appeals are allowed. The impugned orders are set aside. The respective appeals listed below are restored to their original positions before CESTAT.

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

CUSAA No	Impugned Order Date	CESTAT Appeal No.
128/2025	3 rd July, 2017	C/53420/2015
143/2025	3 rd July, 2017	C/53188/2015
144/2025	30 th June, 2017	C/52563/2015

13. The above appeals as listed before CESTAT shall now be decided on merits.

14. The proof of deposit of costs shall be placed before CESTAT.

15. List before CESTAT on 8th October 2025.

**PRATHIBA M. SINGH
JUDGE**

**SHAIL JAIN
JUDGE**

SEPTEMBER 12, 2025/dk/sm