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

Date of decision: 22nd August, 2025

+ **CUSAA 29/2024**

COMMISSIONER OF CUSTOMSAppellant
Through: Mr. Harpreet Singh, SSC with Mr. Jai Ahuja, Mr. Sanidhya Sharma, Mr. Akshay Saxena and Ms. Shivali Saxena, Advs.

versus

SURENDRA SINGH MEHTARespondent
Through: None.

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WITH

+ **CUSAA 31/2024**

COMMISSIONER OF CUSTOMSAppellant
Through: Mr. Harpreet Singh, SSC with Mr. Jai Ahuja, Mr. Sanidhya Sharma, Mr. Akshay Saxena and Ms. Shivali Saxena, Advs.

versus

UTTAM SHARMARespondent
Through: None.

**CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 19530/2024 in CUSAA 29/2024

CM APPL. 20440/2024 in CUSAA 31/2024

2. These are applications for condonation of delay in filing the Customs



Appeals before this Hon'ble Court. For the reasons stated in the applications, the delay is condoned. The applications are disposed of.

CUSAA 29/2024

CUSAA 31/2024

3. These appeals challenge the impugned orders passed by the Customs Excise & Service Tax Appellate Tribunal (hereinafter “*CESTAT*”) dated 5th July, 2017 and 20th June, 2017 by which the CESTAT had remanded the matter to the Adjudicating Authority to await the decision in *Union of India & Ors. vs. Mangali Impex Limited, Special Leave Petition (C) No. 20453 of 2016*.

4. Notice was issued in *CUSAA 29/2024* on 3rd April, 2024 and in *CUSAA 31/2024*, however, none appears for the Respondent. The noting of the Registry is that notice was issued and the process fee was also filed but the Respondents were not residing at the respective addresses.

5. Similar appeals have already been considered by this Court in a number of matters. The decision on *proper officer* has 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 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. 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.”

6. 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.
7. 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 Enginner, (CUSAA 175/2022)***, ***Commissioner of Customs vs. Do Throng Hieu and Other, (CUSAA 176/2022)*** and various other appeals.
8. Accordingly, these appeals are allowed. The impugned order is set aside. The respective appeals before the CESTAT being ***C/3399/2012*** and ***C/590/2010*** are restored to the original position before CESTAT. The CESTAT shall decide the respective appeals as listed earlier on merits. Since none has appeared for the Respondents CESTAT may also issue notice to the Respondent for taking up the matter for final adjudication.
9. The present appeals are disposed of in the above terms. Pending



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application, if any, is also disposed of.

10. List before the CESTAT on 15th September, 2025.

**PRATHIBA M. SINGH
JUDGE**

**SHAIL JAIN
JUDGE**

AUGUST 22, 2025/kp/msh