

Commissioner Of Customs (Import) vs M/S N. V. Distilleries And Breweries Pvt ... on 8 April, 2025

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 08th April, 2025

+ CUSAA 87/2022 and CM APPLs. 33851/2022, 33853/2022

COMMISSIONER OF CUSTOMS (IMPORT) Appellant

Through: Mr. Harpreet Singh, SSC with Ms.

Suhani Mathur, Mr. Jai Ahuja & M

Akshay Saxena, Advs.

versus

M/S N. V. DISTILLERIES AND BREWERIES PVT. LTD.

..... Respondent

Through: Mr. Abhas Mishra & Ms. Neha

Singhal, Advs. (Mob:9811673672)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. In the present appeal, the Appellant has sought setting aside of the Final Order No. C/A/52064/2021-CU[DB] dated 06th December, 2021 in Customs Appeal No. 50064 of 2020 passed by the Customs Excise and Service Tax Appellate Tribunal ('CESTAT'), quashing the Order-in-Original dated 30th August, 2019.

3. While passing the Final Order, reliance was primarily placed by CESTAT upon the Supreme Court decision in Canon India Pvt. Ltd. v. Commissioner of Customs, 2021 (18) SCC 563 (hereinafter 'Canon-I'), which had held that DRI Officials were not 'proper officers' for the purpose of adjudication under Section 28 of the Customs Act, 1962.

4. However, the Canon-I decision has been reviewed in Review Petition (Civil) No. 400/2021 titled 'Commissioner of Customs v. M/s Canon India Private Limited', (hereinafter, 'Canon-II').

5. In Canon-II, the following findings have been rendered by the Supreme Court:

"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 of the decision of the Supreme Court in Canon-II, the present appeal is allowed and the Final Order passed by CESTAT is set aside. Accordingly, the matter

is remanded to CESTAT in terms of para 168(vi)(e) of Canon-II.

7. Customs Appeal No. 50064 of 2020 is restored to its original position before CESTAT and the same shall be adjudicated, on merits, in accordance with law.

8. Accordingly, list before the CESTAT on 22nd July, 2025.

9. A copy of this order be communicated to the Registrar, CESTAT.

10. The present appeal is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, JUDGE RAJNEESH KUMAR GUPTA JUDGE APRIL 8, 2025
Rahul/ss