

Shail Singhal vs Additional Director Directorate Of ... on 8 April, 2025

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

\$~85 & 89

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 08th April

+ W.P.(C) 13402/2021 & CM APPL. 42249/2021

SHAIL SINGHAL

..... Petiti

Through: Mr. Naveen Malhotra and Mr. Ritv
Malhotra, Adv.

versus

ADDITIONAL DIRECTOR DIRECTORATE OF REVENUE

INTELLIGENCE & ANR.

..... Respo

Through: Ms. Anushree Narain, SSC with Mr
Ankit Kumar, Adv.

Mr. Vikrant N. Goyal, Ms. Nish

Ms. Shivani, Mr. Nitin and Ms.

Divya, Adv.

Mr. Aditya Singla, SSC, CBIC w

Ms. Arya Suresh Nair, Adv. for

89

AND

+ W.P.(C) 446/2022 & CM APPL. 1246/2022

MS SUPER PLASTRONICS PVT LTD

..... Petiti

Through: Mr. Naveen Malhotra and Mr. Ritv
Malhotra, Adv.

versus

ADD DIRECTOR GENERAL DIRECTORATE OF REVENUE

INTELLIGENCE AND ANR

..... Respo

Through: Ms. Anushree Narain, SSC with Mr
Ankit Kumar, Adv.

Mr. Vikrant N. Goyal, Ms. Nish

Ms. Shivani, Mr. Nitin and Ms.

Divya, Adv.

Mr. Aditya Singla, SSC, CBIC w

Ms. Arya Suresh Nair, Adv. for

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. These two petitions, were filed under Article 226/227 of the Constitution of India seeking to quash the following Show Cause Notices issued by DRI officials:

(i) Show Cause Notice bearing reference number F. No.23/L7/20I 1-

DZU(Sppl & Svl)/2558 dated 20th May, 2015 in W.P.(C) 446/2022

(ii) Show Cause Notice bearing reference number F. No. DRI F. No. 50-D/19/2005-CI dated 14th June, 2007 in W.P.(C) 13402/2021

3. The primary contention that the Petitioners raise in these writ petitions is in respect of the jurisdiction of DRI Officials as 'proper officers' to conduct proceedings under Section 28 of the Customs Act, 1962. Reliance was placed on 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 initiating/conducting proceedings 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 above decision vide which DRI officials have now been recognised as 'proper officers' for initiating/conducting proceedings under Section 28 of the Customs Act, 1962, this petition would no longer survive. The show cause proceedings shall proceed in accordance with law.

7. A copy of this order be sent to the concerned Adjudicating Authority for necessary information.

8. The present petitions are disposed of. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, JUDGE RAJNEESH KUMAR GUPTA JUDGE APRIL 8, 2025/dk/Ar.