

Anil Saini vs Intelligence Officer, Dri ... 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,

+ W.P.(C) 4121/2022 & CM APPL. 12286/2022

SHRI AJAY SAINI

..... Peti

Through: Ms. Sangita Bhayana, Adv,
(M:9810026768)

versus

INTELLIGENCE OFFICER DRI

HEADQUARTERS & ANR.

..... Respond

Through: Mr. Satish Aggarwala, Sr. Standi
Counsel with Mr Gagan Vaswani,
Adv. for DRI.

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AND

+ W.P.(C) 4453/2022 & CM APPL. 13290/2022

ANIL SAINI

..... Petition

Through: Ms. Sangita Bhayana, Adv.
versus

INTELLIGENCE OFFICER, DRI

(HEADQUARTERS) & ANR.

..... Respond

Through: Mr. Satish Aggarwala, Sr. Standi
Counsel with Mr Gagan Vaswani,
Adv. for DRI.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India seeking to quash the Seizure Memo dated 25th August, 2018 has been issued by the Directorate of Revenue Intelligence (hereinafter 'DRI'), which has been challenged.

3. The primary contention that the Petitioner raises in this writ petition is in respect of the jurisdiction of DRI Officials as 'proper officers' to conduct proceedings under 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 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 the Customs Act, 1962. Hence, the present petitions have become infructuous.

7. Ld. Counsel for the Petitioner submits that the appeal is also pending before the Commissioner (Appeals), hence the said appeal shall go on in accordance with law.

8. Let a copy of this order be sent to the concerned Commissioner (Appeals) for necessary information.

9. Both the petitions are disposed of. All pending applications are also disposed of.

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