

Paresh K. Daftary vs Additional Director General ... 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 Apr

+ W.P.(C) 12553/2018 and CM APPL. 48736/2018

PARESH K DAFTARY

..... Petitioner

Through: Mr. Ashish Patil, Adv. for Ms.

Mathur, Adv. (Mob:9881144922)

versus

ADDITIONAL DIRECTOR GENERAL

..... Respondent

Through: Mr. Aditya Singla, SSC with Ms

Soren & Mr. Siddarth Saxena,

54

WITH

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W.P.(C) 13006/2018 and CM APPL. 50457/2018

PARESH K DAFTARY

..... Petitioner

Through: Mr. Ashish Patil, Adv. for Ms.

Mathur, Adv. (Mob:9881144922)

versus

ADDITIONAL DIRECTOR GENERAL

..... Respondent

Through: Mr. Aditya Singla, SSC with Ms.

Soren & Mr. Siddarth Saxena, Adv

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WITH

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W.P.(C) 13010/2018 and CM APPL. 50484/2018

PARESH K. DAFTARY

..... Petitioner

Through: Mr. Ashish Patil, Adv. for Ms.

Mathur, Adv. (Mob:9881144922)

versus

ADDITIONAL DIRECTOR GENERAL

..... Respondent

Through: Mr. Aditya Singla, SSC with Ms

Soren & Mr. Siddarth Saxena,

56

WITH

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W.P.(C) 1051/2020 & CM APPL. 3480/2020

PARESH K. DAFTARY

..... Petitioner

Through: Mr. Ashish Patil, Adv. for Ms.

Mathur, Adv. (Mob:9881144922)

versus

Signature Not Verified

Signed By:RAHUL

Signing Date:11.04.2025 W.P.(C) 12553/2018 & connected matters

14:38:50

ADDITIONAL DIRECTOR GENERAL (ADJUDICATION), DRI,
NEW DELHI AND ANR. Respond

Through: Mr. Aditya Singla, SSC with Ms.
Soren & Mr. Siddarth Saxena, Adv

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 present petitions have been filed by the Petitioner- Mr. Paresh K. Daftary seeking setting aside of the following Orders-in-Original:

☐ Order-in-Original No. 03/NKU(03)ADG(Adj.)/DRI/N.Delhi/2018-19 dated 3rd May, 2018 in W.P.(C) 12553 of 2018;

☐ Order-in-Original No. 02/NKU(02)ADG(Adj.)/DRI/N.Delhi/2018-19 dated 1st May, 2018 in W.P.(C) 13006 of 2018;

☐ Order-in-Original No. 05/NKU(05)ADG(Adj.)/DRI/N.Delhi/2018-19 dated 1st May, 2018 in W.P.(C) 13010 of 2018;

☐ Order-in-Original No. 04/NKU(04)ADG(Adj.)/DRI/N.Delhi/2018-19 dated 10th May, 2018 in W.P.(C) 1051 of 2018.

3. Issue notice. Mr. Singla, ld. Senior Standing Counsel accepts notice.
4. The present petitions were kept pending, awaiting the decision of Supreme Court 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. Hence, the said decision has now been rendered in which it has been settled that the DRI officers are proper officers. In view thereof, this issue no longer arises in the present petitions.

7. The above stated Orders-in-Original are all appealable orders in terms of Section 128 of the Customs Act, 1962.

8. Accordingly, the Petitioners are relegated to avail appellate remedies before the Commissioner (Appeals).

9. If the appeals are filed by 30th June, 2025, the same shall not be dismissed on the ground of being barred by limitation and shall be considered on merits.

10. Ld. Counsel for the Petitioner submits that the prayer of the Petitioner for permitting the Petitioner to cross-examine the persons whose statements have been recorded and relied upon in the Orders-in-Original, be granted.

11. Let the said submission be made before the Commissioner (Appeals) and the same be duly considered while deciding the Appeals.

12. All petitions are disposed of in these terms. All pending applications, if any, are also disposed of.

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