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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 16th May, 2025

+ **CUSAA 1/2023**

M/S ICON FIBRES FABRICS PVT LTD.Appellant

Through: Mr. Wattan Sharma, Advocate.

versus

COMMISSIONER OF CUSTOMS, DELHIRespondent

Through: Mr. Harpreet Singh, Senior Standing
 Counsel with Ms. Suhani Mathur, Mr.
 Jai Ahuja and Ms. Vanshika Kapoor,
 Advocates.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE RAJNEESH KUMAR GUPTA****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. This appeal is part of the batch of matters that were adjourned *sine die* awaiting the decision of the Supreme Court in **Review Petition No. 400/2021** titled **Commissioner of Customs v. M/s Canon India Private Limited**. The same has now been decided by the recent decision of the Supreme Court in **Review Petition No. 400/2021** titled **Commissioner of Customs v. M/s Canon India Private Limited** (hereinafter “*Cannon - II*”) pronounced on 7th November, 2024. The Supreme Court, *vide* the said judgment, has categorically held that DRI Officers would be ‘*proper officers*’ for the purposes of the Customs Act, 1962.

3. The observations in Canon-II 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. ”

4. Accordingly, the issue of jurisdiction stands determined. However, the present petition, in addition to the ground of lack of jurisdiction, also assails the impugned final order dated 9th January, 2020, as well as the order dated 22nd April, 2022 passed in ***Customs Rectification of Mistake Application No. 50245/2020***, on other substantive grounds.

5. In fact, the question of law has already been framed by the predecessor bench of this Court *vide* order dated 4th October, 2023, in the following terms and the same would have to be adjudicated by this Court on merits:

“a) Whether Customs, Excise and Service Tax Appellate Tribunal [CESTA’f] was justified in upholding the penalty under Section 114A of the Act as well as the custom duties upon the appellant bearing in mind that it asserts itself to be a bona fide transferee of the DFIA licences”

6. The case of the Petitioner is that out of 30 appeals only 24 appeals were properly heard by the CESTAT before passing the impugned final order dated 9th January, 2020 and the remaining 6 appeals, including the Petitioner’s appeal was not duly heard. The Petitioner has subsequently sought rectification of the order on the said ground. However, the said rectification application has been dismissed on 22nd April, 2022 with the following observations :



“An application has been filed by the Appellant for rectification of mistake in the Final Order dated January 01, 2020.

2. It is stated that though in the opening paragraph of the order it has been mentioned that "these 30 appeals have been preferred by importer-appellant, exporter appellants, Prabir Ghosh and also the Revenue against the adjudication orders detailed below", but the chart that has been prepared in this paragraph gives details of only 24 appeals. According to the learned Counsel for the Applicant, the remaining six appeals were not heard since they related to Duty Free Import Authorization (DFIA) under a Foreign Trade Policy.

3. Learned Authorized Representative appearing for the Department has, however, pointed out that there may be a mistake In the chart that is contained in paragraph 1 of the order, but all the 30 appeals were heard and disposed of on merits, Including the 6 appeals relating to DFIA licenses.

4. The submission made by learned Authorized Representative is correct as is clear from the order. In this view of the matter, the only mistake that needs to be rectified in paragraph 1 of the order is by addition of details of 6 more appeals. Thus, in the chart contained in paragraph 1 of the order, the following details of six appeals shall be added after serial no. 24 ;

1	2	3	4	5	6	7	8	9	10	11
Sr No	Appeal No.	Period of Dispute	SCN Details	Custom Duty (Rs.)	Penalty (Rs.) under section 11AA/11AAA	License utilized for Import	Whether TRA or not	Port of Import	Port of Export	Remarks
25	C/53861/2018 K. J. Inc. Vs C.C. PATRANGARI	2011	26.11.2015 (Rajal) International	24.99 L	24.99 L	DFIA (2)	No	Nhava Sheva	Ghoja Dhanga	
26	C/53862/2018 Park Import Vs C.C. PATRANGARI	2011	26.11.2015 (Parkar) International	24.94 L	24.94 L	DFIA (1)	No	Nhava Sheva	Ghoja Dhanga	
27	C/53864/2018 Icon Fibres & port Rd Icon Fibres & port Rds Vs C.C. PATRANGARI	2010-11	26.11.2015 (Royal) International	11.68 L	11.68 L	DFIA (2)	No	Tuticorin Port Ghoja Dhanga	Ghoja Dhanga	
28	C/53870/2018 Adya Incorporation Vs C.C. PATRANGARI	2009	19.03.2015 (Perfect Export)	20.03 L	20.03 L	DFIA (1)	No	KCD Mundat	Ghoja Dhanga	
29	C/54050/2018 Shammi Chandra Vs C.C., PATRANGARI	2010-11	26/11/2015 (Royal Enterprises) DRG Kolkata Zonal Unit	-	Penalty 99.34L (under section 11AAA)	DFIA (6)	-	-	Ghoja Dhanga	He is one of the Partner along with Sh. Sanjeev Kumar Arora in M/s. Aum Silk Mills, on whose name(s) DFIA licenses were issued after submitting forged documents with DGFT.
30	C/53274/2018 WADHWANI COMMERCE TRADING PVT LTD Vs C.C., Patrangari	2018	05.10.2015 (BNS Import Export)	66.07L	66.07L	DFIA (2)	No	Nhava Sheva	Ghojada rgr	

5. The application stands disposed of accordingly.”



7. Heard. The Court has also perused the records. Upon perusal of the records, the Court is of the opinion that the Petitioner has not been heard on merits by CESTAT either while passing the order dated 9th January, 2020 or on 22nd April, 2022. This matter relates to Duty Free Import Authorization under the Foreign Trade Policy. Considering these circumstances, the Court is inclined to relegate the matter in order to provide the Appellant an opportunity to present its case before CESTAT on merits.
8. Accordingly, the appeal is allowed. The ***Customs Appeal No. 53658/2018*** is restored to its original position.
9. The Appellant shall be free to appear before the CESTAT on 21st July, 2025 and make its submissions. CESTAT shall consider the submissions of the Petitioner and pass a reasoned order on merits in this matter.
10. The appeal is disposed of. Pending application(s), if any, also stand disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 16, 2025/nd/Ar.