CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

COURT NO. 4

Customs Appeal No. 50195 of 2020

(Arising out of Order-in-Original No. 07/2019-20/UG/Principle Commissioner dated 13.11.2019 passed by the Pr. Commissioner of Customs House (Import), New Delhi)

Arun Kumar Agarwal **Appellant**
Partner of M/s Venus Industries
C-24, Lawrence Road,
Industrial Area, Delhi-110035

Presently at:

B-1/74, Safdarjang Enclave
New Delhi-110029

Vs.

The Principal Commissioner of Customs (Import), New Customs House, Near IGI Airport New Delhi-110037 **Respondent**

And

Customs Appeal No. 50196 of 2020

(Arising out of Order-in-Original No. 07/2019-20/UG/Principal Commissioner dated 13.11.2019 passed by the Pr. Commissioner of Customs House (Import), New Delhi)

M/s Venus Industries **Appellant**
C-24, Lawrence Road,
Industrial Area, Delhi-110035

Presently at:

B-1/74, Safdarjang Enclave
New Delhi-110029

Vs.

The Principal Commissioner of Customs (Import), New Customs House, Near IGI Airport New Delhi-110037 **Respondent**

Appearance
Present for the Appellant : Shri Rakesh Chibber, Advocate
Present for the Respondent: Shri Rakesh Kumar, Authorised Representative

CORAM: HON'BLE MR. P V SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing : 07/12/2021
Date of Decision: 04/01/2022

FINAL ORDER NO. 50005-50006/2022

PER: P V SUBBA RAO

1. Both these appeals assail the same Order-in-Original[1] dated 13.11.2019 passed by the Principal Commissioner of Customs (Airport), New Customs House, AGI Airport New Delhi, the operative part of which is as follows:

(i) I confirm the customs duty of Rs. 3,68,10,660/- (Rupees Three crore sixty Eight Lakh Ten Thousand Six Hundred and Sixty Only) against M/s State Trading Corporation of India Ltd., Jawahar Vyapar Bhavan, Tolstoy Marg, New Delhi-110001 leviable on import of 133 kgs of gold issued to M/s Venus Industries, C-24, Lawrence Raod, Industrial Area, Delhi-110035 under replenishment scheme, in terms of Section 28(4) of the Customs Act, 1962 read with Circular No. 27/2016-Cus as amended and order the recovery of the same.

(ii) I order for recovery of interest, as applicable in terms of Section 28AA of the Customs Act, 1962 on the Customs duties mentioned at (i) above.

(iii) I impose penalty of Rs. 3,68,10,660 (Rupees Three Crore Sixty Eight Lakh Ten Thousand Six Hundred and Sixty only) on M/s State Trading Corporation of India Ltd. Jawahar Vyapar Bhavan, Tolstoy Marg, New Delhi-110001 under Section 114 A of the Customs Act, 1962.

(iv) I refrain from imposing penalty on Shri Rajendra Rawat, Chief Manager (Marketing), Bullion Division. M/s State Trading Corporation of India Limited, Jawahar Vyapar Bhavan Tolstoy Marg, New Delhi-110001 under Section 114 AA of the Customs Act, 1962.

(v) I confiscate the articles of jewellery already exported, as detailed in worksheet-A1 to the Show Cause Notice , totally valued at Rs. 37,10,75,770/-(Rupees Thirty Seven Crore Ten Lakh Seventy Five

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1 Impugned order

Thousand Seven Hundred and Seventy Only) under section 113 (d) and 113(i) of the customs act, 1962. Since, the goods have already been cleared & were never seized, therefore, I refrain myself from imposing any redemption fine Section 125(1) of the Customs Act, 1962.

(vi) I impose a penalty of Rs. 36,81,066/- (Rupees Thirty Six Lakh Eighty One Thousand and Sixty Six only) on M/s Venus Industries, C-24, Lawrence Road, Industrial Area, Delhi-110035 under Section 114 of the Customs Act, 1962.

(vii) I impose a penalty of Rs. 25,00,0000/-(Rupees Twenty Five Lakh Only) on Shri Arun Kumar Agarwal, Parnter , M/s Venus Industries, C-24, Lawrence Raod, Industrial Area, Delhi-110035 under section 114 AA of the Customs Act, 1962.

2. The impugned order was assailed on several grounds in the two appeals. An application for out of turn hearing was also filed. On 05.11.2021 Miscellaneous Order No. 50154 /2021 was passed in appeal No. 50195 of 2020 whereby appellants' prayer for early hearing on the ground that the case involved is covered by the judgment of the Hon'ble Supreme Court in case of **Canon India Pvt. Ltd. vs. Commissioner of Customs**[2] was allowed. Accordingly, both appeals were listed for final disposal today.

3. Learned Counsel for the appellants submits that in this matter the show cause notice[3] was issued by Additional Director General of DRI, Hyderabad Zonal unit demanding duty under section 28(4) along with interest. Consequently, it was also proposed in the SCN to confiscate goods under section 113 and impose penalties under section 114, 114A. The SCN was adjudicated by the learned Principal Commissioner confirming the demand of customs duty as

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2. 2021 (376) ELT 3 (SC)
3. SCN

proposed along with interest and imposing penalty under section 114A upon M/s Venus Industries and penalty under section 114AA upon Arun Kumar Agarwal. It has been held by the Hon'ble Supreme Court in **Canon India** that the officers of DRI are not "proper officers" to issue a show cause notice demanding duty under section 28(4). Therefore, the SCN itself is issued without authority of law and the consequential impugned order in these two appeals cannot be sustained. He, therefore, prays that both appeals may be allowed and the impugned order may be set aside.

4. Learned Departmental Representative supports the impugned order.

5. We have considered the arguments in these two appeals and perused the records. We find that in the present case the show cause notice was issued by the Additional Director General of DRI under section 28(4). In **Canon India** the Hon'ble Supreme Course has held as follows:

> "23. We, therefore, hold that entire proceedings in the present case initiated by the Additional Director General of the DRI by issuing show cause notice in all the matters before us are invalid without any authority of law and liable to be set aside and the issuing demands are also set aside."

6. This judgement of the Supreme Court was followed by various high Courts and this Tribunal in several cases. The Larger Bench of Supreme Court has, on 29/31.8.2021, in the matter of **Agarwal Metals**[4] followed the ratio of the judgment of **Cannon India Ltd.** and dismissed Revenue's appeals holding as follows:

"Delay condoned.

4 Commissioner of Customs Kandla vs. M/s. Agrawal Metals and Alloys [Civil Appeal No. 3411/2020]

> In view of decision dated 09.03.2021 of three judge Bench of this Court in Civil Appeal No. 1827 of 2018 titled as "M/s. Canon India Private Ltd. vs. Commissioner of Customs reported in 2021 (3) SCALE 748. These appeals must fail as the show cause notice(s) in the present cases was also issued by Additional Director General (ADG), Directorate of Revenue Intelligence (DRI), who is not a proper officer within the meaning of Section 28 (4) read with Section 2(34) of the Customs Act, 1962.
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> Hence, these appeals stand dismissed."

7. High Court of Karnataka has also followed the judgment of **Cannon India Ltd.** in the case of **Guvidivan**[5] and allowed the writ petition and quashed the impugned order as the show cause notice issued by officer of DRI demanding duty under section 28. The Madurai Bench of Madras High Court in the case of **Quantum coal**[6]**,** likewise, followed **Cannon India Ltd.** and quashed the impugned order passed by the Commissioner since the Show Cause Notice was issued by the DRI. In view of above we find that the present case and the impugned order cannot be sustained because the show cause notice was issued by the ADG DRI who is not the competent authority to issue show cause notice under section 28(4).

8. We have also considered the fact that penalties were imposed under section 114, 114A and 114 AA in the impugned order and the SCN for confiscation of goods or imposition of penalties is issued under section 124 of the Customs and not under Section 28. The SCN under Section 124 need not be issued by 'the proper officer'. However, in the present case the basis for the proposed confiscation of goods and imposition of penalties in the SCN has been the re-

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5 Givaudan India Pvt Ltd. vs Principal Commissioner of Customs, Bangalore (Writ Petition no. 10773/2018 and 4628/2018)

6 Quantum Coal Energy (P) Ltd. vs The Commissioner [Writ Petition (MD) 10186 10817/2014]

assessment of the goods and demand of the duty under Section 28(4). The basis for re-assessment being unsustainable in view of **Canon India,** the proposals for confiscation and of goods and imposition of penalties cannot service either. Therefore, the impugned order cannot be sustained. The impugned order is set aside and the appeals are allowed with consequential relief, if any.

(Order pronounced on **04.01.2022)**

(P V Subba Rao)
Member (Technical)

(Rachna Gupta)
Member (Judicial)

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