

DRI officers have no power to issue show cause notice under the customs law: SC

18 March 2021



Summary

The Supreme Court (SC), in a recent case, has held that the Directorate of Revenue Intelligence (DRI) officers have no power to issue show cause notices (SCNs) under the customs law. The SC stated that only the proper officer could issue such a notice as the Parliament has employed the article 'the' before the words proper officer not accidentally but with the intention to designate the proper officer who had assessed the goods at the time of clearance.

Facts of the case

- The petitioner¹ was denied exemption of basic customs duty accorded to the Digital Still Image Video Cameras (DSIC) imported².
- Further, the consequential confiscation of goods, demand of interest and imposition of penalty³ was upheld by the CESTAT.
- Aggrieved by the said order the petitioner filed present appeal wherein the main issue is whether after clearance of the cameras on the basis that they were exempted from levy of BCD, the proceedings initiated by DRI for recovery of duty not paid⁴ are valid in law.

Supreme Court's observations and ruling⁵

- **Proper officer which first assessed the goods shall have powers:** The Parliament has employed the article 'the' not accidentally but with the intention to designate the proper officer who had assessed the goods at the time of clearance. It must be clarified that the proper officer need not be the very officer who cleared the goods but may be his successor in office or any other officer authorised to exercise the powers within the same office.
- **Two officers belonging to different departments cannot exercise powers in same case:** Where the statute confers the same power to perform an act on different officers, as in this case, the two officers, especially when they belong to

different departments, cannot exercise their powers in the same case.

- **Things should be done as directed by the Statute:** When the statute directs that ‘the proper officer’ can determine duty not levied/not paid, it does not mean any proper officer but that proper officer alone. It is completely impermissible to allow an officer, who has not passed the original order of assessment, to re-open the assessment on the grounds that the duty was not paid/not levied, by the original officer who had decided to clear the goods and who was competent and authorised to make the assessment.
- **Officer who did assessment can only do re-assessment:** The nature of the power to recover⁶ duties which have escaped assessment is in the nature of an

administrative review of an act. The section must therefore be construed as conferring the power of such review on the same officer or his successor or any other officer who has been assigned the function of assessment. Thus, an officer who did the assessment, could only undertake re-assessment.

- **Recovery proceedings to be set aside:** The Additional Director General of the DRI can be considered to be a Customs officer only if he is shown to have been appointed as Customs officer under the Customs Act. Therefore, he was not ‘the’ proper officer to exercise the power and the initiation of the recovery proceedings in the present case is without any jurisdiction and liable to be set aside.

¹ M/s. Canon India Pvt. Ltd.

² in terms of exemption Notification No. 20/2005 dated 01.03.2005 (as amended by Notification No. 15/2012 dated 17.03.2012)

³ as provided for under various sections of the Customs Act, 1962

⁴ under Section 28(4) of the Customs Act, 1962

⁵ CIVIL APPEAL NO.1827 OF 2018 order dated 9 March 2021

⁶ conferred by Section 28 (4) of the Customs Act, 1962

Our comments

In the landmark case of Sayed Ali, earlier in 2011, the apex court had quashed the SCNs issued by Commissioner (preventive) stating that such officer is not a 'proper officer' to issue SCN. Further, the SC had categorically mentioned that if the approach of department is accepted then it will lead to a situation where multiple officers would exercise jurisdiction over the same assessee, leading to utter chaos and confusion. The verdict would have resolved legacy litigations pertaining to the powers of non-jurisdictional officers. However, realising the negative impact, the government took immediate step and made required amendments in the law as a corrective recourse.

The present judgment by the apex court is in line with the judgment of Sayed Ali and is most likely to impact the existing as well as future litigations involving SCNs issued by DRI. Further, the ratio of this judgment may impact the SCNs issued by the Directorate General of Goods & Services Tax Intelligence (DGGSTI) under GST.

As an immediate recourse, the CBIC has instructed that all the SCNs issued by DRI should be kept pending until further directions. Further, all fresh SCNs presently being investigated by DRI should be issued by jurisdictional commissionerate from where imports have taken place.

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