

DRI officers appointed by the Board as Common Adjudicating Authority are the “Proper Officer”- Allahabad HC

5 May 2022



Summary

The Allahabad High Court (HC) has held that the Commissioner of CGST and Central Excise are the “Proper Officer” to adjudicate the Show Cause Notice (SCN) issued by the Commissioner of Customs. The Court elucidated that after the legislature amendment, all persons appointed as officers of Customs are deemed and always should be considered as a proper officer. The HC further cited the decision of the Gujarat HC and ruled that both the Commissioner of Customs as well as the Commissioner of CGST and Central Excise have the jurisdiction to issue and adjudicate the SCN respectively.

Facts of the case

- The petitioner¹ is engaged in the manufacture and export of finished leather. The petitioner had exported four consignments² classified as ‘Finished Leather of all kinds’ to buyers in Italy.
- The DRI officers on the basis of statement of quality inspector for Italian buyers in India, concluded that the shipments were made of semi-finished leather. Hence, the petitioner has availed inadmissible exemption of export duty along with inadmissible export incentive³.
- Consequently, a SCN was issued by the Commissioner of Customs proposing recovery of duty, confiscation of goods along with penalty. The Commissioner, CGST and Central Excise proceeded to adjudicate the SCN.
- The petitioner relied on Apex Court decision⁴ and objected the competence of officers to issue and adjudicate the

SCN. The petitioner sought alternative relief also.

Allahabad HC observations and ruling⁵:

- **Validity of SCNs issued:** The Board had appointed DRI officers as proper officers to perform functions under the provisions⁶. Subsequently, the SCNs issued by DRI prior to 6 July 2011 stand validated. Such officers should be deemed and always should be considered as proper officers.
- **Jurisdiction of DRI Officer:** It is evident from the perusal of the notifications⁷ that DRI officers are appointed as Customs officers. The officers of DRI have been given jurisdiction over whole of India.
- **Authority w.r.t SCN:** Basis the catena of notifications, circulars⁸, the HC found that the notification⁹ assigns functions of the proper officer to the various officers including DRI officers¹⁰. It is clear that the Commissioner of Customs had the

¹ Sultan Tanneries And Leather Products

² During the period 01.04.2006 to 30.11.2009

³ Duty drawback and DFIA scheme

⁴ Canon India Private Limited versus Commissioner of Customs (2021 SCC Online SC 200); Commissioner of Customs versus Sayed Ali [2011 (3) SCC 537]

⁵ Writ Tax No.1085 of 2021; order dated 07.04.2022

⁶ Sections 17 and 28

⁷ Notifications dated 07.07.1997 and 07.03.2002

⁸ Notification dated 07.07.1997 and 07.03.2002, 06.07.2011, circulars dated June 9, 2015 and October 17, 2018,

⁹ for the purpose of Section 2(34) of the Customs Act
¹⁰ for the purposes of Sections 17 and 28 of the Customs Act

- jurisdiction to issue SCN and the Commissioner of CGST and Central Excise has the jurisdiction to adjudicate the same.
- **Alternate relief not entitled:** The HC relied on one of its decisions¹¹ wherein similar relief was considered and repealed. Since the proceeding for adjudication are yet to commence, the assessee is not entitled to alternative relief.

Our comments

The powers of DRI officers to issue SCN have been a matter of extensive litigation since their inception.

Earlier, the Apex Court in the case of Canon India had held that the DRI officers are not empowered to issue SCNs and only the proper officer could issue such a notice. However, the Revenue had filed a review petition against this before the SC arguing that the DRI officers have the power to issue SCNs under the Customs Act which is pending.

Further, legislative changes have been introduced vide the Finance Act, 2022 to widen the scope of the term “proper officer” under the Customs law to include officers of DRI, audit and preventive in the class of officers by Customs.

Recently, the Delhi HC admitted a writ petition challenging the same. Now, it will be interesting to see the verdict of the Delhi HC which will have a wide impact on revenue authorities as well as on the taxpayers.

Interestingly, the CESTAT Kolkata recently in the case of Beriwalla Impex Pvt. Ltd. has emphasised that there is no proposal to amend the provisions relating to power for issuance of SCN under the customs law. Therefore, it seems that the SC’s verdict in the case of Canon India shall remain valid even after widening the scope of the term proper officer and thus the DRI officers may not be authorised to issue SCNs under the customs law.

¹¹ Parmarth Iron Pvt. Ltd, Special Appeal No.741 (D) of 2010

Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI

National Office,
Outer Circle,
L 41, Connaught Circus,
New Delhi - 110001
T +91 11 4278 7070

NEW DELHI

6th Floor, Worldmark 2,
Aerocity,
New Delhi - 110037
T +91 11 4952 7400

AHMEDABAD

Unit No - 603 B, 6th Floor,
Brigade International
Financial Center,
GIFT City Gandhinagar,
Ahmedabad - 382355
T +91 11 4278 7070

BENGALURU

5th Floor, 65/2, Block A,
Bagmane Tridib,
Bagmane Tech Park,
CV Raman Nagar,
Bengaluru - 560093
T +91 804 243 0700

CHANDIGARH

B-406A, 4th Floor,
L&T Elante Office Building,
Industrial Area Phase I,
Chandigarh - 160002
T +91 172 433 8000

CHENNAI

9th floor, A wing, Prestige
Polygon, 471 Anna Salai,
Mylapore Division, Teynampet,
Chennai - 600035
T +91 44 4294 0000

DEHRADUN

Suite No 2211, 2nd Floor,
Building 2000, Michigan Avenue,
Doon Express Business Park,
Subhash Nagar,
Dehradun - 248002
T +91 135 264 6500

GURGAON

21st Floor, DLF Square,
Jacaranda Marg,
DLF Phase II,
Gurgaon - 122002
T +91 124 462 8000

HYDERABAD

Unit No - 1, 10th Floor,
My Home Twitza, APIIC,
Hyderabad Knowledge City,
Hyderabad - 500081
T +91 40 6630 8200

KOCHI

6th Floor, Modayil Centre Point,
Warriam Road Junction,
MG Road
Kochi - 682016
T +91 484 406 4541

KOLKATA

10C Hungerford Street,
5th Floor,
Kolkata - 700017
T +91 33 4050 8000

MUMBAI

11th Floor, Tower II,
One International Center,
SB Marg Prabhadevi (W),
Mumbai - 400013
T +91 22 6626 2600

MUMBAI

Kaledonia, 1st Floor,
C Wing,
(Opposite J&J Office),
Sahar Road, Andheri East,
Mumbai - 400069

NOIDA

Plot No 19A, 2nd Floor,
Sector - 16A,
Noida - 201301
T +91 120 485 5900

PUNE

3rd Floor, Unit No 310-312,
West Wing, Nyati Unitree,
Nagar Road, Yerwada
Pune - 411006
T +91 20 6744 8800

For more information or for any queries, write to us at GTBharat@in.gt.com



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