



**SUPREME COURT - DRI NOT 'THE PROPER OFFICER' TO
ISSUE RECOVERY NOTICE UNDER CUSTOMS ACT, 1962**

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Directorate of Revenue Intelligence ('DRI') is the apex intelligence and investigative agency for matters relating to violation of the Customs Act. However, when it comes to administration of Customs Regulations there are limits to the agency's powers as recently held by Supreme Court in a landmark Ruling on jurisdiction and empowerment of officers of DRI.

After a meticulous examination of provisions of Customs Act and notifications issued thereunder, the Apex Court in the case of *Canon India (P.) Ltd. v. Commissioner of Customs*¹ has ruled that officers of the **DRI are not empowered to issue recovery notice when the customs officer allows exemption from customs duties at the time of clearance.** The Supreme Court is of the view that Section 28(4) of Customs Act confers the power to recover duty not paid, short paid, or erroneously refunded only to the "Proper Officer" and **DRI does not come under the definition of "the Proper Officer".**

1. [2021] 125 taxmann.com 188 (SC)

Brief facts of the Case

Appellant i.e. Canon India, imported cameras that were cleared after due verification and review of the declarations by the Deputy Commissioner of Customs. However, officers of DRI reassessed the clearance of goods and issued Show Cause Notice denying the exemption sought, demanded duty with interest, imposed penalty on the importers and confiscated the offending goods. Order was passed confirming the demand and the same was also upheld by CESTAT.]

Issue

Whether DRI had authority in law to issue a show cause notice under section 28(4) of the Act for recovery of duties allegedly not levied or paid when the goods have been cleared for import by a Deputy Commissioner of Customs who decided that the goods are exempted?

Summary of the judgment -

1. The power to re-assess the goods is with the same authority who assesses the goods in the first instance

- Court observed that the nature of the power conferred by Section 28 (4) to recover duties that 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 who has been assigned the function of assessment.

2. DRI is not the 'Proper Officer' under Customs Regulations to issue recovery notice

- The Notification No. 40/ 2012 dated May 2, 2012 which entrusts the function to DRI as 'proper officer' is invalid. Said Notification has been issued under Section 2(34) of the Customs Act. This section is part of the definition clause of the Customs Act and does not confer any powers on any authority to entrust any functions upon any officer.
- If the intention was to entrust DRI officers with the functions of the customs officers, the Government would have conferred this power under section 6 of the Customs Act, which is the only section that provides for the entrustment of the functions of customs officer on other officers of the Central or State Governments.

Implications of the Ruling

The Ruling gave rise to a number of challenges to the investigation which were carried on by DRI along with SCNs issued and Orders passed against said SCNs. Thus, to bring clarity Central Board of Indirect Taxes and Customs issued Instruction No. 04/2021-Customs dated March 17, 2021 vide which it has been clarified that in respect of cases presently being investigated by DRI, all the fresh SCNs under Section 28 of the Customs Act, 1962 are required to be issued by Jurisdictional Commissionerates from where imports have taken place.

Further, CBIC and judiciary must also decide a corrective measure in relation to cases which has already been finalized, however the same involved DRI as 'Proper Officer' issuing the SCN. In absence of any corrective measure, all said cases would stand discharged in the light of Canon India judgments and the revenue might incur a major loss on this count.

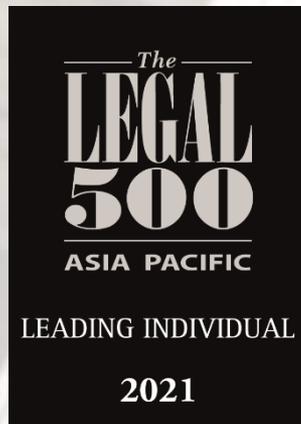
The judgment would have far reached ramifications in the context of re-assessment initiated by DRI. As per this judgment, (i) only the original officer who assessed and cleared the goods can re-assess the goods and not DRI officers, and (ii) entrustment of the reassessment function to DRI officers is invalid. The taxpayer would have another strong ground to contest past proceedings initiated by DRI officers.

Further, the ratio of this judgment may also impact the SCNs issued by the Directorate General of Goods & Services Tax Intelligence (DGGSTI) under GST. DGGSTI is an apex intelligence and investigative agency for matters relating to violation of the Goods & Services Tax. Thus, applying the same legal principles, any proceeding initiated by DGGSTI may also come within the ambit of ratio laid down by the Supreme Court in the case of Canon India.

ABOUT AMICUS

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The Firm focuses on providing efficient, effective, solution-oriented advice and representation based on specialist knowledge and experience. Amicus' boutique tax practice has been consistently been ranked as a leading practice by Legal 500, Asia Law and World Tax (ITR).



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