

**Budget Proposal**

The Finance Bill, 2022 has sought to overcome the ruling of the Supreme Court in the case of Canon India Vs Commissioner of Customs [2021-TIOL-123-SC-CUS-LB] whereby it was held that DRI official(s) were not a “proper officer” to issue show cause notices under Section 28 of the Customs Act. The Bill amends the definition of “proper officer” in Section 2(34), substituting Section 3 and section 5 of the Customs Act to specifically provide that DRI is an officer of the Customs. Further, section 96 of the Bill *inter alia* provides that: (a) any action performed earlier shall be deemed to have validly done or performed and (b) any pending proceeding shall be disposed in accordance with the amended provisions of the Customs Act.

The amended position, prospectively, provides that the investigating officer, post conducting the inquiry and investigation, would forward a report in writing to the jurisdictional proper officer to initiate suitable actions including issuance of a Show Cause Notice under Section 28 of Customs Act.

**Impact**

Last year, the Supreme Court in the case of Canon (*supra*) had held that the power of recovery of short levy u/s 28(4) must be exercised by the same officer (who had assessed and cleared the goods) or his successor in office and not an officer of another department. Accordingly, it was held that the DRI is not the “proper officer” as they had not assessed the goods. The Supreme Court also held that the relevant Notifications purportedly issued to designate DRI as officers of customs were invalid, as they were issued u/s 2(34) which merely defines who is a “proper officer” and does not confer any power on any

authority to entrust any functions to the Customs officers. Post Canon (*supra*), different High Courts and Tribunals across the country have quashed Show Cause Notices and the proceedings initiated by DRI officers on the preliminary ground of jurisdiction itself.

The Department’s plea of Review Petition pending before the Supreme Court was also not heeded. In fact, in August 2021, the Supreme Court again in Agarwal Metals (C.A. No. 3411 of 2020) proceeded to quash proceedings initiated by the DRI.

**ELP’s Insights**

This amendment was anticipated as massive revenue of the Government was at stake. The direct impact of the amendment will be on the outcome of the pending Petitions/Appeals, wherein the jurisdiction of DRI officer to issue Show cause Notice has been challenged. These Petitions/Appeals will have to be amended to challenge the constitutional validity of the proposed validation clause, in as much as it seeks to retrospectively validate the past actions of the DRI officers, which are bad in law and without jurisdiction.

A decade back, when the Supreme Court in Sayed Ali [2011 (265) ELT 17 (SC)] had held that Collector of Customs (Preventive) is not the “proper officer” to issue show cause notice u/s 28, it was equally overcome by the Government through a validation clause. Writ Petitions challenging the validation clause remain pending before the Supreme Court. If the past is anything to go by, these amendments will also see intense litigation and finally the Supreme Court will arbitrate on the issue.