

THE JURISDICTIONAL AUTHORITY OF THE DRI: SUPREME COURT'S REVIEW IN CANON INDIA CASE

INTRODUCTION

In a pivotal legal development, the Supreme Court recently reviewed its 2021 judgment in *Canon India Private Limited [2021 (3) TMI 384]* dated 09.03.2021, which questioned the jurisdiction of the Directorate of Revenue Intelligence ('DRI') to issue show-cause notices ('SCNs') under Section 28 of the Customs Act, 1962 ('the Customs Act'). The Court vide judgment dated 09.03.2021 initially held that the DRI officers lacked jurisdiction to issue SCNs, reasoning that only officers directly involved in assessment under Section 17 could initiate SCN proceedings under Section 28. However, in its recent judgment dated 07.11.2024, in Review Petition No. 400/2021, following a department-filed Review Petition, the Supreme Court reversed the stance, affirming the DRI's jurisdiction to issue SCNs. To fully understand this judgment and its implications, it is essential to review the legal background that led to the same.

BRIEF HISTORY

- **The Syed Ali Case:** In *Sayed Ali, [2011 (2) TMI 5]* case dated 18.02.2011, the Supreme Court examined the jurisdiction of the Collector of Customs (Preventive) to issue SCNs under Section 28 of the Customs Act. Analyzing Sections 2(34), 17 and, 28 of the Customs Act, the Court held that there is a direct linkage between Sections 17 and 28, and only those customs officers explicitly assigned the duties of assessment and re-assessment under Section 17 in a specific jurisdiction could lawfully issue SCNs under Section 28. It ruled that the Collector of Customs (Preventive) did not have the requisite jurisdiction in the case at hand. The Court further observed that permitting multiple customs officers within the same jurisdiction to issue SCNs could create confusion and legal disorder, as it would allow numerous officers to assume overlapping authority as 'proper officers.' The Department's review petition against this decision was subsequently dismissed.
- **Customs (Amendment and Validation) Act, 2011:** To address gaps highlighted in *Syed Ali (supra)*, Parliament enacted the Customs (Amendment and Validation) Act, 2011, *inter alia* introducing Section 28(11) in the Customs Act. This Section retroactively validated the authority of all officers appointed under Section 4 as officers of customs before 06.07.2011, deeming them as 'proper officers' with assessment powers.
- **Sunil Gupta and Mangali Impex Cases:** In *Sunil Gupta, [2014 (12) TMI 151]*, dated 03.11.2014 the Bombay High Court upheld the constitutional validity Section 28(11) of the Customs Act. However, in *Mangali Impex Ltd., [2016 (5) TMI 225]* dated 03.05.2016, the Delhi High Court *inter alia* ruled that Section 28(11) was too broad, as it enabled multiple officers to claim jurisdiction and hence, the same was declared as unconstitutional. Respective appeals were filed against these decisions before the Supreme Court and the same were tagged along with the review petition in *Canon India (supra)*.
- **Canon India Case (2021):** In 2021, in *Canon India (supra)*, the Supreme Court held that DRI officers were not proper officers under Section 28 and thus lacked the jurisdiction to issue SCNs. The Court stated that only customs officers who conducted the original assessment under Section 17 could later initiate SCN proceedings under Section 28, following the reasoning in *Syed Ali (supra)*. It was also held that the usage of definite article 'the' and not indefinite article 'a' in the phrase 'the proper officer' referred specifically to the officer conducting the original assessment, restricting authority to initiate SCN proceedings to the same authority. The Court also held that although Notification No. 40/2012 dated 06.07.2011, issued by the Board, designated DRI officers as proper officers, it was issued by the Central Government under Section 2(34) rather than under Section 6, and therefore does not confer jurisdiction to DRI officers to issue SCN under Section 28.
- **Review Petition and Amendments vide Finance Act, 2022 to Validate Past Actions:** Following the *Canon India (supra)* 2021 decision, the Department filed a review petition challenging the ruling. The Finance Act, 2022 also made amendments to validate past actions and address the defects pointed out in *Canon India (supra)* 2021 decision. The amendments were made *inter alia* to Section 2(34) and Section 5 of the Customs Act to empower the

Board to assign functions to officers. Section 3 was substituted to include officers of DRI and a new Section 110AA was inserted providing that after investigation, the case should be transferred to the officer who had taken the original decision in the matter. Section 97 of the Finance Act, 2022 provided that Sections 2, 3 and 5 of the Customs Act, as amended by this Act, shall have and shall always be deemed to have effect for all purposes as if the provisions of the Customs Act, as amended by this Act, had been in force at all material times.

SUPREME COURT DECISION IN THE REVIEW PETITION: KEY FINDINGS

The Supreme Court tagged the review petition in *Canon India* (2021) with *Mangali Impex* (*supra*), *Sunil Gupta* (*supra*) (both challenging Section 28(11) of the Customs Act), *Daikin Air Conditioning India Pvt. Ltd.* [W.P. (C) 526 of 2022] (challenging Section 97 of the Finance Act, 2022), and related cases, and heard them together. Ultimately, the Court upheld DRI's jurisdiction, the validity of Section 28(11) of the Customs Act, and Section 97 of the Finance Act, 2022, and clarified several points of law, as discussed below.

- **No interlinkage between Sections 17 and 28:** The Supreme Court held that Sections 17 (assessment) and 28 (recovery of duty) serve distinct functions and are not inherently linked. The Court observed that Section 17 enables customs officers to assess duty at the time of import or export, whereas Section 28 grants specific officers the power to recover unpaid or short-paid duties through SCNs. This recovery process does not require the same officer who assessed the original duty under Section 17 to issue notices under Section 28. Accordingly, it was held that, the linkage established between Section 17 and Section 28 as per *Syed Ali* (*supra*), and *Canon India* (*supra*) 2021 case does not lay down the correct position of law.
- **Interpretation of the Term 'the Proper Officer' in Section 28:** In *Canon India* (*supra*) 2021 decision, the use of the definite article 'the' was interpreted as referring exclusively to the officer who performed the original assessment under Section 17. However, the Court in the review judgment held that 'the proper officer' does not imply exclusivity to authority involved in initial assessments. Instead, it refers to the officer appointed under the Customs Act to fulfill Section 28's specific function of issuing SCNs for recovery of duty.
- **Impact of amendment of Section 17 vide Finance Act, 2011:** It was further held that *Sayed Ali* (*supra*), which interpreted Section 17 as it existed before the Finance Act, 2011 which introduced a self-assessment regime effective from 08.04.2011, should not have been relied upon in the *Canon India* (*supra*) 2021 decision for post-08.04.2011 cases for holding that the authority who assessed bills of entry under Section 17 ought to issue SCNs under Section 28. Under the self-assessment regime, the importer conducts the initial assessment, and the role of the proper officer is limited to reassessment in specified situations.
- **DRI as Proper Officers and the Interplay between Sections 2(34), 3, 4, 5, and 6 of the Customs Act:** The Court analyzed the scheme of 'officers of customs' appointed under Sections 2(34), 3, 4, 5, and 6 in detail. Section 2(34) defines a 'proper officer' as an officer of customs who is assigned specific functions under the Act. Section 3 of the Customs Act establishes the administrative framework, listing certain classes of officers of customs. Section 4 allows for the appointment of customs officers, and Section 5 empowers them to execute their assigned responsibilities. DRI officers, already part of the customs structure as 'officers of customs', derive their authority from Sections 2(34) and 5 directly. In this regard, the Court held that Notifications such as No. 44/2011-Cus-N.T. and No. 40/2012-Cus-N.T. were validly issued under Section 2(34), empowering DRI officers to act as proper officers inter alia for issuing SCNs under Section 28. Contrary to what was established in the *Canon India* (*supra*) 2021 decision, it was held that Section 6 is intended to extend customs functions to officers outside the customs department—such as police or Coast Guard personnel—to support customs operations when necessary, and does not apply to DRI officers, who are part of the customs department.
- **Validation of Section 28(11) of the Finance Act:** The Supreme Court upheld the constitutionality of Section 28(11) of the Customs Act, which was introduced by the Customs (Amendment and Validation) Act, 2011, effective from 16.09.2011, to validate past actions by DRI officers in light of *Sayed Ali* (*supra*). Accordingly, the decision of the Bombay High Court in *Sunil Gupta* (*supra*) was affirmed, and the decision of the Delhi High Court in *Mangali Impex* (*supra*) was overruled.
- **Constitutional Validity of Section 97 in the Finance Act, 2022:** In addition to Section 28(11), the Court also examined the constitutional validity of Section 97 of the Finance Act, 2022, which validated past actions by DRI officers in issuing SCNs post the *Canon India* (*supra*) 2021 decision. Section 97 was challenged inter alia as being 'manifestly arbitrary' for selectively applying validation to past notices and also on the ground that it does not cure the defects pointed out in *Canon India* (*supra*) 2021 decision. The Court in *Daikin Air Conditioning India Pvt. Ltd.* (*supra*) dismissed these challenges, inter alia holding that Section 97 met the constitutional standard of a validating legislation and did not violate principles of equality under Article 14.

DIRECTIONS FOR PENDING CASES

The Court provided a directive on how pending cases affected by its revised interpretation should be handled. It is summarized here below:

Sr. No.	Type of case	Way forward
1	Where SCNs challenged before the High Courts directly by way of a writ petition and are currently pending.	The High Court shall dispose of such writ petitions as per the present decision and restore such SCNs for adjudication by the proper officer under Section 28.
2	Where writ petitions have been disposed of by the respective High Court and appeals have been preferred against such orders which are pending before the Supreme Court.	The Supreme Court shall dispose of such matters as per the present decision and restore such SCNs for adjudication by the proper officer under Section 28.
3	Where Orders-in-original ('OIO') passed by the adjudicating authority have been challenged before the High Courts on the ground of jurisdiction.	The High Court shall grant eight weeks' time to the respective assessee to prefer appropriate appeal before the Customs Excise and Service Tax Appellate Tribunal ('CESTAT').
4	Where writ petitions have been disposed of by the High Court and appeals have been preferred against them which are pending before the Supreme Court.	They shall be disposed of in accordance with the present decision and the Supreme Court shall grant eight weeks' time to the respective assessee to prefer appropriate appeals before the CESTAT.
5	Where the orders of CESTAT have been challenged before Supreme Court or the respective High Court on the ground of jurisdiction.	The Supreme Court or the respective High Court shall dispose of such appeals or writ petitions in accordance with present decision and restore such SCNs to the CESTAT to hear the matter on merits.
6	Where appeals against the OIOs involving issues pertaining to the jurisdiction are pending before the CESTAT.	They shall now be decided by CESTAT in accordance with the observations made in the present decision.

ELP Comments

- The Supreme Court's decision in Canon India (supra), Review Petition No. 400/2021 dated 07.11.2024 resolves the following issues:
 - Canon India (supra) decision dated 09.03.2021 holding that DRI officers do not have jurisdiction to issue SCNs have been reversed.
 - Validity of Section 97 of the Finance Act, 2022, promulgated to cure defects pointed out in Canon India (supra) decision dated 09.03.2021 has been upheld inter alia in the matter of Daikin Air Conditioning India Pvt. Ltd. (supra)
 - Validity of Section 28(11) of the Customs Act introduced through the Customs (Amendment and Validation) Act, 2011 to cure defects pointed out in Syed Ali (supra) has been upheld inter alia in the matter of Mangali Impex (supra) and Sunil Gupta (supra) in the appeals filed before Supreme Court.
- All pending cases will now be required to be adjudicated on merits and other issues such as limitation before the relevant forums, such as adjudicating authorities, CESTAT etc. The impact on cases where DRI SCNs were quashed on the grounds of jurisdiction and that the Department has not filed appeal will now be required to be analyzed to assess whether such cases can be reopened by the Department.
- This decision also raises questions about its impact on Supreme Court ruling in ITC v. CCE, Kolkata-IV, [2019 (9) TMI 802] which recognized self-assessment as an assessment order by the officer under amended Section 17 whereas the present decision makes a significant departure by holding that role of proper officer under Section 17 is limited to 'reassessment' in certain specified situations and the same must be distinguished from self-assessment done by the assessee.

- Furthermore, the decision affirms the legislative power to rectify jurisdictional gaps, setting a precedent that may influence future jurisdictional challenges within the legal framework. It also underscores that the merits of a matter take precedence over jurisdictional arguments, as such issues can always be retrospectively cured by the Department.

We hope you have found this information useful. For any queries/clarifications please write to us at insights@elp-in.com or write to our authors:

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