



M2K Alert

The Can(n)on -Powder is no longer dry

The last word has been said on the vexed question of jurisdiction of DRI officers to issue Show Cause Notices under Section 28 of the Customs Act, 1962.

1.1 Decisions of the Hon'ble Supreme Court -> On 7th November 2024, the Hon'ble Supreme Court, in unanimous decision, has allowed the Review Petition filed by Government of India against the Hon'ble Supreme Court decision in the matter of Commissioner of Customs v. M/s Canon India Pvt. Ltd on the issue of jurisdiction of officers of Customs such as DRI officers, to issue show cause notice under Section 28 ibid.

- With this decision the question pertaining to the jurisdiction of officers of customs such as DRI officers to issue Show Cause Notices demanding duty, penalty etc., under Section 28 ibid has been once and for all settled.
- It should also be noted that that this decision will apply to all Show Cause Noticees under Section 28 ibid issued prior to 30 March 2022, when Section 110AA was introduced in the Customs Act, through Section 97 of the Finance Act 2022.
- In their Order the Hon'ble Supreme Court also upheld the Constitutional validity of Section 97 to the Finance 2022 and thus approving the procedure prescribed under Section 110AA ibid under which Notices in respect of investigations conducted by officers of Customs such as DRI officers could be issued only by the jurisdictional Commissioners.

1.2 Clarifications on cases pending at various levels -> The Hon'ble Supreme Court have also clearly laid down the way forward in respect of the cases pending at various levels as under:

a) Matters pending before High Courts:

- Pending writ petitions and appeals (both by Government and importers) against Notices, pending before various High Courts to be disposed of restoring the matters for adjudication by the Customs authorities.
- Where the orders-in-originals have been challenged before High Courts by way of writs or Appeals, respective High Courts shall grant eight weeks' time to the importers prefer appropriate appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT).

b) Matters pending before High Courts/ Supreme court:

➤ Where the orders of CESTAT have been challenged before Supreme Court or the respective High Court, the Supreme Court or the respective High Court shall dispose of such appeals or writ petitions and restore such notices to the CESTAT for hearing the matter on merits.

c) Matters pending before CESTAT:

➤ CESTAT shall now decide the matters in accordance with the decision of the Hon'ble Supreme Court in this matter.

1.3 Key points to be noted ->

- Supreme Court has given above directions on the matters pending at various levels.
- It therefore follows that in matters where Notices/ appeals had been dropped and not appealed against by Customs, cannot be reopened on the strength of this decision.
- Given the fact that the jurisdiction argument is no longer valid, the pending matters will have to be argued either on merits or in applicable cases on limitation.
- As the Supreme Court has directed the High Courts to provide eight weeks' time to file appeals in all such cases pending before the High Courts, importers will have to gear up to get the matters disposed of by the respective High Courts and be ready to file appeals within eight weeks' time.
- As the time limit of eight weeks has been fixed by the Supreme Court, no extensions will be available, and any delay may lead to dismissal on limitation by the Tribunals or Commissioner (Appeals) as the case may be.
- As all the matters are old where the imports may have been made before 2011, importers should be ready with the details for preparing Appals to be filed within the allotted time.
- Further in respect of SCN kept un call book the respective Commissioners will get ready to adjudicate the matters. Therefore, importers should be ready with their replies and arguments on merits or as the case may be, on limitation.

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