

## 2022 (6) TMI 723 - MADRAS HIGH COURT

### M/S. N.C. ALEXENDER VERSUS THE COMMISSIONER OF CUSTOMS, CHENNAI II COMMISSIONERATE, CHENNAI

W.P.Nos.33099 of 2015, 18918 of 2016, 27344 of 2017 8242, 9306, 9405, 9407, 9434, 9484  
,11156,11268, 11271,11274, 12929, 12933, 26200 & 27009 of 2021

**Dated: - 09 June 2022**

**Jurisdiction - power of DRI to issue SCN - Proper Officer - It is the uniform submission of the respective counsel for the petitioners in the respective writ petitions is that the impugned proceedings under the respective Show Cause Notices as also the respective impugned Order-in-Originals are without jurisdiction as they emanate from a person who is not a “proper officer” within the meaning of Section 2(34) of the Customs Act, 1962.**

HELD THAT:- What was implicit in the provisions of the Customs Act, 1962 has been now made by explicit in the amendment to the Customs Act, 1962 vide amendment in Finance Act, 2022. Therefore, these writ petitions are liable to be dismissed by giving liberty to the petitioners to work out their remedy before the alternate forum.

Thus, under the Customs Act, 1962, there are different Power Centres for appointing persons as “Officers of Customs” for discharging their powers and functions (duties) imposed under the Act. The contours of powers to be exercised by such “Officers of Customs” is to be drawn by the Board. Section 3, of the Customs Act, 1962, recognizes the classes of “Officers of Customs”. It also includes such other classes of “Officers of Customs” who may be appointed for the purpose of the Act by the Board - Under Sub-Section 2 to Section 4, the Board can also authorize the officers mentioned therein to appoint “Officers of Customs” below the rank of the Assistant Commissioner of Customs.

Officers from Group-B who are already from the Customs Department can be appointed as “Officers of Customs”. Similarly, the Officers of Directorate of Revenue Intelligence (DRI) are appointed as “Officers of Customs” under notification issued under Section 4(i) of the Customs Act, 1962 - Apart from the above, the Central Government may by notification can also entrust the function of the Board or any “Officers of Customs” under the Customs Act, 1962, on any other officer from any other department, viz., the Central Government, the State Government or the Local Authority either conditionally or unconditionally. Thus, under Section 6 of the Customs Act, 1962, the powers and functions(duties) of the Board and/or “Officers of Customs” specified in Section 5 read with Section 4 and notifications issued there under to implement the same can be entrusted on these officers.

The challenges to the impugned Show Cause Notices and the Orders in Original on the strength of the decision of the Hon'ble Supreme Court in M/S CANON INDIA PRIVATE LIMITED VERSUS COMMISSIONER OF CUSTOMS [2021 (3) TMI 384 - SUPREME COURT] fail.

It is made clear that in case the respondent(s) want(s) to rely on the statement of person who may have given statement against the petitioner, such person shall be produced for cross examination by the petitioner - In case such person is not available for cross -examination, the respondent shall pass orders on merits by applying the principle of preponderance of probability and decide the case. Needless to state, the petitioner shall be heard before final orders are passed.

The respective petitioners are at liberty to file their reply and written submission within a period of 30 days from the date of receipt of a copy of this order. In case the petitioner(s) fail(s) to file their reply within such time or within such extended time as may be allowed by the jurisdictional adjudicating authority, order shall be passed based on the available records and materials.

It is made clear that in case the respondent wants to rely on the statement of person who may have given statement against the petitioner, such person shall be produced for cross examination by the petitioner - In case such person is not available for cross -examination, the respondent shall pass orders on merits by applying the principle of preponderance of probability and decide the case. Needless to state, the petitioner shall be heard. The petitioner is also directed cooperate with the respondent in the de novo proceeding, failing which, the respondent is at liberty to pass appropriate orders on merits based on the available material. Appeal allowed in part by way of remand.

#### **Judgment / Order**

**And WMP.Nos. 22162/2021, 29238, 29239/2017, 8791, 9874, 9997, 10019, 10020, 10143, 10081, 10083, 10085, 11790, 11791, 11925, 11927, 11929, 13732, 13733, 13735, 27651, 27653 And 28453/2021**

**Honourable Mr. Justice C. Saravanan**

**For the Petitioner : Mr.S.Krishnanandh**

**For the Respondent : Mr.K.Mohanamurali Senior Panel Counsel**

#### **COMMON ORDER**

By this common order, all the below mentioned 17 cases are being disposed. Since the 17 cases are being disposed by this common order, it is divided into 10 Parts as follows:-

<b><i>Part No.</i></b>	<b><i>CONTENT</i></b>	<b><i>Paragraphs</i></b>
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### **PART I - INTRODUCTION**

2. Part I – Introduction is divided into two parts namely, Part – A and Part – B. There are 5 Writ Petitions in Part – A. In these 5 Writ Petitions, the respective petitioners have challenged the impugned Order in Original and impugned Recovery Notice as detailed below:-

**Table I - (Part - A)**

<b><i>Sl. No.</i></b>	<b><i>W.P.Nos</i></b>	<b><i>Name</i></b>	<b><i>Date</i></b>	<b><i>Order in Original No.</i></b>
1	33099/ 2015	M/s.N.C.Alexander	29.06.2015	39839 of 2015
2	27344/ 2017	M/s.E.Duraisamy & Bros.,	18.07.2017	58133 of 2017
3	18918/ 2016	Mr.Chirag U Jain	05.02.2016	44560 of 2016
4	12929/2021	Shri.Farooq Ubaithulla	30.12.2015	44421 of 2016

5	12933/ 2021	Shri.Farooq Ubaithulla	06.05.2019	impugned Recovery Notice No.F.No.RRU 18/2019-RRU II (Gr-6)
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3. There are 12 Writ Petitions in Part – B. In these 12 Writ Petitions, the respective writ petitioners have challenged the impugned Show Cause Notices as detailed below:-

**Table II - Part – B)**

<b>Sl. No.</b>	<b>W.P.Nos</b>	<b>Name</b>	<b>Date</b>	<b>Order in Original No.</b>
6	9484/2021	M/s.Sneha Glasses Private Ltd.,	F.No.VIII/48/28/2008-DRI #	26.10.2009
7	9434/2021	M/s.Bagrecha Enterprises Ltd.,	F.No.VIII/48/33/2008-DRI #	26.10.2009
8	9306/ 2021	M/s.Sun Tv Network Limited	F.No.DRI/MZU/E/13/ 2012/5518	19.07.2013
9	8242/2021	Shri.Mahaveer Kumar	F.No.DRI/AZU/CI/ENQ- 19(INT01)2017	23.11.2017
10	11268/2021	Mr.D.Vivek	F.No.DRI/CZU/VIII/48/ENQ- 1/INT-23/2019 *	06.12.2019
11	11271 of 2021	Mr.T.Arun		06.12.2019
12	11274 of 2021	Mr.Parameshchary Kananthoju		06.12.2019
13	11156 of 2021	Mr.Devadoss Gittan		06.12.2019
14	9405 of 2021	Mr.K.Swaminathan Managing Director M/s.Sun Direct TV Pvt.Ltd.,	F.No.DRI/BZU/S-IV/ENQ-17 (INT-NTL)/2019/318	23.06.2020
15	9407 of	Mr.L.Subramanian General	F.No.DRI/BZU/S-IV/ENQ-	23.06.2020

	2021		ManagerSun Direct TV Pvt Ltd.,	17 (INT-NTL)/2019/317	
16	27009 of 2021		Mr.P.Murugesan	F.No.DRI/CZU/VIII/48/ENQ-1/ INT-03/2021 *	30.11.2021
17	26200 of 2021		M/s.Bombardier Transportation India Limited.	F.No.DRI/CRU/VIII/26/ENQ-1/ INT06/2019	19.01.2021

\* Old No – dated 31.12.2021 has been passed pending these writ petitions

# The petitioner was also issued with Show Cause Notice dated 27.01.2010 bearing reference F.No.VIII/26293/2008-DRI which case was settled before the Settlement Commission vide Order No.5/2010 – Cus dated 10.09.2016.

4. In all the writ petitions in Table-I, the respective petitioners have challenged the impugned Order-in-Originals passed by the respective jurisdictional officers of the Customs under various provisions of the Customs Act ,1962. It is submitted that these impugned orders are without jurisdiction as they have emanated from show cause notices issued by the officers from the Directorate of Revenue Intelligence (DRI). In all the writ petitions in Table-II, the petitioners have challenged the impugned Show Cause Notices issued by the officers from the Directorate of Revenue Intelligence.

5. It is the uniform submission of the respective counsel for the petitioners in the respective writ petitions is that the impugned proceedings under the respective Show Cause Notices as also the respective impugned Order-in-Originals are without jurisdiction as they emanate from a person who is not a “proper officer” within the meaning of Section 2(34) of the Customs Act, 1962.

6. In all these writ petitions, the challenge to the impugned Show Cause Notices and the impugned Order-in-Originals are inspired from the decision of the Hon'ble Supreme Court in Commissioner v. Sayed Ali 2011 (265) E.L.T. 17 (S.C.) and the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3(S.C.). The said decision is now the subject matter of a review before the Hon'ble Supreme Court.

7. The Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3(S.C.) the above case has held that the officer from the Directorate of Revenue Intelligence (DRI), are not the “Proper Officer” within the meaning of Section 2(34) of the Customs Act, 1962 for issuing Show Cause Notice under Section 28 of the Customs Act, 1962. The Hon'ble Supreme Court held that “If it was intended that officers of the Directorate of Revenue Intelligence who are officers of Central Government should be entrusted with functions of the Customs officers, it was imperative that the Central Government should have done so in exercise of its power under Section 6 of the Act. The reason why such a power is

conferred on the Central Government is obvious and that is because the Central Government is the authority which appoints both the officers of the Directorate of Revenue Intelligence which is set up under the Notification dated 4-12-1957 issued by the Ministry of Finance and Customs officers who, till 11-5-2002, were appointed by the Central Government. The notification which purports to entrust functions as proper officer under the Customs Act has been issued by the Central Board of Excise and Customs in exercise of non-existing power under Section 2(34) of the Customs Act, 1962". However, the attention of the Hon'ble Supreme Court appears to have not been brought to Section 4 of the Customs Act, 1962 and the Notification issued thereunder wherein officers of the Directorate of Revenue Intelligence have already been appointed as "Officer of Customs" and it is the "Officers of Customs" who are appointed as "proper office". Similarly, the attention of the Hon'ble Supreme Court appears to have not been brought to amendment to Section 17 of the Customs Act, 1962 vide Section 38 of the Finance Act, 2011 w.e.f from 8.4.2011. I shall endeavour to explain the same later in the course of this Order.

## **PART II - IMPACT OF FINANCE ACT, 2022**

8. At the time when the cases were argued and reserved for passing orders, the Finance Bill, 2022 had been introduced in the Parliament. The Finance Bill, 2022 contained clauses which proposed changes to the provisions of the Customs Act, 1962 and validations to actions already taken. Now the Finance Act, 2022 has been passed as on date.

9. The Finance Act, 2022 has cured the so-called defects pointed out by the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3 (S.C.). Further, under Section 97 of the Finance Act, 2022, there is a validation of all proceedings already taken and pending proceedings have to be completed accordingly.

10. As per Section 97 of the Finance Act, 2022 there is a validation of action taken or function performed before the date of commencement of Finance Act, 2022 under various Chapters of the Customs Act by any officer of Customs, as specified in Section 3 of the Customs Act, 1962 as amended, where such action was in pursuance of their appointment and assigning of functions by the Central Government or the Board under the Customs Act, 1962.

11. The explanation to Section 97 of the Finance Act, 2022 further makes it clear that any proceeding arising out of any action taken under this Section and pending on the date of commencement of this Act shall be disposed of in accordance with the provisions of the Customs Act, 1962 as amended by the Finance Act 1962. Section 97 of the Finance Act, 2022 reads as under:-

### **Validation of certain actions taken under Customs Act.**

97. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal, or other authority, or in the provisions of the Customs Act, 1962 (hereinafter referred to as the Customs Act),—

- (i) anything done or any duty performed or any action taken or purported to have been taken or done under Chapters V, VAA, VI, IX, X, XI, XII, XIII, XIV, XVI and XVII of the Customs Act, as it stood prior to its amendment by this Act, shall

be deemed to have been validly done or performed or taken; Validation of certain actions taken under Customs Act.

(ii) any notification issued under the Customs Act for appointing or assigning functions to any officer shall be deemed to have been validly issued for all purposes, including for the purposes of section 6;

(iii) for the purposes of this section, 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.

Explanation.— For the purposes of this section, it is hereby clarified that any proceeding arising out of any action taken under this section and pending on the date of commencement of this Act shall be disposed of in accordance with the provisions of the Customs Act, as amended by the Act”.

12. In the light of the above development, the challenge to the impugned Show Cause Notices and the impugned Order in Originals have to fail since these proceedings are pending before this Court. They will have to be disposed of in accordance with the provisions of the Customs Act, 1962 and Section 97 of the Finance Act, 2022.

13. Since the writ petitions were argued at length in the light of the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3 (S.C.), I shall endeavour to explain the position of law independently in the light of the scheme of the Customs Act, 1962 and the Notification issued under it.

14. At the same time, challenges to some of the impugned Order in Original in Table-I merit the attention of this Court to the extent they have been passed based on statements of third party and without affording an opportunity of cross-examination of such witness(s). I will however refrain from making any observations on the merits of the case.

15. Before dealing with the applicability of the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3 (S.C.) to the facts of these cases. I shall briefly narrate the facts of each of the cases of the counsel for the respective counsel for petitioner's and for the respondents in the respective Writ Petitions.

### **PART III - FACTS OF THE CASES AND BRIEF SUBMISSIONS**

#### **PART- A : CHALLENGE TO THE IMPUGNED**

##### **ORDER-IN-ORIGINALS:-**

W.P.No.33099 of 2015 : [M/S.N.C.ALEXANDER-SI.No.1 in TABLE-I]:

16. In W.P.No.33099 of 2015, the petitioner has challenged the impugned Order in Original No.39839 of 2015 dated 29.06.2015 passed by the respondent, Commissioner of Customs. The prayer in this writ petition reads as follows:

“ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified

Mandamus calling for the records of the Respondent pertaining to the Order in Original No.39839/2015 dated 29.06.2015 and quash the same and forbear the Respondent from proceeding with any recovery of the Adjudicated dues pursuant to the said Order In Original, as it is partisan, one sided and issued with a closed mind besides being passed in clear violation of the Principles of Natural Justice and in passed in gross judicial indiscipline, as the petitioner had relied upon Judgements of this Hon'ble Court in W.P.No.1641 of 2008 dated 10.01.2011 and W.P.No.3720/2009 dated 01.12.2014; besides the orders of Commissioner of Customs (Appeals), pertaining to the Valuation of Import of Apples in the preceding years; and also for the reason that the Imports in question, impugned in the Order under Challenge in the present writ petition were on the basis of an "Apostilled Contract", issued in terms of "the Hague Convention, 1961", to which India as a Sovereign Country is a signatory and the said contract is binding on all Indian Authorities functioning under the aegis of the Indian Constitution"

17. By the impugned Order-in-Original No.39839 of 2015 dated 29.06.2015, the respondent Commissioner of Customs has confirmed the demand proposed in the Show Cause Notice dated 26.03.2010 bearing reference F.No.VIII/371/2009-DRI-CZU under Section 28 of the Customs Act, 1962 and imposed interest under Section 28AB of the Customs Act,1962, redemption fine under Section 125 and penalty under Section 114A on the petitioner.

18. The impugned Order is challenged primarily on the ground that the Show Cause Notice dated 26.03.2010 bearing reference F.No.VIII/371/2009-DRI-CZU which preceded the impugned Order was issued by the Additional Director General of Directorate of Revenue Intelligence was without jurisdiction.

19. It is submitted that the Additional Director General of Directorate of Revenue Intelligence(DRI) was incompetent to issue the said Show Cause Notice as the Additional Director General of Directorate of Revenue Intelligence was not a "Proper Officer" for the purpose of Section 28 and Section 124 of the Customs Act, 1962, within the meaning of Section 2(34) of the said Act.

20. The dispute pertains to alleged mis-declaration of value of apples imported from the United States of America in respect of ten different Bills of Entry and cleared by claiming and availing the benefit of Customs Notification No.41/2005-Cus dated 09.05.2005 and utilizing Credit Certificates issued under the Vishesh Krishi & Gram Udyog Yojana Scheme (VKGUY Scheme). It was also alleged that the petitioner had filed forged invoice/purchase and thereby suppressed the value and evaded tax.

21. The challenge to the impugned Order is inspired from an earlier decision of the Hon'ble Supreme Court in the case of Commissioner of Customs Vs. Sayed Ali, 2011 (265) ELT 17 (SC) which was re-affirmed in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3 (S.C.). I shall also refer to these decisions at some length later in this order.

22. That apart, the challenge to the impugned Order in Original is also on the ground of alleged violation of principles of natural justice and contrary to the decision of this Court in W.P.No.1641 of 2008 and W.P.No.3720 of 2009 vide its order dated 10.01.2011 and 01.12.2014, respectively.

23. Further, it is submitted that the imports were made on the basis of an "Apostilled Contract" issued in terms of Hague convention, 1961 and that such contract is not only binding on the signatories but also the authorities functioning under the aegis of the Indian Constitution.

24. The facts of the case indicate that the petitioner had earlier filed W.P.No.3720 of 2009, for a Writ of Mandamus, to direct the respondents to assess the Bills of Entry filed by the petitioner during April 2003 to January 2009.

25. During the pendency of the above writ petition, the petitioner was issued with the above mentioned Show Cause Notice dated 26.03.2010 bearing Reference F.No.VIII/371/2009-DRI-CZU by the Additional Director General of Directorate of Revenue Intelligence.

26. In the light of the submissions of the petitioner, the said writ petition in W.P.No.3720 of 2009 was disposed by this Court by its order dated 01.12.2014.

27. The petitioner also appears to have also filed another writ petition in W.P.No.1641 of 2008, wherein the petitioner had challenged an earlier impugned Order-in Original and that the writ petition came to be allowed on 10.01.2011 and therefore, a direction was issued to the officers to adjudicate the Show Cause Notice dated 26.03.2010 within a period of four weeks from the date of receipt of a copy of this order.

28. On merits the challenge to the impugned Order is also on the strength of the earlier order passed in W.P.No.1641 of 2008 on 10.01.2011. The petitioner has made several other submissions on merits by stating that the respondent has not followed the orders passed for similar imports made by the petitioner earlier. Learned counsel for the petitioners also relied on the following cases:-

- i. Bushboak Allen India Ltd vs. Union of India, 1995(77) ELT 529;
- ii. Union Trade Company vs. Union of India, 1996(82) ELT 20 (Mad.)
- iii. Pushpanjali Silks Pvt.Ltd. vs. Chief Commissioner of Customs, Chennai, 2007 (211) ELT 206(Mad.)
- iv. Commissioner of Customs, Kolkata vs. South India Television, Pvt.Ltd., 2007(214) ELT 3 (Mad.)
- v. Thangaiah vs. State of Tamil Nadu, 2010(251) ELT 187 (Mad.)
- vi. Claris Life Sciences vs. Union of India, 2014(305) ELT 497(Guj)
- vii. Commissioner of Customs (Import) vs. Wings Electronics, 2015(323) ELT 450 ( SC)
- viii. Gowrishankar and Another vs. Joshi Amba Shankar Family Trust and Others, (1996) 3 SCC 310
- ix. Commissioner of Customs, Kandla, Essar Oil Ltd., and Others, (2004) 11 SCC 364
- x. M/s.Samsung India Elect. Vs. Commissioner of Customs, New Delhi, 2013 SCC Online CESTAT 562"

29. The writ petition is opposed primarily on the ground that the petitioner has an alternate remedy and that the petitioner has indulged in evasion of customs duty by suppressing the import value and had wrongly availed the benefit of the Customs Notification and therefore is also liable to duty and penalty and therefore the writ petition is devoid of merits. It is submitted that the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3 (S.C.).

W.P.No.27344 of 2017 : [E.DURASAMY & BROS- Sl.No.2 in TABLE-I].

30. In W.P.No.27344 of 2017 [Sl.No.2 in Table-I] the petitioner has challenged the impugned Order in Original No.58133 of 2017 dated 18.07.2017 passed by the respondent Commissioner of Customs. The prayer in this writ petition reads as follows:

*“Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records of the Respondent in F.No.CAU/DRI/CHE/06/2012-CH-IV; leading to issuance of Order-in-Original No.58133/2017 dated 18.07.2017 and quash the same as the same is contrary to the judgments of the Hon’ble Apex Court and the circulars issued by the Central Board of Excise and Customs (CBEC).”*

31. By the impugned Order-in-Original, the respondent Commissioner of Customs has confirmed the demand under Section 28 of the Act and has also imposed penalty and ordered confiscation of the imported goods under Section 124 of the Act as proposed in the Show Cause Notice dated 10.02.2012 bearing reference No.VIII 26/363/07 issued by the Directorate of Revenue Intelligence(DRI).

32. The dispute in this case also pertains to alleged wrongful availing of the benefit of Customs Notification No.41/2005-Cus dated 09.05.2005 read with Appendix of 37-B of Hand Book Procedure, Foreign Trade Policy.

33. The Show Cause Notice seems to indicate that the statements were recorded from the partner of the petitioner namely, the second petitioner herein on 10.10.2007 and that the said petitioner also under took to pay the difference customs duty.

34. However, thereafter, filed W.P.No.33715 of 2007 before this Court for a mandamus to restrain the Officers of the Directorate of Revenue Intelligence from either summoning and/or demanding duties under the Bills of Entry filed by the petitioner from 2006 to 2007, in respect of apples imported and duty paid under (Vishesh Krishi & Gram Udyog Yojana Scheme (VKGUY Scheme), availing the benefit of Notification No.41/2005-Cus dated 09.05.2005. The writ petition came to be disposed on 27.11.2011.

35. The impugned Order in Original is primarily challenged on the ground that the officers of the Directorate of Revenue Intelligence (DRI) were incompetent to issue a Show Cause Notice under Sections 28 & 124 of the Customs Act, 1962 for the imports made prior to its amendment in 2011.

36. This writ petition is also inspired from the decision of the Hon’ble Supreme Court in Commissioner of Customs Vs. Sayed Ali, 2011 (265) ELT 17 (SC) which has been referred to

subsequently in Canon India Private Limited Vs. Commissioner of Customs, 2021(376) E.L.T. 3(S.C.).

37. It is further submitted that the attempt of the parliament to retrospectively validate the action taken and to get over the decision of the Hon'ble Supreme Court in Commissioner of Customs Vs. Sayed Ali, 2011 (265) ELT 17 (SC) which was set at knot by the Delhi High Court in Mangali Impex and Ors. Vs. Union of India, 2016(335) ELT 165 (Del.) and that the Delhi High Court had concluded that the attempt was misconceived and that the amendment to Section 28 would come into force only from 08.07.2011 and not from the period prior to that date.

38. That apart, a reference was also made to the decision of the Division Bench of the Delhi High Court in the case of BSNL Vs. Union of India and others vide order dated 25.05.2017 in W.P.(C).No.4438 of 2017 in the context of Notification No.61/2016 Customs dated 4th May 2016, wherein, the decision of the Delhi High Court taking note of paragraph (9.3) of the circular, transferring the case to call back and that the challenge to the notification was revived. The writ petition is opposed on the ground that the petitioner has an alternate remedy before the Appellate Tribunal.

39. On merits, similar submissions in W.P.No.33099 of 2015 were made by the learned counsel for the respondent in W.P.No.27344 of 2017, also.

W.P.No.18918 of 2016: [CHIRAG U JAIN-SI.No.3 in TABLE-I]

40. In W.P.No.18918 of 2016, the petitioner has challenged the impugned Order in Original No.44560 of 2016 dated 05.02.2016 passed by the respondent, Commissioner of Customs. The prayer in this writ petition reads as follows:

*"Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the respondent pertaining to the Order in Original No.44560/2016 dated 05.02.2016 and quash the same and forbear the Respondent from proceeding with any recovery of the Adjudicated dues pursuant to the said Order In Original, as it is partisan, one sided and issued with a closed mind besides being passed in clear violation of the Principles of Natural Justice."*

41. By the impugned Order-in-Original, the first respondent Commissioner of Customs has confirmed the demand proposed in the Show Cause Notice dated 25.04.2013 bearing reference No.VIII 48/41/2012-DRI issued by the Additional Director General, Directorate of Revenue Intelligence(DRI).

42. It was alleged that the petitioner had imported fire crackers in the name of M/s.Malar Agencies which were restricted items of import and disguised the import with birthday party poppers to conceal the imported fire crackers.

43. It is submitted that the impugned Order-in-Original dated 05.02.2016 was without jurisdiction. It was further submitted that before passing impugned Order-in-Original dated 05.02.2016, an opportunity to cross-examine Shri.Ashok Kumar and Shri.Dayanadhi and Shri.S.Suresh (the Joint Director of Custom House Laboratory, Chennai) and Shri.

Sargunarajan (Joint Chief Controller of Explosives) ought to have been given.

44. Facts, on records indicate that the petitioner had imported fire crackers using the I.E.Code of holder Malar Agencies in connivance of Shri Dhyanthi, Ashok Kumar, Sagayaraj, Ganesh Kumar and Shri Ramesh Babu of M/s.Blue Wale Shipping Company with support of on Shri.Parthiban. I.E.holder of the importing firm. The petitioner in his voluntary statement confirmed that the imported consignments were sold to Saravana Stores, Export Fashion, Chennai, Cool Clubs, Shobha Readymades etc.

45. The petitioner vide his reply dated 02.12.2013 had requested for cross-examination of Shri Dayanadhi and Shri Ashok Kumar, conotices in the show cause notice to enable the petitioner to defend himself in the impugned adjudication proceedings. It is submitted that the said request was acceded to. It is therefore submitted that the impugned order in original is liable to be quashed. The respondents have reiterated the submission as in other case regarding inapplicability of the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3 (S.C.).

W.P.Nos.12929 and 12933 of 2021 : [FAROOQ UBAITHULLA – Sl.Nos.4 & 5 in TABLE-I]

46. In W.P.Nos.12929 of 2021 and 12933 of 202, the petitioner has challenged the impugned Order-in-Original No.44421 of 2016 dated 30.12.2015 from the file No.CAU/DRI/CHE/21/2015 of the first respondent in W.P.No.12929 of 2021 and the consequential recovery notice dated 06.05.2019 issued by the second respondent.

47. The prayers in these two writ petitions read as follows:-

<b>Prayer in W.P.No.12929 of 2021</b>	<b>Prayer in W.P.No.12933 of 2021</b>
<i>“Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified calling for the records pertaining to the impugned Order-in-Original No.44421 of 2016 dated 30.12.2015 issued in F.No.CAU/DRI/CHE/21/2015 issued by the first respondent and quash the same.</i>	<i>“Petition filed under article 226 of the Constitution of India to issue a Writ of Certiorarified calling for the records pertaining to the impugned recovery notice dated 06.05.2019 issued in F.No.RRU 18/2019-RRU II (Gr-6) issued by the second respondent and quash the same.”</i>

48. It is the case of the petitioner that the petitioner was no way connected with import of goods and therefore the impugned order passed pursuant to show cause notice dated 30.06.2015 issued by the third respondent/Additional Director General, Directorate of Revenue Intelligence was without jurisdiction.

49. The Show Cause Notice dated 30.06.2015 bearing reference F.NO.DRI/CZU/VIII/48/ENQ-01/INT-25/2014 was issued by the third respondent/Additional Director General, Directorate of Revenue Intelligence to the petitioner Shri.Farooq Ubaithulla as a co-noticee.

50. The petitioner was called upon to show cause as to why, the penalty should not be imposed

on him under Section 112 and Section 114 AA of the Customs Act, 1962 along with the co-noticee named in the paragraph 117 of the Show Cause Notice.

51. It was alleged that the petitioner had destroyed evidence to facilitate evasion of Customs Duty by the main Noticee in the Show Cause Notice, bearing reference F.NO.DRI/CZU/VIII/48/ENQ-01/INT25/2014 issued by the Additional Director General, Directorate of Revenue Intelligence (DRI) dated 30.06.2015. The allegation against the petitioner in Show Cause Notice reads as under:-

109.1 During the course of the search proceedings at showroom premises of M/s.Designer's Furniture, No.28, Spurtank Road, Chetpet, Chennai 600 031 on 27.06.2014, Shri.Farook Ubaithulla, came to the premises and along with Shri.M.O.Mohamed, Fareed, threatened the officers and snatched the bag containing the Hard Disk and pen drives and escaped from the said place. As the Hard Disk and pen drives were believed to contain incriminatory evidences for the investigation under the Customs Act, 1962, a complain was lodged with the Inspector of Police, G7 Police Station, Chetpet, Chennai and to retrieve the said Hard disk and pen drives from Shri Farook Ubaithullah and to take appropriate action against the above said persons. Shri Farook Ubaithullah had sent a letter dated 02.07.2014 stating that he had been falsely implicated in the case relating Shri M.O.Mohamed Fareed. The matter was examined with relevant records and a factual reply was given to him by DRI vide letter dated 09.07.2014. DRI also sought Shri.Farook Ubaithullah to return the stolen storage devices from the premises of M/s.Designer's Furniture, No.28, Spurtank Road, Chetpet, Chennai. But he had not returned the stolen storage devices.

109.2. Voluntary statements under Section 108 of the Customs Act, 1962 were recorded from Shri M.O.Mohamed Fareed during which he repeatedly deposed that all the information were contained in the Hard disk and pen drives taken away by Shri.Farook Ubaithulla and he did not remember anything. In view of the same, summons dated 02.02.2015 under Section 108 of the Customs Act, 1962 was issued to Shri.Farooq Ubaithulla for his appearance on 06.02.2015. He failed to appear on the said date, instead sent a letter dated 04.02.2015, inter alia, stating that only the Police had the power to investigate the above mentioned incident and it was unlawful on the part of DRI officials to do a parallel investigation. Further, summons dated 06.02.2015 for his appearance on 13.02.2015 was also issued. He had failed to honour the said summons also, but sent another letter dated 11.02.2015 expressing certain apprehensions. A reply was given to him vide letter dated 17.02.2015 explaining that all his apprehensions were considered and replied to him vide letter dated 09.07.2014 wherein the circumstances under which he was being summoned had been detailed. A summons dated 17.02.2015 for his appearance on 20.02.2015 was also enclosed along with the said letter. The said summons was also not honoured by him. The purpose of dodging the summons and entering into unwanted and undesired correspondence seemed to drag the proceedings and to brow-beat the officers investigating the case.

109.3. In the above said circumstances, DRI filed a petition under Section 174 IPC with

the Hon'ble Additional Chief Metropolitan Magistrate, E.O.I, Egmore and its proceedings are pending before the Hon'ble Court at the time of issue of this Notice.

109.4. Shri Farook Ubaidullah is an ex-cofeposa detainee. He was detained on two occasions by the State Government of Tamil Nadu vide Detention Order in S.R.1/280-5/94 dtd 04/04/1994 for the offence in O.S.No.46/1994 (Air) concerned with seizure of foreign currency valued at Rs/36,74,984/- and in S.R./844-8/99 dated 26.10.1999 for the offence in O.S.No.44/1999 (Air) concerned with seizure of electronic goods valued at Rs.9.03 lakhs”.

52. The petitioner was called upon to show cause notice as to why penalty under Sections 112 and 114A of the Customs Act, 1962. It is further submitted that the said petitioner was not connected with import of goods and therefore the impugned Order passed pursuant to the Show Cause Notice dated 30.06.2015 issued by the third respondent/Additional Director General, Directorate of Revenue Intelligence was without jurisdiction.

53. The learned counsel for the petitioner further submits that neither the Show Cause Notice nor the impugned Order- in-Original were served to the petitioner and that after the impugned detention notices was issued to the petitioner on 26.04.2019, the petitioner requested the respondents to furnish a copy of the impugned Order-in-Original No.44421 of 2016 dated 30.12.2015 to ascertain the liability and since there was no response, the petitioner sent one more letter pursuant to which the impugned order was served on the petitioner vide letter dated 23.03.2021. It is therefore submitted that there is no delay in filing the present writ petition.

54. The learned counsel for the petitioner submits that since neither the Show Cause Notice nor the Order-in-Original were served to the petitioner, the petitioner became aware of the impugned Order-in-Original only after the impugned detention notices were issued to the petitioner on 26.04.2019.

55. It is further submitted that the petitioner requested the respondents to furnish a copy of the Order in Original to ascertain the liability and since there was no response, the petitioner sent one more letter pursuant to which the impugned order was served on the petitioner vide letter dated 23.03.2021.

56. It is further submitted that in the light of the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021 (376) E.L.T. 3(S.C.). the entire proceedings initiated by the third respondent Directorate of Revenue Intelligence and order passed by the first respondent herein as without jurisdiction. Consequently, the impugned recovery notice dated 06.05.2015 is also liable to be quashed.

57. The learned counsel for the petitioner further submits that the respondent in the counter has also admitted that the notices dispatched to the petitioner earlier had returned as un-served. It is therefore submitted that the petitioner cannot be held guilty of laches or for the delay in approaching this Court.

58. It is submitted that the Show Cause Notice dated 30.06.2015 which has culminated in impugned Order-in-Original No.4442 of 2016 dated 30.12.2015 is liable to be quashed in the

light of the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021 (376) E.L.T. 3(S.C.).

59. The learned ASG assisted by Mr.V.Sundareswaran, learned Senior Panel Counsel submitted that the Show Cause Notice was issued on 30.06.2015 and the case was adjudicated on 30.12.2015 five years before the aforesaid decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021 (376) E.L.T. 3(S.C.).

60. It is submitted that the petitioner was silent after the Show Cause Notice was issued and failed to reply to the Show Cause Notice was issued. Further, long after the adjudication of the said Show Cause Notice vide Order-in-Original No.44421/2016 dated 30.12.2015 by the first respondent, Commissioner of Customs, the petitioner has filed this writ petition. The petitioner as per his own admission admitted to have come to knowledge about the case against him in the subject case through a detention notice dated 26.04.2019 served on him by the second respondent for payment of penalty of Rs.55,00,000/- in terms of Order-inOriginal No.44421/2016 dated 30.12.2015 issued by the first respondent during the petitioner's incarceration in Puzhal Prison and that the petitioner replied to the said detention notice. In view of the above factual matrix, it is submitted that this writ petition is an afterthought and advice received by the petitioner based on Canon Judgment to wriggle out from the clutches of law and liability already incurred cannot be countenanced.

61. The learned ASG further submits that the writ petition is devoid of merits and inasmuch as the petitioner has neither participated in the proceedings initiated pursuant to the Show Cause Notice dated 30.06.2015 nor filed an appeal in time before the Appellate Tribunal. It is further submitted that the petitioner was aware of the detention notice issued as early as 26.04.2019 and has filed this writ petition to take advantage of the decision of the Hon'ble Supreme Court in the case of Canon India Private Limited Vs. Commissioner of Customs 2021 (376) E.L.T. 3(S.C.). It is submitted that the law as declared in the said case cannot be applied to the facts of the case.

62. It is submitted that the petitioner took away the hard disk after assaulting the officers and therefore the first respondent has correctly imposed penalty on the petitioner under Section 112 of the Customs Act, 1962.

63. It is further submitted that a review petition is pending before the Hon'ble Supreme Court against the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3(S.C.).

64. The learned ASG further submits that the writ petition is liable to be dismissed on account of the serious allegations even otherwise. It is submitted that the petitioner has indulged in destruction of material evidence against the importer namely Import/Export holder Smt.P.Banumathy. It is therefore, submitted that the writ petition should be dismissed with exemplary cost.

65. By way of rejoinder, the learned counsel for the petitioner submits that the impugned order has been challenged by the Import/Export holder namely Smt.P.Banumathy in W.P.Nos.13263

and 13270 of 2021 and that an Interim Order was passed on 25.06.2021 and subsequently the final order was passed on 25.10.2021 wherein the proceedings initiated against the Import/Export holder Smt.P.Banumathy was quashed. It is therefore submitted that in the light of the development since the proceedings against the main noticee has been dropped, the proceedings against the petitioner cannot be sustained.

**PART- B (TABLE II CASES) CHALLENGE TO IMPUGNED SHOW CAUSE NOTICES:**

W.P.No.9484 of 202 & W.P.No.9434 of 2021 1- [ M/S.Sneha Glasses Private Ltd. And M/S.Bagrecha Enterprises Ltd.,- Sl.Nos.6 and 7 in Table-II]

66. The petitioners have challenged the impugned Show Cause Notices issued by the Additional Director of Directorate of Revenue Intelligence. The prayer in these Writ Petitions read as under:-

<b>W.P.No.9484 of 2021</b>	<b>W.P.No.9434 of 2021</b>
<p>“Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the entire records connected with the Show Cause Notice F.No.VIII/48/28/2008-DRI, dated 26.10.2009, passed by the third respondent herein and quash the same”.</p>	<p>“Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the entire records connected with the Show Cause Notice F.No.VIII/48/33/2008-DRI, dated 26.10.2009, passed by the third respondent herein and quash the same”.</p>

67. The challenge to the impugned show cause notices is in the year 2021 on 09.04.2021 after the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3(S.C.) came to be rendered as no orders were passed earlier.

68. The learned counsel for the petitioners submits that the show cause notices have been issued under Section 28 of the Customs Act, 1962 as it stood prior to its amendment in 2011. It is submitted that in the light of the decision of the Hon'ble Supreme court in the case of Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3(S.C.), the show cause notice issued by the 3rd respondent, Additional Director, Directorate of Revenue Intelligence are liable to be quashed.

69. In this connection, the learned counsel for the petitioner has drawn attention to the decision of the Hon'ble Supreme Court in Commissioner of Customs, Kandla Vs. Agarwal Metals and Alloys 2021 (378) E.L.T.7(S.C), wherein, the Hon'ble Supreme Court has dismissed the department appeal by following its earlier decision in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3(S.C.).

70. The learned counsel for the petitioners have also drawn attention to few other decisions of this Court which have followed the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3(S.C.) and that of the decision of the Karnataka High Court and Bombay High Court. It is therefore submitted that the

impugned show cause notice is liable to be quashed.

71. That apart, the learned counsel for the petitioners submits that the adjudication of the show cause notice long after its issue is clearly time barred and is liable to be quashed in the light of the decision of the Hon'ble Supreme Court in State of Punjab Vs. Bhatinda District Coop. Milk Union Limited 2007 (217) E.L.T. 325 (S.C).

72. The learned counsel for the petitioners have drawn attention to the following cases from the Punjab and Haryana High Court and that of this Court, wherein a similar view was taken and it is therefore submitted that the show cause notice even otherwise is liable to be quashed and therefore adjudication proceedings could not be proceeded. In this connection, reference is made to the following decisions:-

- i. GPI Textiles Limited Vs. Union of India, 2018 (362) E.L.T (P&H),
- ii. Mentha & Allied Products Ltd Vs. Commr. Of CGST, Chandigarh 2021 (376) E.L.T. 41 (P&H),
- iii. Mahalakshmi Traders Vs. Assistant Commissioner of Customs (GR.7B-DEPB), Chennai 2021 (378) E.L.T. 51 (Mad),
- iv. Swathi Menthol & Allied Chemicals Limited Vs. Commr., GST & C.Ex. Commissionerate, Chandigarh 2021 (378) E.L.T. 110 (P&H) and
- v. Sushitex Exports (India) Ltd, & Ors Vs. Union of India & Anr, W.P.(L).No.9641 of 2020;
- vi. Babu Verghese and others Vs. Bar Council of Kerala and Ors, AIR 1999 SC 1281;
- vii. Commissioner of Customs Vs. Sayed Ali, 2011(265) E.L.T.17(S.C.);
- viii. Mangali Impex Ltd., Vs. Union of India, 2016 (335) E.L.T.605(Del.)”.

73. The learned counsel for the petitioners further submits that the Hon'ble Division Bench of the Bombay High Court in Commissioner of Customs Vs. Reliance Industries Limited, 2021 SCC Online 5914 has discussed at length.

74. Opposing the prayer in this writ petition, the learned ASG duly assisted by the learned Senior Panel Counsel for the third respondent submits that the petitioner had attempted to take a adjournment in the show cause notice stating that the petitioner was settling the dispute with the Settlement Commission and that indeed an order had been passed on 16.09.2010 and therefore the present writ petition is devoid of merits.

75. It was later submitted that the case arising out of the impugned order has been settled before the Settlement Commission and therefore this writ petition is devoid of merits even if the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3(S.C.) is applied to the facts of the case and nothing survives for adjudication in the writ petition.

76. He therefore submits that the writ petition is liable to be dismissed, as not maintainable/infructuous. Since the petitioner contested the above submission of the learned

ASG, the case was adjusted to verify whether indeed the writ petition was infructuous.

77. The learned counsel for the respondent submits that the petitioner had received a Personal Hearing Intimation letters issued F.No.S.23/2004 04218/08-GR 3 / VIII/48/33/2008-DRI-Chennai, dated 19.02.2019 and of 10.03.2010 scheduling the physical hearing in the matter. This was in continuation to the initial notice and is not a fresh matter.

78. The impugned Show Cause Notice emanates from a search and seizure effected during 2006-2007 and that the petitioner requested time to approach the Settlement Commission and that the petitioner had been dragging in the proceedings from 2009 stating that the petitioner will approach the Settlement Commission and that the petitioner had been dragging in the proceedings from 2009 stating that the petitioner will approach the Settlement Commission and workout the remedy. It is therefore submitted that the Writ Petition was not bonafide.

79. He therefore submits that the petitioner in paragraph 6 of the Affidavit stated that the petitioner examined the allegations contained in the impugned Show Cause Notice and took legal advice and that all the import transactions were bonafide and truthful and the allegations and enhancement of value by Directorate of Revenue Intelligence (DRI) was arbitrary without any evidence, and decided that they will contest the show cause notice on merits and was ready for adjudication proceedings. It is therefore submitted that the Writ Petition is devoid of merits.

80. By way of rejoinder, the learned counsel for the petitioner submits that the petitioner has not approached the Settlement Commission and therefore that the submissions that case was settled before the Settlement Commission cannot be countenanced.

W.P.No.9306 of 2021: [ M/s.SUN NETWORK LIMITED-SI.No.8 of Table-II]

81. The petitioner has challenged the impugned Show Cause notice dated 19.07.2013 issued by the second respondent Additional Director of DRI, Mumbai seeking to demand customs duty and to appropriate an amount of Rs.60,17,61,981/- paid by the petitioner. Thereafter, no summons were issued by the Office of the second respondent on 05.03.2013. The prayer in the said writ petition reads as under:-

“Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to quash the show cause notice dated 19.07.2013 in File No:DRI/MZU/E/13/2012/5518 issued by the second respondent now pending adjudicating before the first respondent and consequently direct the second respondent to refund the said sum of Rs.60,17,62,000/- (Rupees Sixty Crores Seventeen Lakhs Sixty Two Thousand Only) paid by the petitioner by way of demand draft dated 05.03.2013 bearing No: 544861 drawn at City Union Bank Ltd., Mandaveli Branch, Chennai with applicable interest.”

82. The challenge to the impugned show cause notice is almost identified as is other writ petitions. It is stated that the 2nd respondent is a Superior Officer and therefore the show cause notice was contrary to Section 28(4) of the Act.

83. The petitioners herein had imported Bombardier aircraft pursuant to the permission granted by Director General of Civil Aviation on 16.07.2008 and thereafter issued permit notice on 29.07.2008 on merits.

84. It appears the allegation is that the petitioner has used this aircraft contrary to the exemption notification and the permission granted by the Director General of Civil Aviation and therefore the petitioner was liable to customs duty foregone at the time of import of the Bombardier aircraft and the penalty thereon.

85. The learned counsel for the petitioner in W.P.No.9306 of 2021 has relied on the decision of the merits:-

i. M/s.Universal Impex, through its Proprietor Mr.Sushil Toshniwal and another vs. 1. The Additional Director General, Directorate of Revenue Intelligence, Delhi Zone Unit, B-3 & B-4, 6th Floor, Paryavarn Bhawan, Lodhi Road, New Delhi and two Others, W.P.No.6443/2020;

ii. Reliance Transport & Travels Ltd., vs. CC, New Delhi, 2018 SCC Online CESTAT 11036;

iii. Commissioner of Customs (Import & General) vs. Reliance Transport & Travels Ltd., C.A.Nos.87 & 88 of 2020;

iv. Commissioner of Customs (Preventive) New Delhi vs. M/s.Airmid Aviation Services (P) Ltd., C.A.Nos.2515-2519 of 2011

v. The Commissioner of Central Excise, Coimbatore vs. M/s.Pricol Ltd., Perinaickenpalayam, Coimbatore 641 103 and Other, C.M.A.No.3185 of 2015;

vi. Virbac Animal Health India Pvt.Ltd., Rep.by its Director Supply Chain, Manoj Kumar Roy, 604, 6th Floor, Western Edge-1, Megathane, Western Express Highway, Borivali (E), Mumbai 400 066 Vs. The Union of India, Rep.by its Secretary ( Revenue) Department of Revenue, Ministry of Finance, North Block, New Delhi 110 001, W.P.No.14126 of 2020”.

86. Appearing on behalf of the petitioner, the learned Senior Counsel submits that though the petitioner had replied to the Show Cause Notice and paid a part of the amount ‘under protest’ and without prejudice to its rights, the issue now squarely stands covered against the revenue in the light of the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs Commissioner of Customs, 2021(376) E.L.T. 3(S.C.)

87. The learned Senior Counsel for the petitioner has also relied on the decision of the Hon'ble Supreme Court in Raza Textiles Limited Vs Income Tax Officer, (1973) 1 SCC 633. A specific reference was made to Paragraph 3 from the said decision to support the case of the petitioner to state that the second respondent cannot assume jurisdiction and deny refund of the amount under protest and without prejudice.

88. It is submitted that the entire proceedings are vitiated and are therefore liable to be interfered notwithstanding that the petitioner has replied to the Show Cause Notice in the light of the decision of the Hon'ble Supreme Court in Canon India Private Limited case (referred to

supra).

89. The learned Senior Counsel for the petitioner has also placed reliance on the decision of the learned Single Judge of this Court in Alston Transport India Limited Vs The Additional Director General, Directorate of Revenue Intelligence, Zonal Unit, G.N.Chetty Road, T.Nagar, Chennai and 16 others, passed in W.P.No.19919 of 2021 dated 25.10.2021 and the Madurai Bench of this Court in Quantum Coal Company Private Limited, Represented by its Managing Director Vs The Commissioner, Office of the Commissioner of Customs, Tuticorin, passed in W.P.No.10186 of 2021 dated 16.03.2021.

90. The learned counsel for the petitioner has also relied on the following decisions of the Courts:-

- i. Babu Verghese and others vs. Bar Council of Kerala and others, AIR 1999 SC 1281;
- ii. Commissioner of Customs vs. Sayed Ali, 2011(265) E.L.T.17(S.C.);
- iii. Mangali Impex Ltd., vs. Union of India, 2016(335) E.L.T.605(Del.);
- iv. State of Punjab vs. Bhatinda District Co-op, Milk P.Union Ltd., 2007(217) E.L.T.325(S.C.);
- v. GPI Textiles Limited vs. Union of India, 2018(362) E.L.T.388(P & H),;
- vi. Mentha & Allied Products Ltd. vs. Commr.of CGST, Chandigarh, 2021(376) E.L.T.41(P & H);
- vii. Mahalakshmi Traders vs. Asst.Commr.of Cus.(GR.7B-DEPB), Chennai, 2021(378) E.L.T.51(Mad.)
- viii. Swati Menthol & Allied Chemicals Ltd., vs. Commr.GST& C.Ex.Commissionerate, Chandigarh, 2021(378) E.L.t.110 (P & H);
- ix. Sushitex Exports (India) Ltd. & Ors. vs. The Union of India & Another, W.P.(L)No.9641 of 2020

91. In support of these present writ petitions, the learned counsel for the petitioners have also referred to several Notification and Circular. It will be useful to refer to the following notification for a proper understanding.

W.P.No.8242 of 2021 : [Shri.Mahaveer Kumar- Sl.No.9 in Table-II]

92. The petitioner in W.P.No.8242 of 2021 has challenged the impugned Show Cause Notice dated 23.11.2017 issued by the first respondent, the Additional Director, Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad in respect of such imports made in the name of one M/s.Johnrose Exports, Chennai of which the petitioner is stated to be defacto importer. The prayer in this writ petition reads as under:

“Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for records pertaining to the impugned Show Cause Notice in F.No.DRI/AZU/CI/ENQ-19(INT01)/2017 dated 23.11.2017 issued by the first respondent

herein and to quash the same in view of the judgement rendered by the Hon'ble Supreme Court in the case of Canon India Pvt., Ltd., Vs. Commissioner of Customs in Civil Appeal No.1827 of 2018 dated 09.03.2021.”

93. The allegation in the Impugned Show Cause Notice to be mis declaration of the value and correct description. It appears that the petitioner had given submissions which were later retracted and the petitioner was not connected with M/s Johnrose. It further appears M/s Johnrose also earlier had filed Writ Petition and secured an order for provisional release of the goods.

94. It appears that the proprietor of M/s.Johnrose had also retracted his earlier statements given before the DRI by contending that the statement given by him was not voluntary, and that the statement was recorded under duress, coercion and force.

95. The learned counsel for the petitioner submitted that with regard regards to the adjudication of Show Cause Notice, they had vide by their various representations, had sought for to provide with the relied upon documents to the impugned Show Cause Notice, while also had sought for cross-examination of certain persons as referred to in the said letter/representation addressed by the petitioner to the respondents herein.

96. The counsel for the petitioner submitted that in the impugned Show Cause Notice issued by the 1st respondent Additional Director Directorate of Revenue Intelligence is yet to be adjudicated by the 2nd respondent herein, the proceedings initiated is contrary to demur of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3 (S.C.), wherein it was held that the DRI was not the “proper officer” under sec.28 and 28(4) of the Customs Act to issue the show cause notice.

97. The petitioner submits that on the strength of the above said judgment delivered by the Hon'ble Supreme Court, the present writ petition is filed challenging the impugned show cause notice dated 23.11.2017, as the said impugned Show Cause Notice issued by the respondent is without jurisdiction, without authority of law and in excess of the powers vested with the said respondent, in terms of the above judgment delivered by the Hon'ble Supreme Court.

98. The challenge to the impugned show cause notice is on the strength of the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3(S.C.).

W.P.Nos.11268, 11271 11274 &11156 of 21 of 2021-[ Mr.D.Vivek, Mr.T.Arun & Mr.Parameshchary Kananthoju and Devadoss -Sl.No.10,11, 12 & 13in Table-II] :

99. These petitioners have challenged the impugned Show Cause Notices dated 06.12.2019 bearing reference F.No.DRI/CZU/VIII/48/ENQ1/INT-23/2019 issued by the first respondent/Joint Director, Directorate of Revenue Intelligence. The prayer in these writ petitions reads as under:-

**W.P.No.11268 of 2021, W.P.No.11271 of 2021 W.P.No.11274 of 2021 & W.P No 11156 of 2021**

*Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records of the first respondent in F.No.DRI/CZU/VIII/48/ENQ-1/INT-23/2019 dated 06.12.2019 and quash the same, consequently direct the respondents to return the goods seized from them as per the Mahazar dated 08.06.2019*

100. The impugned Show Cause Notice calls upon the petitioner and others to show cause to the Additional/Joint Commissioner of Customs, Chennai-1V (Group-7H), 60,Rajaji Salai, Chennai-01, as to why:

i. The value of Rs.15,36,914/- (Rupees Fifteen Lakhs Thirty Six Thousand Nine Hundred and Fourteen Only), declared in respect of goods imported by them should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules,2007 and redetermined as Rs.1,22,03,964/-(Rupees One Crore Twenty Two Lakhs Three Thousand Nine Hundred and Sixty Four Only) as detailed in Annexure-A to this Show Cause Notice, under sub-section (1) of Section 14 of the Customs Act, 1962 read with Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as applicable:

ii. The imported Glass Chatons, Cup Chain and Glue Sheets, as detailed in Annexure-A to this Notice, valued at Rs.1,22,03,964/-(Rupees One Crore Twenty Two Lakhs Three Thousand Nine Hundred and Sixty Four Only) (re-determined value), should not be held liable for confiscated under the provisions of Section 111(d) and 111(m) of the Customs Act,1962;

iii. Customs Duty amounting to Rs.19,12,746/(Rupees Nineteen Lakhs Twelve Thousand Seven Hundred and Fourty Six Only) leviable on various imported goods of Chinese origin totally valued at Rs.1,22,03,964/-(Rupees One Crore Twenty Two Lakhs Three Thousand Nine Hundred and Sixty Four Only) (re-determined value) as detailed in Annexure-A to this Show Cause Notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;

iv. Interest should not be recovered from them on the leviable Customs Duty mentioned at (iii) above under Section 28AA of the Customs Act,1962;

v. Penalty should not be imposed on them under Section 112(a)/114A of the Customs Act, 1962.

101. The impugned Show Cause Notice has been issued to:

i. M/s. Johnrose Exports, Exports, 3, Arunachalpuram, 2nd Street, Adyar, Chennai-600 020/11/6, 2nd Trust, Link Street, Mandaveli, Near Indian Bank ATM, Chennai, Tamil Nadu and

ii. (a) Shri Mahaveer Kumar, Proprietor of M/s Reliable International, 28, Tiru Pally Street, Chennai-600 079.

(b) the de-facto owner/beneficial owner of the said seized goods, are hereby called upon.

102. The impugned Show Cause Notice is challenged by the petitioner primarily on the ground that the notice has been issued without furnishing the relied upon documents and despite the petitioner asking the petitioner for the documents none of the documents have been furnished by the respondents.

103. That apart, it is submitted that the issue is no longer res integra as the proceedings has initiated by the first respondent Additional Director, Directorate of Revenue Intelligence. It is therefore submitted that is contrary to law settled by the Hon'ble Supreme Court in Canon India Private Limited Vs Commissioner of Customs, 2021 (376) ELT 3(S.C).

104. It is the case of the respective petitioners that they are Indian Citizen who returned from Singapore and that even before they could file a proper declaration contemplated under Section 77 of Customs Act, 1962, the petitioner and other co-passengers were arrested and Gold and Electronic items were seized by the officers.

105. It is the further case of the petitioner that the impugned show cause notice issued is contrary to the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3(S.C.) and therefore the Show Cause Notice was without jurisdiction.

106. That apart, it is submitted that though the Show Cause Notice was issued on 23.11.2017 and that Section 28(9) of the Customs Act, 1962 has been amended as per which if Show Cause Notice is issued within the normal period of limitation, the Show Cause Notice should be adjudicated within a period of six months from the date of issuance of such notice and in the case of invocation of larger period of limitation 28(4) of the Customs Act, 1962, adjudication should be completed within a period of twelve months from the date of receipt of a copy of the Show Cause Notice.

107. In this connection, the learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Punjab and Haryana High Court in Harkaran Dass Vedpal Vs Union of India, 2019 (368) E.L.T. 546 (P & H) and in Super Oil Company Vs Union of India, 2020 (372) E.L.T. 536 (P & H).

108. The learned counsel for the petitioner submits that after the writ petition was listed for admission on 12.05.2021 and notice was ordered, the second respondent has passed Order-in-Original dated 31.12.2021 and thereby attempted to make these writ petitions infructuous.

109. On a query as to whether the petitioners have filed any appeal or challenged the aforesaid order of the second respondent, it is submitted that the petitioners have not initiated any proceedings against the order dated 31.12.2021.

110. It is the further case of the petitioner that the impugned Show Cause Notice issue is contrary to the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3(S.C.) and therefore the show cause notice was without jurisdiction.

111. On merits, a reference was made to the Bombay High Court dealing with the circular

issues . A specific reference was made to the Bombay High Court in Commissioner of Customs Vs. Reliance Industries Limited, 2021 SCC Online 5914 dealing with the similar issues. It is therefore submitted that the impugned show cause notice is liable to be quashed.

112. He further submits that in any event any officers such an order has been passed on 31.12.2021 and in view of the same, the writ petition is liable to be dismissed as infructuous.

113. The learned counsel for the petitioner has also relied on the following decisions of the Courts:-

- i. Babu Verghese and others vs. Bar Council of Kerala and others, AIR 1999 SC 1281;
- ii. Commissioner of Customs vs. Sayed Ali, 2011(265) E.L.T.17(S.C.);
- iii. Mangali Impex Ltd., vs. Union of India, 2016(335) E.L.T.605(Del.);
- iv. State of Punjab vs. Bhatinda District Co-op, Milk P.Union Ltd., 2007(217) E.L.T.325(S.C.);
- v. GPI Textiles Limited vs. Union of India, 2018(362) E.L.T.388(P & H);;
- vi. Mentha & Allied Products Ltd. vs. Commr.of CGST, Chandigarh, 2021(376) E.L.T.41(P & H);
- vii.Mahalakshmi Traders vs. Asst.Commr.of Cus.(GR.7B-DEPB), Chennai, 2021(378) E.L.T.51(Mad.)
- viii.Swati Menthol & Allied Chemicals Ltd., vs. Commr.GST & C.Ex. Commissionerate, Chandigarh, 2021(378) E.L.t.110 (P & H);
- ix. Sushitex Exports (India) Ltd. & Ors. vs. The Union of India & Another, W.P.(L)No.9641 of 2020.

114. Opposing the prayer, the learned ASG duly assisted by Mr.V.Sundareswaran, learned Senior Panel Counsel for the third respondent submits that the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs Commissioner of Customs, 2021 (376) ELT 3(S.C).is not applicable to the notice of the case in as much as the show cause notice that has been challenged in the writ petition has been issued under Section 77 & 124 of the Customs Act, 1962 and not under Section 28 of the Customs Act, 1962.

115. It is further submitted that these Writ Petitions are liable to be dismissed as infructuous in view of the Order in Original passed on 31.12.2021. It is therefore submitted that the petitioners have an alternate remedy before the appellate authority (under customs act) by way of appeal.

116. It is submitted that the interpretation to the expression "Proper Officer" as defined under Section 2(34) of the Customs Act, 1962 which came up for consideration before the Hon'ble Supreme Court in Canon India Private Limited Vs Commissioner of Customs, 2021 (376) ELT 3(S.C).is not applicable to the facts of the case.

117. The learned counsel for the respondent submits that under Section 124 of the Customs Act, 1962, a notice can be issued with an approval from the officers of the Assistant

Commissioner of Customs.

118. It is submitted that the expression "Proper Officer" has not been used in Section 124 and in Section 111 of the Customs Act and therefore the decision of the Hon'ble Supreme Court in Canon India Private India Ltd. cannot be applied to the facts of the case. He further submits that in any event Order-in-Original has been passed. In view of the same, the writ petition is liable to be dismissed as infructuous.

119. By way of rejoinder, the learned counsel for the petitioner made a specific reference to the decision of the Principal Bench of the Customs, Excise & Service Tax Appellate Tribunal in Customs Appeal No.51570 of 2019 in *M/s.Schweitzer Engineering Laboratories Pvt Ltd Vs. Commissioner of Customs (Import)*.

120. It is submitted that the pursuant of the Tribunal considered the decision of the Hon'ble Supreme Court in Canon judgement in the context of Section 124 had dropped the

121. Opposing the prayer, the learned senior standing counsel for the respondents submits that the decision of the Hon'ble Supreme Court in Canon India Private Limited case (referred to supra) cannot be said to have attained finality and therefore submits that the writ petition is devoid of merits. He further submits that in any event, it is open for the petitioner to participate in the adjudication mechanism prescribed under the Act and buttress the submissions that the entire proceedings is without jurisdiction in terms of the decision of the Hon'ble Supreme Court in Canon India Private Limited case (referred to supra). It is therefore, submitted that the writ petition is liable to be dismissed.

122. That apart, it is submitted that the petitioner has resorted to under valuation, resulting in huge leakage of revenue and therefore the adjudication mechanism prescribed under the Customs Act, 1962 cannot be allowed to be scuttled by way of a writ petition by questioning the jurisdiction of the respondents to pass appropriate orders.

123. The learned senior standing counsel for the respondents has also submitted that even otherwise Explanation 4 to Section 28(ii) has been inserted with effect from 29.03.2008. It is therefore submitted that as per the aforesaid explanation where notice has been issued for nonlevy, not-paid, short-levy or short-paid or erroneous refund after 14.05.2015, but before the date on which the Finance Bill, 2018, receives the assent, they shall continue to be governed by the provisions of Section 28 as it stood immediately before the date on which such assent was received. It is therefore submitted that there is no delay on the part of the respondent in proceeding further with the impugned Show Cause Notice.

124. It is therefore submitted that the order has to be passed within a period of six months or twelve months as the case may be in terms of Section 28(9) of the Customs Act, 1962 is of no avail/consequence as far as the petitioner is concerned.

125. It is the case of the petitioner that the petitioner is a Indian Citizen who returned from Singapore and filed a declaration contemplated under Section 77 of Customs Act, 1962. The petitioner and the copassengers were arrested and the goods namely Gold and Electronic items were seized by the officers even before the petitioner could file declaration between the

Customs Department.

W.P.Nos.9405 & 9407 of 2021:[ K.Swaminathan & L.Subramanian Sl.No.14 & 15 in Table]

126. The prayer in W.P.Nos.9405 and 9407 of 2021, reads as follows:-

<b>W.P.No.9405 of 2021</b>	<b>W.P.No.9407 of 2021</b>
<i>“Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to quash the show cause notice dated 23.06.2020 in File No: DRI/BZU/S-IV/ENQ-17(INT-NIL) 2019/318 issued by the second respondent now pending adjudicating before the first respondent”.</i>	<i>Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to quash the show cause notice dated 23.06.2020 in File No: DRI/BZU/SIV/ENQ-17(INT-NIL) 2019/317 issued by the second respondent now pending adjudicating before the first respondent”.</i>

127. W.P.No.9405 of 2021 has been filed by the Managing Director Sun Direct TV Pvt.Ltd. Dispute pertains to import of viewing cards and set Top Box by allegedly mis-declaring the correct classification by wrongly classifying the viewing card as smart card under CTH 85235290 instead of CTH 85299090 and by making a wrong claim of country of origin on set Top Box by pre-loading the software from supplier located in Non Asean Country and thereby wrongly availed the benefit of Notification No.46/2011 dated 01.06.2011, Notification No.189/2009 Customs (NT) dated 31/12/2009. An individual show cause notice dated 23.06.2020 bearing reference No.DRI/BZU/S-IV/ENQ17(INT-NIL)2019/316 was issued, Sun Direct TV Network, wherein it was called upon to pay differential tax. The said show cause notice was challenged separately. The petitioners are Managing Director (MD) and GM of the said company. Relevant portion of the show cause notice as far as the petitioners are concerned reads as under:-

11.1.2 Now therefore, Shri L.Subramanian, General Manager-Logistics of M/s. SDTVPL and Shri Swaminathan, Managing Director of M/s. SDTVPL, are called upon to show cause individually, independently and separately, to the Principal Commissioner/Commissioner of Customs, GST Road, New Customs House, Chennai-II, 60, Rajaji Salai, Chennai 600 001, within 30 days of receipt of this notice, as to why Penalty should not be imposed on them under Sections 112 and/or Section 114AA of the Customs Act, 1962, for the offences committed by them as mentioned supra.

11.2. The Principal Commissioner /Commissioner of Customs, GST Road, New Customs House, Chennai-VII, Meenambakkam, Chennai-600027.

11.2.1 Now therefore, M/s. SDTVPL are hereby called upon to show cause to the Principal Commissioner/Commissioner of Customs, GST Road, New Customs House, Chennai-VII, Meenambakkam, Chennai-600027 within 30 days from the date of this notice, as to why:

(i) "Viewing Cards" imported by M/s SDTVPL. from Chennai Air Cargo, detailed in Annexure A2, misdeclared as Smart Cards and mis-classified under CTH 85235290 should not be held to be "Parts of Set Top Boxes (CTH 8528)" and appropriately classified under CTH 85299090, as "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528" of the Customs Tariff.;

(ii) it should not be held that they are liable to pay BCD and other applicable duties and taxes on the said Viewing Cards imported by them as detailed in Annexure A2, es applicable under CTH 85299090; and as to why the IGST exemption claimed under notification no. 01/2017 Integrated Tax (Rate) dated 28.06.2017 (at serial No. 382 of Schedule-III), by virtue of mis-classification should not be denied to them:

(iii) the said Viewing Cards imported, having an assessable value of Rs. 130,88,15,025/- (One Hundred Thirty Crore Eighty-Eight Lakh Fifteen Thousand Twenty-Five Only), should not be held liable for confiscation (as the goods are not physically available for confiscation) under Sections 111(d), 111(m) and 111(o) of the Customs Act, 1962:

(iv) Differential duty amount of Rs. 18,12,85,676/- (Rupees Eighteen Crore Twelve Lakh Eighty-Five Thousand Six Hundred Seventy-Six Only), arising due to wrong classification of the imported viewing cards resulting in non-payment of applicable Basic Customs Duty thereon, as detailed in Annexure A2.1 to this notice, should not be recovered from them, in terms of Section 28(4) of the Customs Act, 1962, for the period upto 30.06.2017 and in terms Of Section 28(4) of the Customs Act, 1962 read with Section 5(1) of IGST Act, 2017 from 01.07.2017, read with Section 6 of Chapter V of the Taxation and other laws (relaxation of certain provisions) Ordinance, 2020 (2 of 2020) dated 31-3-2020;

(v) it should not be held that the imported Set Top Boxes with Cardless Client embedded inside these Set Top Boxes imported through Chennai Air Cargo, as detailed in Annexure B3, is a single product and with consolidated value; and hence, as to why their declaration in the Bills of Entry, as two items under two different CTHS i.e. 85287100 for Set Top Boxes and 85238020 for Cardless Clients should not be rejected and why the customs duty exemption claimed under Notification No. 46/2011-Customs dated 01.06.2011 (as amended) read with notification no. 189/2009-Customs (NT) dated 31.12.2009 (as amended) should not be denied to them;

(vi) the imported Cardless Set Top Boxes with embedded Cardless Client Irdeto BV Conditional Access System Software, as detailed in Annexure B3 having a total value of Rs. 116.03.33,674/- (One Hundred Sixteen Crore Three Lakh Thirty-Three Thousand Six Hundred Seventy-Four), should not be held liable for confiscation (as the goods are not physically available for confiscation) under Sections 111(d), 111(m) and 111(o) of the Customs Act, 1962:

(vii) Differential duty amount of Rs. 44,27,83,327/- (Rupees Forty-Four Crore Twenty-Seven Lakh Eighty-Three Thousand Three Hundred TwentySeven Only), arising due to wrong availment of exemption under the said notifications as detailed above, on said imported Cardless Set Top Boxes, as detailed in Annexure B3.1, should not be recovered from them, in terms of Section 28(4) of the Customs Act, 1962, for the period upto 30.06.2017 and Section 28(4) of the Customs Act, 1962 read with Section 5(1) of 1GST Act, 2017 from 01.07.2017, read with Section 6 of Chapter V of the Taxation and other laws (relaxation of certain provisions) Ordinance, 2020 (2 of 2020) dated 31-3-2020; terms of

(viii) the customs duty exemption claimed under Notification No. 46/2011-Customs dated 01.06.2011 (as amended) read with notification no. 189/2009Customs (NT) dated 31.12.2009 (as amended) on the imported Set Top Boxes through Chennai Sea Port, as detailed in Annexure C1 should not be denied;

(ix) the imported Set Top Boxes as detailed in Annexure C1, having a total value of Rs. 46,00,10,833/- (Forty-Six Crore Ten Thousand Eight Hundred Thirty-Three Only) should not be held liable for confiscation (as the goods are not physically available for confiscation) under Sections 111(d), 111(m) and 111(o) of the Customs Act, 1962;

(x) Differential duty amount of Rs. 11,41,95,552/- (Rupees Eleven Crore Forty-One Lakh Ninety-Five Thousand Five Hundred Fifty-Two Only), arising due to wrong availment of exemption under the said notifications as detailed above, on said imported Set Top Boxes, as detailed in Annexure C1.I should not be recovered from them, in terms of Section 28(4) of the Customs Act, 1962, for the period upto 30.06.2017 and in terms of Section 28(4) of the Customs Act, 1962 read with Section 5(1) of IGST Act, 2017 from 01.07.2017, read with Section 6 of Chapter V of the Taxation and other laws (relaxation of certain provisions) Ordinance, 2020 (2 of 2020) dated 31-3-2020;

(xi) interest at the appropriate rate, on the duty recoverable from them as at (iv), (vii) and (x) above, should not be demanded and recovered from them under Section 28 AA of the said Act.

(xii) Penalty should not be imposed on them, under Sections 112 and/or 114A of the Customs, Act, 1962, for the offences committed by them as detailed supra; and

(xiii) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962, for the offences committed by them as detailed in the above paras.

11.2.2 Now therefore, Shri L.Subramanian, General Manager-Logistics of M/s. SDTVPL and Shri Swaminathan, Managing Director of M/s. SDTVPL, are called upon to show cause individually, independently and separately, to the Principal Commissioner/Commissioner of Customs, GST Road, New Customs House, Chennai-

VII, Meenambakkam, Chennai 600027, within 30 days of receipt of this notice, as to why Penalty should not be imposed on them under Sections 112 and/or Section 114AA of the Customs Act, 1962, for the offences committed by them as mentioned supra.

128. The Show Cause Notice issued to the company was challenged in W.P.No.8665 of 2021. The said Writ petition was disposed on 25.10.2021 with the following observations:-

4. By consent of counsel for respective writ petitioners and learned Solicitor i.e., Additional Solicitor General of India, instructed by the Revenue counsel, all the captioned writ petitions are disposed of by saying that in the light of paragraphs 5 & 6 of the previous proceedings dated 04.10.2021, all the show cause notices, consequential orders, if any (wherever applicable) are set aside, albeit preserving the rights of the Department/State to resuscitate/revive the SCNs and the consequential orders, if any (wherever applicable) subject to the orders of Hon'ble Supreme Court in the review applications.

5. Ratio laid down by Hon'ble Supreme Court in Canon India is the law declared by Hon'ble Supreme Court as of today and therefore as a matter of judicial discipline, this Court is bound to follow the same as contended by learned counsel for respective parties.

6. Captioned writ petitions are disposed of in the aforesaid manner. There shall be no order as to costs. Consequently, connected WMPs are also disposed of closed. Though obvious, it is made clear that this Court has not expressed any view or opinion on the merits of the matter as Hon'ble Supreme Court is in seizen of the review petitions and the fate of the impugned SCNs and consequential orders, if any (wherever applicable) being resuscitated, if that be so will depend on the outcome of the review petitions in the Supreme Court.

129. A reference was also made amendment to Section 4 and 5 of the Customs Act, 1962 vide Finance Act, 1998.

W.P.No.27009 of 2020 : [(Mr.P.Murugesan)-(Sl.No.16 in Table-II)]

130. The petitioner in W.P.No.27009 of 2020 has challenged the impugned Show Cause Notice dated 30.11.2021 issued by the Directorate of Revenue Intelligence (DRI), Chennai in respect of consignment which was originated from Bangalore. The prayer in this writ petition reads as under:

“Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records pertaining to the impugned Show Cause Notice in F.No.DRI/CZU/VII/48/Enq – 01/INT-03/2021 dated 30.11.2021 issued by the respondent herein and to quash the same in view of the judgement rendered by the Hon'ble Supreme Court in the case of Canon India Private Limited Vs. The Commissioner of Customs in Civil Appeal No.1827 of 2018 dated 09.03.2021.”

131. It is the case of the petitioner that the petitioner is merely a Customs House Agent (CHA) who has proceeded for having filed the Shipping Bills under Section 50 of the Customs Act,

1962 for the export of goods for the exporter. It is submitted that based on the information provided by the exporter, the petitioner had filed seven shipping bills by declaring the export goods as garments.

132. It is submitted that after the shipping bills were assessed, the Let Export Orders (LED) were issued and the goods were moved from Bangalore to Chennai. It is further submitted that during transit, the exporter in collusion with others has substituted the garments which were declared with red sanders which is the prohibited item and which the petitioner had no role to play in the alleged attempt to export.

133. The learned counsel for the petitioner submits that the impugned Show Cause Notice has been issued by an Authority namely the Directorate of Revenue Intelligence, Chennai contrary to the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs, 2021(376) E.L.T. 3(S.C.).

134. A Specific reference was made to the definition of a "Proper Officer" under Section 2(34) of the Customs Act, 1962, appointment of officers of customs under Section 4 of the Customs Act, 1962 and appointment of other officers under Section 6 of the Customs Act, 1962 which was dealt with by the Hon'ble Supreme Court in the above case.

135. The learned counsel for the petitioner submits that the DRI officers are neither officers of the customs and therefore in any event they were competent to issue a notice either under Section 28 or other proceedings of the Customs Act, 1962. It is submitted that as far as the petitioner is concerned, the impugned Show Cause Notice has been issued under Section 117 of the Customs Act, 1962.

136. It is submitted that as far as the other notices namely exporters and others involved in the export and in the alleged attempt to export red sanders have been issued under Sections 115(2), 119, 113(b), 114 AA, etc., of the Customs Act, 1962. It is further submitted that the impugned Notice issued is without jurisdiction and therefore it is liable to be quashed.

137. Opposing the prayer, the learned Additional Government Pleader for the respondent submits that the decision of the Hon'ble Supreme Court has to be read only with the Section 28 of the Customs Act, 1962 and not to other proceedings of the Customs Act, 1962.

138. He further drew attention to Notification 31/97 dated 07.07.1997 by which all Directorate of Revenue Intelligence (DRI) officers are appointed as Customs Officers, provided as under:

*"... In exercise of the powers conferred by subsection (1) of Section 4 of the Customs Act, 1962 (52 of 1962) and in suppression of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.38/63Customs, dated 1st February, 1963 the Central Government hereby appoints the following persons to be the officers of Customs, namely;-"*

*4. All Officers of the Directorate of Revenue Intelligence. Under Notification No.17/2002Customs (NT) dated 07.03.2002, in exercise of the powers conferred by subsection (1) of Section 4 of the Customs Act, 1962 (52 of 1962) and in super session of*

*notification of the Government of India in the Ministry of Finance (Department of Revenue) No.19/90-Customs (N.T.), dated the 26th April, 1990, the Central Government appoints the officers ADG, DRI to be Commissioner of Customs, Additional Director/Joint Director to be Additional Commissioner/Joint Commissioner of Customs and Deputy Director/Assistant Director to be Deputy Commissioner/Assistant Commissioner of Customs for the whole of India (area of jurisdiction).*

139. The learned Additional Government Pleader for the respondent submits that the officers of the Directorate of Revenue Intelligence are the officers of customs and therefore they are competent to issue the impugned notice and therefore the petitioner should submit to the jurisdiction of the respondent by filing a reply and participate in the adjudication mechanism prescribed under Section 124 of the Customs Act, 1962 in the impugned Show Cause Notice.

140. That apart, it is submitted that the role of the petitioner as to whether the petitioner though indeed indulged in facilitating the smuggling of red sanders in the guise of export garments. As a matter of fact which has to be decided only in the adjudication proceedings and cannot be decided under the summary jurisdiction of this Court in Article 226 of the Constitution of India.

141. It is therefore submitted that the writ petition is liable to be dismissed. A specific reference was made to paragraph 6 and 12 from the said decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs, 2021(376) E.L.T. 3(S.C.) which reads as under:

*“6. The consignment of cameras arrived at Delhi on 15.3.2012. The importer submitted a Bill of Entry to the Customs Authorities on 20.3.2012. Along with the Bill of Entry, the importer submitted a covering letter and literature containing specifications of the cameras. After verification of the Bill of Entry by the Inspector and the Superintendent, the importer requested the Deputy Commissioner of Customs for a first check on 21.3.2012. The Customs Authorities checked the goods on 24.3.2012. They compared the goods with the description given in the literature and took a decision to clear the goods on 24.3.2012, as being exempt from duty in terms of the Notification No. 15/2012 which was issued on 17.3.2012.*

*12. Parliament has employed the article “the” not accidentally but with the intention to designate the proper officer who had assessed the goods at the time of clearance. It must be clarified that the proper officer need not be the very officer who cleared the goods but may be his successor in office or any other officer authorised to exercise the powers within the same office. In this case, anyone authorised from the Appraisal Group. Assessment is a term which includes determination of the dutiability of any goods and the amount of duty payable with reference to, inter alia, exemption or concession of customs duty vide Section 2(2)(c) of the Customs Act, 1962.”*

W.P.No.26200 of 2021: [M/s.Bombardier Transportation India LimitedSl.No.17 in Table II]

142. The petitioner has challenged the impugned show cause notice issued by first respondent/Additional Director General, Directorate of Revenue Intelligence dated 19.01.2021

bearing reference F.No.DRI/CRU/VIII/26/ENQ-1/INT-6/2019. The prayer in this writ petition reads as under:- "Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records relating to the impugned Show Cause Notice.F.No.DRI/CRU/VIII/26/ENQ1/INT-6/2019 dated 19.01.2021, issued by the first respondent and quash the same."

143. The Challenge to the impugned show cause notice is primarily on the strength of the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021 (376) ELT 3 (SC). It is submitted that though in Canon judgment, the Hon'ble Supreme Court has dealt with a definition of proper officer in Section 2(34) of the Customs Act, 1962 and Notification issued therein vide Notification No.40/2012-Customs (N.T.) dated 02.05.2012 the impugned Show Cause Notice has been issued on the strength of Notification No.44/2011-Customs (N.T) dated 06.07.2011.

144. It is submitted that the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021 (376) E.L.T. 3(S.C.). rendered in the context of Notification No.40/2012Customs (N.T) dated 02.05.2012 will apply for interpretation to be placed for notification issued under the same provisions vide the Notification No.44/11-Customs (N.T) dated 06.07.2011.

145. It is submitted that under Section 2(34), the "Proper Officer" in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs. It is submitted that Section 4 Appointment of officers of customs deals with the board may appoint such persons as it thinks fit to be officers of customs without prejudice to the provisions of Sub-Section 1.

146. It is therefore submitted that officers of Directorate of Revenue Intelligence are neither officers of customs nor "Proper Officer" for issuing a show cause notice and therefore the impugned show cause notice has to be quashed in the light of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021 (376) E.L.T. 3(S.C.).

147. The learned counsel for the respondents submits that apart from the fact, that the department has preferred a Review Application before the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021 (376) E.L.T. 3(S.C.). cannot be applied universally as the language used in Notification No.44/2011-Customs dated 06.07.2011 and Notification No.40/2012-Customs (N.T.) dated 02.05.2012 are different and start interpretation has to be placed.

#### **PART- IV -DISCUSSION**

148. Though several submissions were made on merits, I am not inclined to go into the merits of the case, as they either pertain to a rate of duty and/or valuation. It would be improper to venture into the issue arising out of rate of duty and valuation under Article 226 of the Constitution of India.

149. High Court in the exercise of its jurisdiction under Article 226 of the Constitution of India should refrain from deciding issues arising out of rate of duty and valuation. As per the scheme

of the Customs Act, 1962, among courts it is only the Hon'ble Supreme Court which is vested with the jurisdiction to decide issues arising out of rate of duty and valuation in the exercise of its appellate jurisdiction under Section 130E(b) of the Customs Act,1962. Even the High Court in its appellate jurisdiction is barred from deciding those issues. These issue on merits will have to be adjudicated by a competent officer and thereafter tested before the appellate authorities prescribed under the Customs Act,1962 in case it is held that these writ petitions fail.

150. Issues on merits are best left to be decided by the jurisdictional adjudicating authority and thereafter tested before the the appellate authority and finally by the Hon'ble Supreme Court in the hierarchy of the appellate authorities under the Customs Act, 1962.

151. Therefore, I will confine in this order only on the broad issue of jurisdiction of the officers of Directorate of Revenue Intelligence who have issued the Show cause notices to the petitioners.

152. In the case, if it is held that the initiation of proceedings by Directorate of Revenue Intelligence (DRI) was bad in law in the light of the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3 (S.C.) and decision of the Hon'ble Supreme Court in The Commissioner of Customs Vs. Sayed Ali, 2011 (265) ELT 17 (SC) cited supra, and these writ petitions will have to be allowed.

153. On the other hand, if it is held, that the initiation of proceedings by the officers of the Directorate of Revenue Intelligence (DRI) were valid, only option is to give liberty to the respective petitioner(s) to work out their remedy before the adjudicating authority or the Appellate Authority under the Customs Act, 1962.

154. Therefore, I shall confine only to examination of the jurisdictional issue as to whether the Show Cause Notice issued by the officers of the Directorate of Revenue Intelligence (DRI) were within jurisdiction or not? The supplementary issue will be examined and answered on violation of principle of natural justice.

155. The decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs 2021(376) E.L.T. 3 (S.C.) referred supra has been followed by the Hon'ble Supreme Court Commissioner of Customs, Kandla vs. Agarwal Metals and Alloys, 2021(378)E.L.T.(S.C.) and by various High Courts and few zonal benches of the Customs , Excise and Service Tax Appellate Tribunal as detailed below:-

- i. Quantum Coal Energy (P) Ltd., vs. Commissioner of Cus.Tuticorin, 2021(377) E.L.T.486(Mad.)
- ii. Shri Mohan C.Suvana vs. Principal Commissioner of Customs, Bangalore, W.P.No.10773/2018
- iii. M/s.Target Lubricants Pvt.Ltd., rep.by its Managing Director vs. The Commissioner of Customs, Custom House, Tuticorin 628 004 and another, W.P.(MD)Nos.8574, 8579 and 8581 of 2021;
- iv. M/s.Rani Enterprises vs. Principal Commissioner of Customs, ICD, patparganj & Ors., W.P.(C) 11721/2021;

- v. M/s.Alston Transport India Ltd., Rep.by its Authorised Signatory, Gonthina Shankar vs. 1.The Additional Director General, Directorate of Revenue Intelligence, Chennai Zonal Unit, 27, GN Chetty Road, T.Nagar, Chennai 600 017 and Two Others, W.P.Nos34811 of 2019 & etc. batch,;
- vi. Commissioner of Customs vs. Reliance Industries Limited, 2021 SCC Online Bom 5914
- vii. M/s.Schweizer Engineering Laboratories Pvt Ltd., vs. Commissioner of Customs (Import), Customs, Appeal No.51570 of 2019;
- viii. M/s.Ajanata Overseas, 6/1, Furniture Block, Kirti Nagar, New Delhi vs. The Principal Commissioner of Customs, ICD-Imports, Tughlakabad, New Delhi 110 020.
- ix. M/s.Godrej & Boyee Manufacturing Co., Ltd., vs. Union of India and Ors., C.M.5413-CWP-2021;
- x. Kitchen Essentials & ors vs. The Union of India and Ors., 2021(10)TMI 1267;
- xi. Deepak Gopaldas Bajaj, M/s.Taher Impex Pvt.Ltd., vs. The Commissioner of Customs, Custom House, Tuticorin and two Others, 2021(10) TMI 122
- xii. M/s.Steelman Industries vs. Union of India and Others, 2021(8)TMI 1236;
- xiii. Union of India vs. VICCO Laboratories, 2007(218) E.L.T.647 (S.C.)
- xiv. Kothari Petrochemicals Ltd., vs. Union of India, 2015(316) E.L.T.17 (Mad.);
- xv. Union of India vs.Kothari Petrochemicals Ltd., 2019(367)E.L.T.530 (Mad.)
- xvi. Masterstroke Freight Forwarders P.Ltd. vs. C.C.(1) Chennai-1, 2016(332) E.L.T.300 (Mad.);
- xvii. Vendhar Movies vs. Jt.Dir.,D.G.Of GST Intelligence, Chennai, 2019(28) G.S.T.L.545(Mad.);
- xviii. Simplex Infrastructures Ltd., vs. Union of India, 2020(374) E.L.T.574(Mad.)
- xix. Siemens Ltd. vs. State of Maharashtra, 2006(12)TMI 203;
- xx. SBQ Steels Ltd., vs. Commissioner of Customs, Central Excise and Service Tax, Gundur, 2013(1)TMI 359;
- xxi. Oryx Fisheries Private Ltd. vs. Union of India, 2010(10) TMI 660;
- xxii. xxiii) Westinghouse Saxby Farmer Ltd. vs. Commr.of Central Excise Calcutta, 2021(3)TMI 291;

156. The decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs, 2021(376) E.L.T. 3 (S.C.) which was followed by the Hon'ble Supreme Court in M/s.Agarwal Metals and Alloys Vs. Commissioner of Customs, Kandla reported in Civil Appeal No.3411 of 2020, was also followed by a Single Judge of this Court vide

order dated 25.10.2021 in W.P.No.19919 of 2021.

157. Before proceeding further, it will be useful to refer to the decision of the Hon'ble Supreme Court in the case of Commissioner of Customs Vs. Sayed Ali, 2011 (265) ELT 17 (SC).

158. Commissioner of Customs Vs. Sayed Ali, 2011 (265) ELT 17 (SC), a Show Cause Notice dated 28.08.1991 was issued by the Assistant Collector of Customs (Preventive), Mumbai, alleging the violation of the provisions of Section 111(d) of the Customs Act, 1962. It culminated in an order dated 03.02.1993 which was appealed before the Collector of Customs (Appeals). An order came to be passed by the Collector of Customs (Appeals) on 14.12.1993. The Collector of Customs (Appeals) allowed the appeal by holding that the matter involved demand of duty beyond a period of six months and therefore the Show Cause Notice was to be issued by the Collector and not by the Assistant Collector of Customs (Preventive). At that point of time, there were circulars of the Board, which stipulated pecuniary limits for officers to exercise powers under various provisions of the Act. Thus, the Collector (Appeals) granted liberty to the department to re-adjudicate the case by issuing a proper Show Cause Notice.

159. The Collector of Customs (Preventive) thus issued a Show Cause Notice dated 16.04.1994, to show cause as to why the goods seized should not be confiscated and why the customs duty amounting to Rs.5,07,274/- should not be levied in terms of Section 28(1) of the Customs Act, 1962, by invoking the extended period of limitation and why the penalties under Sections 112(a) and (b)(i) and (ii) of the Customs Act, 1962, should not be imposed on the said importer.

160. The jurisdiction of the Collector of Customs (Preventive) to issue Show Cause Notice was questioned in the reply to the Show Cause Notice by referring to Notification No. 251/83 and Notification No.250/83. The Collector of Customs (Preventive) rejected the submission on the jurisdiction. The demand was thus confirmed by the Collector of Customs (Preventive) vide Order dated 19.08.1996. The matter was taken up before the Tribunal, wherein, it was held that the Commissioner of Customs (Preventive) does not have jurisdiction to issue Show Cause Notice and therefore he did not have the jurisdiction to adjudicate the matter when the imports had taken place within the Bombay Customs House.

161. The Hon'ble Supreme Court after referring to Section 28 of the Customs Act, 1962 as it stood during the period in dispute concluded that from a conjoint reading of Section 2(34) and Section 28 of the Customs Act, 1962, it is manifest that only such a customs officer who has been assigned the specific functions of assessment and reassessment of duty in the jurisdictional area where the import concerned has been affected, either by the Board or the Commissioner of Customs, in terms of Section 2(34) of the Customs Act, 1962 was competent to issue notice under Section 28 of the Customs Act, 1962.

162. The Hon'ble Supreme Court further held that "The Any other reading of Section 28 would render the provisions of Section 2(34) of the Act otiose in as much as the test contemplated under Section 2(34) of the Act of the Act is that of specific conferment of such functions". It further held that "Moreover, if the Revenue's contention that once territorial jurisdiction is conferred, the Collector of Customs (Preventive) becomes a "proper officer" in terms of Section

28 of the Act is accepted, it would lead to a situation of utter chaos and confusion, in as much as all officers of customs, in a particular area be it under the Collectorate of Customs (Imports) or the Preventive Collectorate, would be "proper officers" ”.

163. The Hon'ble Supreme Court further concluded that “It is only the officers of customs, who are assigned the functions of assessment, which of course, would include re- assessment, working under the jurisdictional Collectorate within whose jurisdiction the bills of entry or baggage declarations had been filed and the consignments had been cleared for home consumption, will have the jurisdiction to issue notice under Section 28 of the Act”. Thus, the proceedings impugned therein were set aside.

164. Thereafter, a Review Petition was filed by the revenue against the above case. The Hon'ble Supreme Court dismissed the Review Petition on account of delay in filing the review in Commissioner of Customs Vs. Sayed Ali, 2011 (274) ELT A 109. The observations in paragraph 14 which have been referred to supra from the decision of the Hon'ble Supreme Court appears to be partly consistent with Section 17 of the Customs Act, 1962 as it read prior to 08.04.2011 and therefore, the declaration of law in Commissioner of Customs Vs. Sayed Ali, 2011 (265) ELT 17 (SC) cannot be applied for the period subsequent to 08.04.2011 as Section 17 of the Customs Act, 1962 has under gone a sea change.

165. The observation of the Hon'ble Supreme Court in the above case was also set at knot by an amendment to Section 28 of the Customs Act, 1962 and the validations contained therein vide Customs (Amendment and Validation) Act, 2011.

166. Though the Delhi High Court in Mangali Impex and Ors. Vs. Union of India, 2016 (335) ELT 165 (Del.) has held that the amendment in 2011 was only prospective and not retrospective, the Department preferred an appeal before the Hon'ble Supreme Court. The appeal has to been admitted. The order of the Delhi High Court has been stayed by the Hon'ble Supreme Court in Mangali Impex and Ors. Vs. Union of India, 2017 (349) E.L.T. A98.

167. A reading of the Order of the Tribunal dated 13.02.2020 which was challenged in Commissioner of Customs Kandla vs. Agarwal Metals and Alloys, 2021(378) E.L.T.7 (SC.) shows that the challenge to the proceeding before the Tribunal was not on the ground of jurisdiction. It was purely on merits.

168. The Order of the Tribunal dated 13.02.2020 vide Final Order No.A/10478-10481/2020 arose from Order in Original KND–Custom000-19-8-19 dated 26.03.2019 of Commissioner of Central Excise, Customs & Service Tax- Kandla.

169. The appellant Agarwal Metals and Alloys, was issued with show cause notice. It appears that statements were recorded before the Directorate of Revenue Intelligence ( DRI) as is evident from a reading of para No.11.5 of the order of the Hon'ble Supreme Court in the said decision, which reads as under:-

*“11.5 The Adjudicating Authority in order to justify the LME based valuation has relied upon the statements iof Shri Vipul Agarwal and Samir Agarwal. The appellant has objected to such reliance, as the statements were retracted immediately and the same*

*are contradictory to documentary evidence i.e. Contemporaneous import price. The appellant has pleaded that retracted statements cannot be accepted as evidence for confirmation of demand and the said retraction was immediately sent by RPAD to the office of DRI. The adjudicating authority in the impugned order has chosen to not consider the retraction letter on the ground that looking at the same it cannot be inferred that the same were received by the DRI. We are of the view that the said approach of the adjudicating authority is incorrect as the reason for not considering the retracting appears to be presumptive in nature as no evidence has been produced to show that the DRI was not in receipt of the said letters. ....”.*

170. In fact, in Canon India Private Limited Vs. Commissioner of Customs 2021 (376) E.L.T. 3 (S.C.) also, the petitioner had not questioned the jurisdiction before of the officers of Directorate of Revenue Intelligence either before the lower authorities or before the Tribunal. The decision is inspired from the decision of the Court in Syed Ali Case.

#### **PART V - NOTE ON DIRECTORATE OF REVENUE INTELLIGENCE**

171. The Customs Act, 1962, the Customs Tariff Act, 1975 and the Rules made thereunder along with notifications issued under these enactments constitute a comprehensive code. It is the Officers of the Customs who are engaged in the implementation of the Customs Act, 1962, though the Central Government by a notification can entrust on “any other persons” including any officer from the State Government or an officer from the Local Authorities with the function Board or an Officer of Customs under the Act. Otherwise, it is the Central Board of Indirect Taxes and Customs (formerly the Central Board of Excise and Customs) constituted under the Central Board of Revenue Act, 1963, (hereinafter referred to as the Board) which oversees the overall implementation of the union indirect tax laws. In discharge for its function, the Board has constituted the following Directorates:-

- i. Directorate of Central Excise Intelligence
- ii. Directorate of Revenue Intelligence
- iii. Directorate of Inspection (Customs and Central Excise)
- iv. Directorate of Housing and Welfare
- v. National Academy of Customs, Excise & Narcotics
- vi. Directorate of Vigilance
- vii. Directorate of Systems
- viii. Directorate of Audit
- ix. Directorate of Safeguards
- x. Directorate of Export Promotion
- xi. Directorate of Service Act
- xii. Directorate of Valuation

- xiii. Directorate of Publicity and Publicity Relations
- xiv. Directorate of Organisation and Personnel Management
- xv. Directorate of Logistics
- xvi. Directorate of Legal Affairs
- xvii .Directorate of Data Management

172. These Directorates function under the Board and its Directors. The Officers, from the Customs and Central Excise Department and other Departments are on deputation to the Directorate of Revenue Intelligence (DRI). They have been recognized as “Officers of Customs” under Section 4(1) of the Customs Act, 1962 read with Notification issued thereunder. It will be therefore useful to refer to the history of the Directorate of Revenue Intelligence (DRI).

173. The Directorate of Revenue Intelligence (DRI) was constituted on the 4th of December, 1957 when Sea Custom Act, 1876 was in force. It was intended for dealing exclusively with the work relating to the collection and study of information on smuggling activities and the deployment of all anti-smuggling resources at the All India level, besides arrangement of training for the Intelligence and Investigation Officers of the Custom Houses and Central Excise Collectorate deployed on similar work. They have been now recognised as Officers of Customs. The Directorate predates the enactment of Customs Act, 1962, when Sea Customs Act, 1876 was in force.

174. The pre-dominant functions of the Directorate of Revenue Intelligence (DRI) at the time of its conception were as follows:-

- (a) To study and disseminate intelligence about smuggling;
- (b) To identify the organised gangs of smugglers and areas vulnerable to smuggling, targeting of intelligence against them and their immobilization;
- (c) To maintain liaison with the intelligence and enforcement agencies in India and abroad for collection of intelligence and in-depth investigation of important cases having inter Commissionerate and international ramification;
- (d) To alert filed formations for interception of suspects and contraband goods, assessment of current and likely trends in smuggling.
- (e) To advise the Ministry in all Matters pertaining to Anti-Smuggling measures and in formulating or amending laws, procedures and practices in order to plug any loop-holes; and
- (f) To attend to such other matters as may be entrusted to the Directorate by the Ministry or the Board for investigation.

175. It must be also recalled that the officers of Directorate of Revenue Intelligence (DRI) represents an elite wing of the investigative officers from the Revenue Department drawn from experienced Senior Customs and Central Excise Officers. It consists of Senior Officers from the

Department who are tasked with the duty to safeguard economic interests of the Country. It will be useful to refer to the history of Directorate of Revenue Intelligence (DRI) from their own Website which is extracted as under:

*“The Central Excise and Customs administration, which was previously deployed during the British Rule mainly for the collection of revenue, was called upon, in the wake of independence, to shoulder the responsibility of guarding the tariff wall along the country's vast coastline and land frontiers. Many handicaps such as want of trained manpower and adequate resources in the form of equipments and absence of precise intelligence made our frontiers more vulnerable to economic exploitation. Added to it was the temptation to evade taxes and controls which was fuelled on account of growing demand for foreign articles which otherwise were subject to high taxation rates and non-tariff barriers on account of the need to foster indigenous industry and to conserve the country's fast dwindling foreign exchange reserves.*

*A need was felt to have a centralized agency in India to deal with cases of violations of Customs laws, having ramifications beyond the geographical jurisdiction of localized field formations and for collection, co- ordination and correlation of intelligence with respect to violation of these laws and also to furnish specialized know-how. A beginning was made in 1953, when a nucleus cell, christened 'C.R.I.B.' (Central Revenue Intelligence Bureau), charged with the responsibility of dealing with all matters connected with anti-smuggling and anti-corruption in the Customs and Central Excise organizations all over India was constituted. It was a small unit consisting of an Assistant Collector and two Superintendents within the Directorate of Inspection (Customs and Central Excise), New Delhi but working directly under the Central Board of Revenue.*

*By its very composition, a cell like C.R.I.B., could have a very limited scope for wider activities. But various studies undertaken in this small Cell itself revealed that the menace of smuggling had established deep roots in India, which, in turn, spelt out the dire need for establishing a well-organized Central anti-smuggling Organization for planning and directing the anti- smuggling efforts of the various Custom Houses and Central Excise Collectorates throughout India in a scientific manner for successfully meeting the menace of organized smuggling.*

*Various studies were undertaken by C.R.I.B. and suggestions were submitted to the Government of India in the Ministry of Finance (Revenue Division) The proposals made by Chairman, Central Board of Revenue and Finance Secretary dealing with the re-organization of Central Revenue Intelligence Bureau and creation of the Directorate of Revenue Intelligence makes for an interesting reading as it provides an insight into the history of, rationale behind and expectations from DRI. The Chairman noted that "Till about 1955, the officers of the CRIB undertook adhoc investigations or enquiries, at the instance of the Board, and these were mostly enquiries against senior officers accused of corruption. The Bureau could not devote its attention to anti-smuggling measures on any organized pattern until after the taking over of anti- corruption work by the Vigilance wing, and the availability of its full complement of officers about a year ago. In this year, under*

*the personal guidance of Member (Central Excise) the Bureau took up co- ordination of Inter-Collectorate work against smuggling and helped the Collectorates with experienced personnel in the investigation of major cases. Amongst the more important cases developed wholly or partly with the help of officers of CRIB may be mentioned those of Soirat and Webb who were caught while attempting to export Rs. 2.5 Lakhs in currency, Dana and Frey who attempted to export about Rs. 9 Lakhs in currency through Attari and the un-earthing of the smuggling racket at Jamnagar headed by Talab Haji Hussain and seizure of gold valued at at over Rs. 30 Lakhs, currency of 8 lakhs of rupees and about 25 vehicles including motor cars, auto rikshaws etc. and the current investigation into the seizure of Rs. 1.5 Crores worth of diamonds from Shri Zainal Ali Raza of Bombay. In particular, the mopping up of the smugglers on such a large scale at Jamnagar has virtually broken up a powerful and organized gang, whose activities introduced about six to eight crores of rupees worth of gold every year into the country and export of currency or other goods and services of equivalent value out of it."*

*The Finance Secretary noted as below: -*

*"The essential features of the proposed organization are:*

- i. It is designed to collect and collate information and to strike swiftly;*
- ii. It is officer-intensive and the ministerial staff has been kept at a minimum;*
- iii. Although small, it is a high-powered organization so that it can issue instructions to Collectors and can command the confidence and respect of the other State and Central organizations with which it has necessarily to deal in order to become effective;*
- iv. It will consist of selected officers, that is, those who by temperament and experience, are equipped to do this specialized kind of work;*
- v. It will have no routine job of its own in the sense that it is required to collect a certain amount of revenue. It will have complete liberty to act on 'hunches' and only the ends will justify the means it adopts."*

176. However, with the increase in import and exports, the Role of the officers of Directorate of Revenue Intelligence (DRI) was expanded. From merel collection of information and investigation of tax evasion and dissemination of informations and tipping the field formations about possible smuggling and evasion of customs duty, they have been recognized as "Officers of Customs" by notification issued under Section 4 of the Customs Act, 1962. Thus, there is no difficulty in their being appointed as "Proper Officers". Currently, the senior officers in the Directorate of Revenue Intelligence (DRI) consist of Officers of the Customs who are on deputation to the Board. The Officers of the Directorate of Revenue Intelligence (DRI) like their counterparts in the Director General of GST Intelligence (formerly Directorate General of Central Excise Intelligence), are Officers drawn from these Group A and Group B Services of the Department of Revenue, Ministry of Finance.

177. In fact, these officers from the Directorate of Revenue Intelligence (DRI) under the Department of Revenue, Ministry of Finance (MOF) do not cease to be Officers of Custom on their deputation to the said Directorate.

178. Under Act, the Central Government by a notification can also entrust the function of the customs officers on any other officers from other departments including officers from the State Government and Local Body. I shall refer to the relevant provisions later from the Customs Act, 1962 in the course of the discussion in this order.

**PART VI - CLASSES OF CUSTOM OFFICER**

179. Under Section 3(a) to (i) of the Customs Act , 1962 as it stood till 01.04.2022, the following Officers are among the classes of Officers of Customs:-

- i. Principal Chief Commissioner of Customs;
- ii. Chief Commissioner of Customs
- iii. Principal Commissioner of Customs
- iv. Commissioner of Customs
- v. Commissioners of Customs (Appeals)
- vi. Joint Commissioner of Customs
- vii. Deputy Commissioner of Customs]
- viii. Assistant Commissioner of Customs.
- ix. Such other class of officers of customs as may be appointed for the purpose of this Act.

180. Section 3 of the Customs Act, 1962 has been partially amended vide Finance Act, 2022. Now, the officers from the Directorate of Revenue Intelligence (DRI) and others have been specifically included in the class of Officers of Customs. Sub-clause (i) to Section 3 (Subclause (k) to Section 3 as amended) has to be read in conjunction with sub-clause (2) to Section 4 of the Act. For comparison, both amended and unamended Section 3 of the Customs Act, 1962 are reproduced below:-

Unamended Section 3 of the Customs Act, 1962	Amended Section 3 of the Customs Act vide Finance Act, 2022 w.e.f 1.4.2022
<p>There shall be the following classes of officers of customs namely,</p> <p>a) Principal Chief</p>	<p>There shall be the following classes of officers of customs, namely:—</p> <p>a) Principal Chief Commissioner of Customs or <b>Principal Chief Commissioner of Customs (Preventive) or Principal Director General of Revenue Intelligence;</b></p>

<p>Commissioner of Customs;</p> <p>b) Chief Commissioner of Customs);</p> <p>c) Principal Commissioner of Customs;</p> <p>d) Commissioner of Customs;</p> <p>e) Commissioners of Customs (Appeals);</p> <p>f) Joint Commissioner of Customs;</p> <p>g) Deputy Commissioner of Customs;</p> <p>h) Assistant Commissioner of Customs;</p> <p>i) such other class of officers of customs as may be appointed for the purpose of this Act.</p>	<p>b) Chief Commissioner of Customs or <b>Chief Commissioner of Customs (Preventive) or Director General of Revenue Intelligence;</b></p> <p>c) Principal Commissioner of Customs or <b>Principal Commissioner of Customs (Preventive) or Principal Additional Director General of Revenue Intelligence or Principal Commissioner of Customs (Audit);</b></p> <p>d) Commissioner of Customs or <b>Commissioner of Customs (Preventive) or Additional Director General of Revenue Intelligence or Commissioner of Customs (Audit);</b></p> <p>e) <b>Principal Commissioner of Customs (Appeals);</b></p> <p>f) Commissioner of Customs (Appeals);</p> <p><b>g) Additional Commissioner of Customs or Additional Commissioner of Customs (Preventive) or Additional Director of Revenue Intelligence or Additional Commissioner of Customs (Audit);</b></p> <p><b>h) Joint Commissioner of Customs or Joint Commissioner of Customs (Preventive) or Joint Director of Revenue Intelligence or Joint Commissioner of Customs (Audit);</b></p> <p><b>i) Deputy Commissioner of Customs or Deputy Commissioner of Customs (Preventive) or Deputy Director of Revenue Intelligence or Deputy Commissioner of Customs (Audit);</b></p> <p><b>j) Assistant Commissioner of Customs or Assistant Commissioner of Customs (Preventive) or Assistant Director of Revenue Intelligence or Assistant Commissioner of Customs (Audit);</b></p> <p>k) such other class of officers of customs as may be appointed for the purposes of this Act.”.</p>
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**(Note: The portion in Bold represents amendment.)**

181. Sweeping, changes have been brought to the Customs Act, 1962 by Finance Act, 2022 leaving no scope for any doubt as to status of the officers including the officers from the Directorate of Revenue Intelligence (DRI) as officers of Customs .

182. Section 3(i) and Section 3(k) in the respective column also leave no scope for any doubt

as to the other class of Officers of Customs who can also be appointed as Customs Officers for the purpose of the Act.

183. Thus, Group 'B' officers have been recognized as Officers of the Customs in terms of Section 3(i) of the Customs Act, 1962 [presently Section 3(k)]. It is Group 'B' Officers who are appointed under these two sub-Sections.

184. Prior to 08.04.2011, Group 'B' Executive- Gazetted Officers namely the Superintendent of Customs (Preventive) and the Appraiser of Customs were also given the task of making assessment of the Bill(s) of Entry and Shipping Bill(s) under Section 17 and 18 of the Customs Act, 1962.

185. Earlier, the Senior officers from the rank of the Assistant Commissioner of Customs were already exercising the power to issue Demand Notice and Show Cause Notices under Section 28 and other provisions of the Customs Act, 1962 and to adjudicate the same, though assessment of Bill(s) of Entry and Shipping Bill(s) was mostly left to the officer in the field namely, the Appraisers of Customs and Superintendent of Customs. The power to issue show cause notice/demand notice and adjudicate them was left to senior officers from Group. There were only pecuniary/monetary limitation by virtue of Board Circulars. Reference may be made to Board's Circular No. 87/2002-Cus., dated 17-12-2002 [2003 (151) E.L.T. T 12] and Board Circular No. 23/2009-Customs, dated 1-9-2009 [2009 (241) E.L.T. T6]. They provided for monetary limit for adjudication of cases by officers of various grades where SCNs were issued under section 28 of the Customs Act, 1962. All along the, the adjudication of the SCN was with a different officer from the officer who may have made assessment at the time of import or export.

186. In the context of assessment under un-amended Section 17 of the Customs Act, 1962 prior to 8.4.2011, in Escorts Ltd Vs. Union of India, 1998 (97) ELT 211(SC), it was held that in the very nature of opinion, no formal orders of assessment can be expected in such a case. It is more like 'across-the-counter' affair. The Court further held that where a Bill of Entry presented was signed, signifying approval by the assessing officer, that itself was an order of assessment in such a situation. No separate order of assessment was required. This was the position of law before 2011 amendment to Section 17 of the Custom Act, 1962.

187. In fact, the above position was reiterated in Priya Blue Industries Limited Vs. Commissioner of Customs Preventive, 2004 (172) E.L.T. 145 (SC) in the context of refund also. The Court there followed its earlier decision in Collector of Central Excise, Kanpur Vs. Flock India Private Limited, 2000 (120) E.L.T. (285), by holding that unless assessment made under Section 17 is challenged in the manner known to law, refund cannot be entertained.

188. This view has been reiterated recently by the Hon'ble Supreme Court in I.T.C. Limited Vs. Commissioner of Central Excise, Kolkata, 2019 (368) E.L.T. 260 came to be rendered in the context of Sections 17, 18, 27, 28 & 128 of the Customs Act, 1962. In fact, the Hon'ble Supreme Court held that order of self-assessment was appealable by any person aggrieved. Thus, the Hon'ble Supreme Court followed its earlier decision in Escorts Limited Vs. Union of India, 1998 (97) ELT 211(SC), referred to supra.

189. After 2011 amendment to section 17 of the Customs Act, 1962 with effect from 8.4.2011, it is the Appraisers of Customs and Superintendent of Customs along with Inspectors and Examiners Group 'B' Executive- Non Gazetted officers who continue to be the first interface with an importer filing a Bill(s) of Entry under Section 46 of the Act or an Exporter filing Shipping Bill(s) under Section 50 of the Act for export of goods before clearance. However, after the above amendment there is no assessment of Bill(s) of Entry under Section 46 of the Act or an Exporter filing Shipping Bill(s) under Section 50 of the Act by a "Proper Officer". I shall discuss this in next few paragraphs in Part VIII.

### **PART VII - NOTE ON CADRE IN THE CUSTOMS DEPARTMENT**

190. The cadre in the Customs and Central Excise Department (presently the Central Tax Department) consists of Group-A, Group-B, Group-C and Group-D cadre. Officers from the Group-A cadre are under the direct supervision of the Board.

191. Officers from the Group-A cadre are appointed either by Direct Recruitment by the Union Public Service Commission (UPSC) or by promotion from Group B. Group-A Officers belong to the prestigious Indian Revenue Service (IRS) along with their counterparts under the Direct Tax enactments. It is one of the Union Civil Services. The Board Controls the officers in the Group A cadre.

192. Group-B, Group-C and Group- D Officers/Staffs are below Group-A Cadre Officers. Group-B Officers are selected by the Staff Selection Board through Competitive Exams. The control of the Group 'B', 'C' & 'D' cadre Officers/staffs is vested with the jurisdictional Chief Commissioners/Directors General, whose jurisdiction has been drawn under various notifications issued by the Board under the provisions of the Customs Act, 1962.

193. The Group-B Cadre Officers in the Customs and Central Excise (Now Central Tax Officers) consist of:-

- i. Group 'B' Executive Cadre; and
- ii. Group 'B' Ministerial Cadre.

194. For the purpose of the present writ petition a reference to Group 'B' Executive Cadre is sufficient. It is further divided into two groups:-

- i. Group 'B' Executive - Gazetted Officers; and
- ii. Group 'B' Executive - Non-Gazetted Officers.

195. Group 'B' Executive - Gazetted Officers and Group 'B' Executive-Non-Gazetted Officers consist of three Grades as detailed below:-

<b>Sl. No.</b>	<b>Group 'B' Executive – Gazetted Officers</b>	<b>Group 'B' Executive – Non Gazetted Officers</b>
1	Superintendent of Central Excise	Inspector (Central Excise)

2	Superintendent of Customs (Preventive)	Inspector (Preventive Officer)
3	Appraiser of Customs	Inspector (Examiner)

196. The Board or the Principal Commissioner of Customs or Commissioner of Customs may also appoint any person as it thinks fit to be the “Officer of Customs” under Section 2(34) and under Section 4(1) of the Act. It is the officers at the Sl.No.2 and 3 who are the first interface with an exporter or importer.

197. Under the Scheme of the Customs Act,1962 and the notification issued under it, the Group 'B' Executive - Gazetted Officers at Sl. No.2 and 3 of the Customs Department have been designated to act as “Proper Officers”. Till amendment to Section 17 of the Custom Act, 1962, i.e till 7.11.2011, they were the “proper officer” notified for making assessment of the Bill(s) of Entry filed under section 46 of the Customs Act,1962 and/or the Shipping Bill(s) filed under Section 50 of the Customs Act, 1962.

198. The recruitment to the Group 'B' Executive - Gazetted posts is currently entirely by promotion from Group 'B' Executive - Non-Gazetted posts. Inspector of Central Excise is the feeder grade for the grade of Superintendent of Central Excise, while Inspector (Preventive Officer) is the feeder grade for Superintendent of Customs (Preventive).

199. It is the officers from the Group 'B' cadre both Gazetted and Non-Gazetted who are the first interface with the importer or exporter at the time of import or export after these import and export documents are filed. It is they, who examine the Bill(s) of Entry filed under Section 46 and/or or Shipping Bill(s) filed under Section 50 of the Customs Act, 1962.

200.They are in the field and oversee the clearance of the import and export consignments. They have been appointed as officers of customs and further delegated with the powers and function to oversee the clearance of the goods/consignment at the time of export and import. Group 'B' Executive - Gazetted Officers have also been designated as “Proper Officer” for the purpose of Section 17 of the Customs Act, 1962.

201. For the purpose of this case, it will suffice to refer to Officers from Group-A and Group-B cadres as it is these officers who have been appointed as “Proper officer” for the purpose of issuance of Show Cause Notice/ Demand Notice and for adjudication. These officers are empowered under the scheme of the Act, to pass order under Section 17 and Section 28 of the Customs Act, 1962.

**PART VIII - CHANGES TO SECTION 17 W. E.F. 11.4.2011**

**- THE ASSESSMENT OF BILL(S) OF ENTRY**

**AND SHIPPING BILL(S)**

202. Important changes were made to Section 17 of the Customs Act,1962 vide Section 38 of

the Finance Act, 2011 with effect from 08.04.2011. The said amendment altered the method of assessment of Bill(s) of Entry and Shipping Bill(s). This appears to have not been brought to the knowledge of the Hon'ble Supreme Court.

203. With effect from 08.04.2011, assessment of Bill(s) of Entry and Shipping Bill(s) was no longer left with the “proper officer” appointed for the purpose under Section 17 of the Customs Act, 1962.

204. With effect from 08.04.2011 there is only self-assessment of Bill(s) of Entry and/or Shipping Bill(s). Self assessment in the Bill(s) of Entry and Shipping Bill(s) were to be either accepted or rejected by the proper officer.

205. The “Proper Officer” appointed for the purpose of Section 17 of the Customs Act, 1962 under a Notification issued under Section 2(34) of the Act, could only make a re-assessment of the Bill(s) of Entry and Shipping Bill(s) in case they did not agree with the self assessment of the importer or the exporter as the case may be.

206. In case of re-assessment, such a “proper officer” is bound to pass a “Speaking Order” to enable the aggrieved party to file an appeal. This aspect appears to have not brought to the knowledge of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs, 2021 (376) E.L.T.3(S.C). Section 17 as it read before 08.04.2011 and after 08.04.2011 are reproduced below for understanding the issue better:-

<b>Section 17: Assessment of Duty</b>	
<b>Before 08.04.2011</b>	<b>Between 08.04.2011 and 28.03.2018</b>
(1) After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50, the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer.	(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.
(2) After such examination and testing, the duty, if any, leviable on such goods shall, save as otherwise provided in section 85, be assessed.	(2) The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.
(3) For the purpose of assessing duty under sub-section (2), the proper officer may require the importer, exporter or any other person to	(3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any

<p>produce any contract, broker's note, policy of insurance, catalogue or other document whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon the importer, exporter or such other person shall produce such document and furnish such information.</p>	<p>other person to produce any contract, broker's note, insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.</p>
<p>(4) Notwithstanding anything contained in this section, imported goods or export goods may, prior to the examination or testing thereof, be permitted by the proper officer to be assessed to duty on the basis of the statements made in the entry relating thereto and the documents produced and the information furnished under sub-section (3); but if it is found subsequently on examination or testing of the goods or otherwise that any statement in such entry or document or any information so furnished is not true in respect of any matter relevant to the assessment, the goods may, without prejudice to any other action which may be taken under this Act, be re-assessed to duty.</p>	<p>(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods. Amendment of section 18.</p>
<p>(5) Where any assessment done under sub-section (2) is contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification therefor under this Act, and in cases other than those where the importer or the exporter, as the case may be, confirms his acceptance of the said assessment writing, the proper officer shall pass a speaking order within fifteen days from the date of assessment of the bill of entry or the shipping bill, as the case may be.</p>	<p>(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the reassessment, within fifteen days from the date of re-assessment of the bill of entry or the</p>

	shipping bill, as the case may be.
	<p>[(6) Where re-assessment has not been done or a speaking order has not been passed on reassessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed.] *</p> <p>Explanation.- For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received."</p>

\* Sub Section 6 to Section 17 of the Act which read above, was omitted vide Act, 2018 w.e.f. 29.03.2018.

207. Thus, there was a paradigm shift in the method of assessment with effect from 08.04.2011. Till 07.4.2011, the assessment of Bill of Entry(s) or the Shipping Bill(s) was by a "proper officer" appointed for that purpose under Section 2(34) of the Custom Act, 1962. The assessment was left to the Group 'B' Gazetted Officers and it is only such officers were appointed as "proper officers" for assessment under Section 17.

208. However, after 08.04.2011, Bill(s) of Entry (in the case of import) or Shipping Bill(s) (in the case of export) are to be self assessed by an importer or an exporter under Sections 46 and 50 of the Customs Act, 1962 respectively. The changes are shown in bold in the above Table.

209. A "proper officer" has to merely verify the entries made in the Bill(s) of Entry under Section 46 (in case of import) or Shipping Bill(s) under Section 50 (in case of export). The "Proper Officer" may examine or test imported goods or export goods or such part thereof as may be necessary. If required, such an officer can only re-assess the goods under Section 17 of the Act. Thus, a "Proper Officer" under Section 17(1) & 17(4) of the Act is merely required to re-assess the imported goods or export goods where he differs with the self assessment of an importer or an exporter. This important change was not brought to the attention of the Hon'ble

Supreme Court in Canon India Pvt Ltd Case.

210. As mentioned above, an importer or an exporter is merely required to make a self-assessment in the Bill(s) of Entry or Shipping Bill(s) as may be in the case of import or export respectively and file the same.

211. Officers who are appointed as "Proper Officers" for the purpose of Section 17 of the Customs Act, 1962 are "Officers of Customs" like any "Officer of Customs" as per Section 3 and 4 read with notification issued under these provisions. There is delegation of functions by the Board and senior officers to different class of officers by the Board. This is an internal arrangement with a view for better tax administration. Thus, officers of Directorate of Revenue Intelligence are also one among the class "Officers of Customs" like any Officer of Customs as per Section 3 and 4 read with notification issued for the said purpose are competent to issue show cause notice. The "proper officer" at the Port at the time of clearance of import or export, merely reassess the self-assessment already made on the Bill(s) of Entry and/or Shipping Bill(s). They are normally not assigned with the function to adjudicate Show Cause Notices and/or Demand Notices under the various provisions of the Customs Act, 1962.

212. With effect from, 08.04.2011, there was no question of assessment of Bill(s) of Entry /Shipping Bill(s) by a "proper officer". There is only self assessment by an importer or an exporter. There could be only re-assessment of Bill of Entry(s) or the Shipping Bill(s) by the "proper officer" under Section 17 of the Customs Act,1962.

213. If the "proper officer" was inclined to disagree with the self assessment made by an importer or an exporter as the case may be, the "proper officer" could make a re-assessment and pass a speaking order under Section 17(5) of the Customs Act, 1962.

214. If the self assessment is accepted, the "proper officer" appointed under Section 17 of the Customs Act, 1962 becomes "functus officio" under the scheme of the Act and the Notification issued for the aforesaid purpose.

215. Likewise, where there was a re-assessment, again such an officer becomes "functus officio", after such an order of re-assessment and a speaking order under Section 17(5) of the Customs Act, 1962 is passed.

216. An importer or an exporter aggrieved by such an order of reassessment and the speaking order is entitled to file an appeal under Section 128 of the Custom Act,1962 before the Appellate Commissioner. Only circumstances, where such an officer who makes an order of reassessment can re-visit the re-assessment and/or speaking order is under Section 28 (if specifically authorized) or under Section 149 or under Section 154 of the Customs Act, 1962.

217. The power to issue Show Cause Notice whether under Section 28 or under Chapter XIV of Customs Act, 1962 or under any other provisions and to pass orders has been by and large exercised by the Superior Officers from Group 'A' Cadre Officer of the Custom Department in terms of Notification issued under Section 2(34) of the Act. The Officers from the Directorate of Revenue Intelligence (DRI) being "Officers of Custom" have been recognized as a "Proper Officer" for the aforesaid purpose.

218. The “proper officer” who is/was involved at the stage of assessment under Section 17 of the Act upto 08.04.2011 and reassessment after 08.04.2011 have rarely been involved in collateral adjudication of notices issued under Section 28 of the Act. However, once again at the stage of recovery of duty or penalty under other provision of the Customs Act, 1962 or redemption fine under Section 125 of the Customs Act, 1962, they are authorized.

219. Mostly, at the time of clearance of imported goods or export goods for the purpose of assessment under Section 17 of the Custom Act,1962, it is the Superintendent/Appraisers of Customs from Group 'B' Executive - Gazetted Officers who act as “proper officers”. They are merely required to verify the entries made in the Bill(s) of Entry filed under Section 46 of the Act (in case of import) and or Shipping Bill(s) filed under Section 50 of the Act (in case of export). As “proper officers” are required to merely examine or test any imported or export goods or such parts thereof. Such Officer of Customs under the Scheme of the Act and Notification issued thereunder can only re-assess the self-assessment made by the importer or the exporter.

220. Earlier, the Officers from the Directorate of Revenue Intelligence (DRI) were mostly confined with the task of investigation. Over a period of time, they were empowered to issue Show Cause Notices and/or Demand Notices under various provisions of the Customs Act. Adjudication of the Show Cause Notices/Demand Notices were however left to the senior officer of customs from Group 'A' cadre of the Customs Department. However, they are empowered to act as “proper officers” not only for issuance of Show Cause Notice and/or Demand Notices but also for adjudication of such Show Cause Notices and/or Demand Notices.

221. The Hon'ble Supreme Court appears to have not been informed about the important changes brought to Section 17 of the Customs Act, 1962 vide Section 38 of the Finance Act, 2011 with effect from 08.04.2011 when it passed its decision in Canon India Private Limited Vs. Commissioner of Customs, 2021 (376) E.L.T.3(S.C.). Section 17 of the Act has undergone further changes.

222. The observation in paragraph 13 of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs, 2021 (376) E.L.T.3(S.C.) that “Where one officer has exercised his powers of assessment, the power to order reassessment must also be exercised by the same officer or his successor and not by another officer of another department though he is designated to be an officer of the same rank” has been made without taking note of the changes to Section 17 of the Customs Act, 1962 with effect from 08.04.2011.

223. Similarly, the observation in paragraph 14 of the Hon'ble Supreme Court in the case of Canon India Private Limited Vs. Commissioner of Customs, 2021 (376) E.L.T.3(S.C.) that “We find it completely impermissible to allow an officer, who has not passed the original order of assessment, to re-open the assessment on the grounds that the duty was not paid/not levied, by the original officer who had decided to clear the goods and who was competent and authorised to make the assessment. The nature of the power conferred by Section 28(4) to recover duties which 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 or his successor or any other officer who has been assigned the function of assessment. In other words, an officer who did the assessment, could only undertake reassessment [which is involved in Section 28(4)] was made without taking note of the above mentioned amendment and changed to Section 17 of the Customs Act, 1962 with effect from 08.04.2011 vide Section 38 of the Finance Act, 2011.

224. Further, in Canon India Private Limited, Vs. The Commissioner of Customs, 2021 (376) E.L.T.3(S.C.) Show Cause Notice was dated 19.09.2014 in respect of Bill of Entry filed on 20.03.2012. The Court appears to have applied provisions of Section 17 of the Customs Act, 1962, as it stood prior to 08.04.2011 without actually referring to the said provision.

225. In Canon India Private Limited Vs. Commissioner of Customs, 2021 (376) E.L.T.3(S.C), the Hon'ble Supreme Court straightaway concluded that the officer from the Directorate of Revenue Intelligence (DRI) were not officer of customs and therefore cannot function as a "Proper Officer". The Court has held that the power conferred by the Board under Notification No.40/2012 -Customs (N.T.) dated 02.05.2012 was ill-founded would require a reconsideration.

226. Vide Notification No.40/2012-Customs (NT) dated 02.05.2012, the Board has appointed several persons including Officers of Directorate of Revenue Intelligence (DRI) as "Proper Officer" for the purpose of various provisions under the Customs Act, 1962 under Section 2(34) of the Customs Act, 1962.

227. Now Section 2(34) of the Act has also been amended under the Finance Act, 2022. Section 2(34) of the Act together with amendment is reproduced below:-

<b>Section 2(34) of the Customs Act, 1962 till passing of Finance Act, 2022</b>	<b>Section 2(34) of the Customs Act, 1962 after amendment vide Finance Act, 2022</b>
<p>"Proper Officer", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Principal Commissioner of Customs or Commissioner of Customs.</p>	<p>"Proper Officer", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Principal Commissioner of Customs or Commissioner of Customs under Section 5.</p>

(Note: The Portion in Bold represents the amendment)

228. Board or the Principal Commissioner of Customs or Commissioner Customs may assign Commissioner of Customs function to be performed under the Act on the such "Officer of Customs" as "Proper Officer".

229. Notification No.40/2012-Customs (NT) dated 02.05.2012, issued under Section 2(34) of the Customs Act, 1962 cannot be read in isolation. It has to be read in conjunction with Section 4(1) of the Customs Act, 1962 and Notification issued thereunder.

230. The view that "Proper Officer" for the purpose of Section 28 and other provisions of the

Customs Act, 1962 could only mean the person who cleared the goods or the officer who succeeds such officer and not by any other officer from any other department is not requires a relook with the changes to the Custom Act, 1962 vide Finance Act, 2011 and in the light of Section 4 and notification issued thereunder.

231. The Hon'ble Supreme Court in paragraph Nos.11 to 15 of Canon India Private Limited Vs. Commissioner of Customs, 2021 (376) E.L.T. 3 (S.C) has assumed that under the provisions of the Customs Act, 1962, the Central Board has no power to appoint "Proper Officer".

232. As per Section 4 of the Customs Act, 1962, Board constituted under the provisions of Central Board of Revenue Act, 1963 is vested with the power to appoint such persons as it thinks fit to be "Officers of Customs".

233. Under sub-section (1) to Section 4(1) of the Act, the Board may appoint such person as Officers of Customs as it thinks fit. Under Section 4(2) of the Act, the Board can even authorize a Chief Commissioner of Customs or a Joint or Assistant or Deputy Commissioner of Customs to appoint any officers below the rank of Assistant Commissioner of Customs as an "Officer of Customs". This aspect has not been brought to the attention of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs, 2021 (376) E.L.T. 3 (S.C).

234. For an easy reference, Section 4 of the Act is reproduced below:-

**Section Appointment of "Officers of Customs":-**

**4**

- 1) The Board may appoint such persons as it thinks fit to be Officers of Customs.
- 2) Without prejudice to the provisions of subsection (1), [Board may authorise a Principal Chief Commissioner of Customs or a Chief Commissioner of Customs Principal Commissioner of Customs or Commissioner of Customs) or Joint or Assistant Commissioner of Customs or Joint or Assistant Commissioner of Customs or Deputy Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner of Customs.]

235. It must also be noted that it is these Officers of Customs whether under Section 3 or 4(1) of the Act who can be designated as "proper officer" as defined in Section 2(34) of the Customs Act, 1962 by a Notification. Notifications issued under Section 2(34) and 4(1) of the Act is internal arrangement for allocation of work among the officers of customs.

**PART IX - OFFICERS OF DIRECTORATE OF REVENUE INTELLIGENCE (DRI) ARE ALREADY OFFICERS OF CUSTOMS**

236. The officers of the Directorate of Revenue Intelligence (DRI) have already been appointed as "Officers of Customs" under Notification issued under Section 4(1) of the Customs Act, 1962 vide Notification of the Government of India in the Ministry of Finance (Department of Revenue) No.186-Cus, dated 4th August, 1981. The said Notification was later superseded by Notification

No.19/90- Cus (N.T.), dated 26.04.1990.

237. By Notification No.19/90- Cus (N.T.), dated 26.04.1990, the officers from the Directorate of Revenue Intelligence (DRI) were appointed as Collectors and Assistant Collectors of Customs in the area mentioned in Column-I of the said notification.

238. Notification No.19/90- Cus (N.T.), dated 26.04.1990 was later superseded by Notification No.17/2002-Cus. (N.T.) dated 07.03.2002, whereby, various officers from the Directorate General of Revenue Intelligence and Directorate of Revenue Intelligence were appointed as Commissioner of Customs and as Additional Commissioner and Joint Commissioner of Customs and Deputy Commissioner/Assistant Commissioner of Customs. Thus, they were appointed as Officers of Customs. Relevant portion Notification No.17/2002-Cus. (N.T.), dated 07.03.2002 is reproduced below:-

**Directorate of Revenue Intelligence (D.R.I.) Officers appointed as Customs Officers – Notification No.19/90 - Cus. (N.T.) superseded.**

*In exercise of the powers conferred by sub-section (1) of Section 4 of the Customs Act, 1962 (52 of 1962) and in supersession of notification of the Government of India in the Ministry of Finance (Department of Revenue) No.19/90Customs (N.T.), dated the 26th April, 1990, the Central Government appoints the officers mentioned in Column (2) of the Table below to the Commissioner of Customs, the officers mentioned in column (3) thereof to be the Additional Commissioners or Joint Commissioners of Customs and Officers mentioned in column(4) thereof to be the Deputy Commissioners or Assistant Commissioners of Customs for the areas mentioned in the corresponding entry in column(1) of the said Table with effect from the date to be notified by the Central Government in the Official Gazette:-*

**Table**

<b>Area of Jurisdiction</b>	<b>Designation of the Officers</b>		
(1)	(2)	(3)	(4)
Whole of India	Additional Director General, Directorate General of Revenue Intelligence posted at Headquarters and Zonal/regional units	Additional Directors or Joint Directors, of Directorate of Revenue Intelligence posted at Headquarters and Zonal/regional units.	Deputy Directors, or Assistant Directors of Directorate of Revenue Intelligence posted at Headquarter s and Zonal/region al units.

**[Notification No.17/2002-Cus. (N.T.), dated 07.03.2002]**

239. Notification No.17/2002-Cus. (N.T.), dated 07.03.2002 came into force on 25.10.2002 vide Notification No.63/2002-Cus. (N.T.) dated 03.10.2002. Notification No.17/2002-Cus. (N.T.),

dated 07.03.2002 was further amended by Notification No.82/2014-Cus. (N.T.), dated 16.09.2014.

240. Thus, the officers from the Directorate of Revenue Intelligence have been appointed as “Officers of Customs” under Section 4 of the Customs Act, 1962 and therefore they are “Proper Officers” for the purpose of Section 2(34) of the Customs Act, 1962. This aspect was not brought to the attention of the Hon'ble Supreme Court in Canon India Private Ltd. case referred to supra.

241. With a view to streamline the allocation of work and for the purposes of Section 17 and Section 28 of the Customs Act, 1962, Notification No. 44/2011-Cus. (N.T.), dated 06.07.2011 was issued by the Board under Section 2(34) of the Act.

242. Notification No.44/2011-Cus. (N.T.), dated 06.07.2011 was issued under Section 2(34) of the Customs Act, 1962 for the purpose of identifying officers of customs for exercising the power and function under the Customs Act,1962.

243. Notification No.44/2011-Cus. (N.T.), dated 06.07.2011 was later amended by Notification No.53/2012-Cus. (N.T.) dated 21.06.2012 and still later by Notification No.43/2019-Cus. (N.T.) dated 18.06.2019 and eventually has been rescinded/superseded by Notification No.25/2022-Cus. (N.T.) dated 31.03.2022 in tune with the amendment proposed in the Finance Bill, 2022 and passed by Finance Act, 2022.

244. Among various officers of the Customs, following officers were also assigned to act and function as the “Proper Officer” under Notification No.44/2011 – Cus. (N.T.) dated 06.07.2011:-

**TABLE**

<b>Sl. No.</b>	<b>Designation of the officers</b>
(1)	(2)
1	<i>Additional Director Generals, Additional Directors or Joint Directors, Deputy Directors or Assistant Directors in the Directorate General of Revenue Intelligence.</i>
2	<i>Commissioners of Customs (Preventive), Additional Commissioners or Joint Commissioners of Customs (Preventive), Deputy Commissioners or Assistant Commissioners of Customs (Preventive).</i>
3	<i>Additional Director Generals, Additional Directors or Joint Directors, Deputy Directors or Assistant Directors in the Directorate General of Central Excise Intelligence.</i>
4	<i>Commissioners of Central Excise, Additional Commissioners or Joint Commissioners of Central Excise, Deputy Commissioners or Assistant Commissioners of Central Excise.</i>

245. Thus, over a period of time, the officers of Directorate of Revenue Intelligence (DRI) who are primarily drawn from the Customs Department were also given the task of issuing show cause notice and adjudicating the same in terms of Notifications issued as “Proper Officer”, as defined in Section 2(34) of the Customs Act, 1962.

246. Now, under the amended Section 2(34), the word “under Section 5” has been inserted. Thus, what was implicit in the Customs Act, 1962 has now been made explicit in the amendment to the Customs Act, 1962 vide Finance Act, 2022.

247. As per Section 5(1) of the Act, an “Officer of Customs” may exercise the powers and discharge the duties conferred or imposed on him under the Customs Act, 1962, subject to such conditions and limitations as the Board may impose.

248. The power to be exercised may be subject to such conditions and limitations as the Board may impose on such an “Officer of Customs”. Such officers can also exercise the powers and discharge the duties conferred or imposed on any other officers of customs who is subordinate to such officers. This aspect was also not brought to the attention of the Hon’ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs case referred to supra.

249. Only exception that has been provided was in Sub-Section (3) to Section 5 of the Act. As per Sub-Section 3 to Section 5 of the Act, a Commissioner (Appeals) cannot exercise the power and discharge the duties conferred or imposed on an “Officer of Customs” other than those specified in Section 108 of the Act and Chapter XV deals with the Appeals and Revisions.

250. Section 5 of the Customs Act, 1962 has also been amended in the Finance Act, 2022. Sub-Section (1A), (1B) and Sub-Section (4) and (5) to Section 5 of the Customs Act, 1962 have been now inserted. Section 5 as it stood prior to amendment and as it stands after amendment read as under:-

<b>5. Powers of Officers of Customs of the Customs Act, 1962</b>	
<b>Before the amendment Section</b>	<b>After the 2022 amendment</b>
	(1) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.
-	1(A) : Without prejudice to the provisions contained in subsection (1), the Board may, by notification, assign such functions as it may deem fit, to an officer of customs, 91 who shall be the proper officer in relation to such functions.
-	(1B) Within their jurisdiction assigned by the Board, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be,

	may, by order, assign such functions, as he may deem fit, to an “Officer of Customs”, who shall be the “Proper Officer” in relation to such functions.”
	(2) An Officer of Customs may excise the powers and discharge the duties conferred or imposed under this Act on any other officer of Customs who is subordinate to him.
	(3) Notwithstanding anything contained in this Section, a Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and Section 108.
-	<p>“(4) In specifying the conditions and limitations referred to in sub-section (1), and in assigning functions under sub-section (1A), the Board may consider any one or more of the following criteria, including, but not limited to—</p> <p>a) territorial jurisdiction;</p> <p>b) persons or class of persons;</p> <p>c) goods or class of goods;</p> <p>d) cases or class of cases;</p> <p>e) computer assigned random assignment;</p> <p>f) any other criterion as the Board may, by notification, specify.</p>
-	(5) The Board may, by notification, wherever necessary or appropriate, require two or more officers of customs (whether or not of the same class) to have concurrent powers and functions to be performed under this Act.”.

(Note: The portion in Bold represents the amendment)

251. During the interregnum in 2012, a more comprehensive notification was issued vide Notification No.40/2012-Cus. (N.T.), dated 02.05.2012. This notification fell for consideration in Canon India Private Limited Vs. Commissioner of Customs, 2021 (376) E.L.T.3(S.C). However, No.40/2012-Cus. (N.T.), dated 02.05.2012 cannot be read in isolation. It had to be read along with notifications issued under Section 4 of the Customs Act, 1962.

252. Notification No.40/2012-Cus. (N.T.), dated 02.05.2012 was also amended from time to time and has now been eventually rescinded/superseded by Notification No.26/2022-Cus. (N.T.), dated 313-2022 in tune with the amendment proposed in the Finance Bill, 2022 and passed by Finance Act, 2022.

253. Both Notification No.44/2011-Cus. (N.T.), dated 06.07.2011 and Notification No. 40/2012-Cus. (N.T.), dated 02.05.2012 as amended from time to time have also not been challenged directly by any of the petitioners.

254. Although, the vires of Notification No.40/2012-Cus. (N.T.), dated 02.05.2012 was neither challenged or questioned before the Court in Canon India Private Limited Vs. Commissioner of Customs, 2021 (376) E.L.T.3(S.C) nor the issue of jurisdiction was canvassed before the Tribunal, the Hon'ble Supreme has held that the officers of the Directorate of Revenue Intelligence were not "Proper Officers" as they are not Officers of Customs and therefore there had to be issue of an independent Notification under Section 6 of the Customs Act, 1962.

255. The view is inspired from its earlier decision in Commissioner of Customs Vs. Sayed Ali and Another, (2011) 3 SCC 537 : 2011 (265) E.L.T. (S.C.). However, the above view was possible only if the device under Section 4 was not available under Section 4 of the Act. It will be useful to refer to Paragraphs 16 to 21 from the Canon India Private Limited Vs. Commissioner of Customs, 2021 (376) E.L.T.3(S.C.). These paragraphs are reproduced below:-

*16. At this stage, we must also examine whether the Additional Director General of the DRI who issued the recovery notice under Section 28(4) was even a proper officer. The Additional Director General can be considered to be a proper officer only if it is shown that he was a Customs officer under the Customs Act. In addition, that he was entrusted with the functions of the proper officer under Section 6 of the Customs Act. The Additional Director General of the DRI can be considered to be a Customs officer only if he is shown to have been appointed as Customs officer under the Customs Act.*

*17. Shri Sanjay Jain, Learned Additional Solicitor General, relied on a Notification No. 17/2002Customs (N.T.), dated 7-3-2002 to show all Additional Directors General of the DRI have been appointed as Commissioners of Customs. At the relevant time, the Central Government was the appropriate authority to issue such a notification. This notification shows that all Additional Directors General, mentioned in Column (2), are appointed as Commissioners of Customs.*

*18. The next step is to see whether an Additional Director General of the DRI who has been appointed as an officer of Customs, under the notification dated 7-3-2002, has been entrusted with the functions under Section 28 as a proper officer under the Customs Act. In support of the contention that he has been so entrusted with the functions of a proper officer under Section 28 of the Customs Act, Shri Sanjay Jain, Learned Additional Solicitor General relied on a Notification No. 40/2012, dated 2-5-2012 issued by the Central Board of Excise and Customs. The notification confers various functions referred to in Column (3) of the notification under the Customs Act on officers referred to in Column (2). The relevant part of the notification reads as follows :-*

***"[To be published in the Gazette of India,***

***Extraordinary, Part I, Section 3, Sub-section (i)]***

***Government of India***

Ministry of Finance

(Department of Revenue)

Notification No. 40/2012-Customs (N.T.)

New Delhi, dated the 2nd May, 2012

S.O. (E). - In exercise of the powers conferred by subsection (34) of section 2 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs, hereby assigns the officers and above the rank of officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to the various sections of the Customs Act, 1962, given in the corresponding entry in Column (3) of the said Table :-

<b>Sl. No.</b>	<b>Designation of the officers</b>	<b>Functions under Section of the Customs Act, 1962</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
1	Commissioner of Customs	(i) Section 33
2	Additional Commissioner or Joint Commissioner of Customs	(i) Sub-section (5) of section 46; and (ii) Section 149
3	Deputy Commissioner or Assistant Commissioner of Customs and Central Excise	(i) ..... (ii) ..... (iii) ..... (iv) ..... (v) ..... (vi) Section 28;.....”

19. It appears that a Deputy Commissioner or Assistant Commissioner of Customs has been entrusted with the functions under Section 28, vide Sl. No. 3 above. By reason of the fact that the functions are assigned to officers referred to in Column (3) and those officers above the rank of officers mentioned in Column (2), the Commissioner of Customs would be included as an officer entitled to perform the function under Section 28 of the Act conferred on a Deputy Commissioner or Assistant Commissioner but the notification appears to be ill-founded. The notification is purported to have been issued in exercise of powers under sub-section (34) of Section 2 of the Customs Act. This section does not confer any powers on any authority to entrust any functions to officers. The subSection is part of the definitions clause of the Act, it merely defines a proper officer, it

reads as follows :

*“2. Definitions. - In this Act, unless the context otherwise requires, -*

*...*

*(34) ‘proper officer’, in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Principal Commissioner of Customs or Commissioner of Customs.”*

20. Section 6 is the only Section which provides for entrustment of functions of Customs officer on other officers of the Central or the State Government or local authority, it reads as follows:-

*“6. Entrustment of functions of Board and customs officers on certain other officers. - The Central Government may, by notification in the Official Gazette, entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority any functions of the Board or any officer of customs under this Act.”*

21. If it was intended that officers of the Directorate of Revenue Intelligence who are officers of Central Government should be entrusted with functions of the Customs officers, it was imperative that the Central Government should have done so in exercise of its power under Section 6 of the Act. The reason why such a power is conferred on the Central Government is obvious and that is because the Central Government is the authority which appoints both the officers of the Directorate of Revenue Intelligence which is set up under the Notification dated 4-12-1957 issued by the Ministry of Finance and Customs officers who, till 115-2002, were appointed by the Central Government. The notification which purports to entrust functions as proper officer under the Customs Act has been issued by the Central Board of Excise and Customs in exercise of non-existing power under Section 2(34) of the Customs Act. The notification is obviously invalid having been issued by an authority which had no power to do so in purported exercise of powers under a section which does not confer any such power.

22. In the above context, it would be useful to refer to the decision of this Court in the case of *Commissioner of Customs v. Sayed Ali and Another* [(2011) 3 SCC 537 = 2011 (265) E.L.T. 17 (S.C.)] wherein the proper officer in respect of the jurisdictional area was considered. The consideration made is as hereunder :-

*“16. It was submitted that in the instant case, the import manifest and the bill of entry were filed before the Additional Collector of Customs (Imports), Mumbai; the bill of entry was duly assessed, and the benefit of the exemption was extended, subject to execution of a bond by the importer which was duly executed undertaking the obligation of export. The Learned Counsel argued that the function of the preventive staff is confined to goods which are not manifested as in respect of manifested goods, where the bills of entry are to be filed, the entire function of assessment, clearance, etc. is carried out by the appraising officers*

functioning under the Commissioner of Customs (Imports).

17. Before adverting to the rival submissions, it would be expedient to survey the relevant provisions of the Act. Section 28 of the Act, which is relevant for our purpose, provides for issue of notice for payment of duty that has not been paid, or has been short-levied or erroneously refunded, and provides that :

*“28. Notice for payment of duties, interest, etc. - (1) When any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may, -*

*(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year;*

*(b) in any other case, within six months, from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short-levied or part paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :*

*Provided that where any duty has not been levied or has been short-levied or the interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful misstatement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words ‘one year’ and ‘six months’, the words ‘five years’ were substituted.”*

18. It is plain from the provision that the ‘proper officer’ being subjectively satisfied on the basis of the material that may be with him that customs duty has not been levied or short levied or erroneously refunded on an import made by any individual for his personal use or by the Government or by any educational, research or charitable institution or hospital, within one year and in all other cases within six months from the relevant date, may cause service of notice on the person chargeable, requiring him to show cause why he should not pay the amount specified in the notice. It is evident that the notice under the said provision has to be issued by the ‘proper officer’.

19. Section 2(34) of the Act defines a ‘proper officer’, thus :

**‘2. Definitions. -**

.....

*(34) 'proper officer', in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs;'*

*It is clear from a mere look at the provision that only such officers of customs who have been assigned specific functions would be 'proper officers' in terms of Section 2(34) the Act. Specific entrustment of function by either the Board or the Commissioner of Customs is therefore, the governing test to determine whether an 'officer of customs' is the 'proper officer'.*

*20. From a conjoint reading of Sections 2(34) and 28 of the Act, it is manifest that only such a Customs Officer who has been assigned the specific functions of assessment and reassessment of duty in the jurisdictional area where the import concerned has been affected, by either the Board or the Commissioner of Customs, in terms of Section 2(34) of the Act is competent to issue notice under section 28 of the Act. Any other reading of Section 28 would render the provisions of Section 2(34) of the Act otiose inasmuch as the test contemplated under Section 2(34) of the Act is that of specific conferment of such functions."*

*23. We, therefore, hold that the entire proceeding in the present case initiated by the Additional Director General of the DRI by issuing show cause notices in all the matters before us are invalid without any authority of law and liable to be set aside and the ensuing demands are also set aside.*

256. The observations in paragraphs 11, 12, 13 & 14 are based on the decision of the Hon'ble Supreme Court in Sayed Ali vs Commissioner of Customs referred to supra. At that time, Section 17 read differently as in column 1 to the above table where again Section 4 was not considered.

257. During the period covered in the case of Canon India Private Limited, Vs. The Commissioner of Customs, 2021 (376) E.L.T.3(S.C.), Section 17 read differently in column 2 to the above table. Therefore, these observations of the Hon'ble Supreme Court would require a reconsideration as otherwise, the amendments to the law in 2011 would be rendered otiose without any discussion by the Hon'ble Supreme Court.

258. The fact that the officers of the Directorate of Revenue Intelligence had already been appointed as officers of the Customs under a Notification issued under Section 4(1) of the Act appears to have not been neither brought to the attention of the Hon'ble Supreme Court in Commissioner of Customs Vs. Sayed Ali and Another, 2011 (265) E.L.T. 17 (S.C.) nor in Canon India Private Limited Vs. Commissioner of Customs, 2021 (376) E.L.T. 3 (S.C.).

259. Officers from the Directorate of Revenue Intelligence (DRI) are now explicitly recognized as "Officers of Customs" under the Customs Act, 1952 by virtue of the amendment to the Customs Act, 1962 vide amendment in the Finance Act, 2022.

260. That apart, there is validation of all action taken by such officers under Section 97 of the

Finance Act, 2022. I have already extracted Section 97 of the Finance Act, 2022 earlier in this order. Therefore, these writ petitions are liable to be dismissed and the ground that the officers of the Directorate of Revenue Intelligence (DRI) have indeed the power to issue Show Cause Notice. The defence that they are incompetent is no longer available to these petitioners.

261. In fact, the Hon'ble Supreme Court while considering the issue in paragraph 16 as to whether the officers namely the Additional Director General of Directorate of Revenue Intelligence (DRI) can be considered as the "Proper Person" has indicated the test by stating that Additional Director General can be considered to be a proper officer only if it is shown that he was a Customs Officer under the Customs Act, 1962. However, Section 4 and the notification was not brought to the attention of the Hon'ble Supreme Court.

262. Both the revenue and assesses have not brought to the attention of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs, 2021 (376) E.L.T. 3 (S.C.) that the officers of Directorate of Revenue Intelligence have already been appointed as "Officers of Customs" under Notification issued under Section 4(1) of the Customs Act, 1962.

263. The Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs, 2021 (376) E.L.T. 3 (S.C.) has further stated that such officers of Directorate of Revenue Intelligence had to be entrusted with the function of the "Proper Officer" under Section 6 of the Customs Act, 1962.

264. However, it should be noted that Section 6 of the Act operates in a totally different context. It contemplates entrustment of function of the Board or any Officer of Customs under the Customs Act, 1962 on any of the officers specified therein by the Central Government. Such entrustment can be either conditional or unconditional. The powers are of wide. Section 6 of the Act is reproduced below:-

"Entrustment of functions of Board and customs officers on certain other officers.-The Central Government may, by notification in the Official Gazette, entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority any functions of the Board or any officer of customs under this Act".

265. As per Section 6 of the Customs Act, 1962, the Central Government may by a notification in Official Gazette entrust the function of the Board or the Officers of Customs on any of the following officers namely:-

- i. any officer of the Central Government; or
- ii. (ii) the State Government; or
- iii. a Local authority.

266. Thus, the functions of both Board and the Customs Officers can be entrusted by the Central Government on the above mentioned officers. In other words, under Section 6 of the Act, function of the Board or any officer of customs under the Act can be entrusted on these officers.

267. A reading of Section 6 of the Act further makes it clear that it applies only to officers from

other departments other than the Officers of the Customs under Section 4 of the Customs Act, 1962. The Officers of the Directorate of Revenue Intelligence (DRI) are not any other officers of the Central Government or the State Government or the Local Authority to be entrusted with the function of the Board and the Customs Officers. The Officers of the Directorate of Revenue Intelligence (DRI) are already officers of the Customs by virtue of the Notification issued under Section 4(1) of the Customs Act, 1962.

268. To recognize the officers from Directorate of Revenue Intelligence as officers of Customs, the mechanism under Notification of the Central Government under Section 6 of the Customs Act, 1962 is not warranted. When Section 6 of the Customs Act, 1962 is invoked, the Central Government can entrust the function of Board and Customs officers on officers from other Departments specified therein.

269. By such entrustment, these officers of other Departments do not become Officers of Customs. They can merely function as such officers. Since entrustment under Section 6 is on the officers from other department, the Parliament by design has given the powers to the Central Government and not to the Board.

270. As the Officers from the Directorate of Revenue Intelligence, Ministry of Finance (MOF) are already “Officers of Customs” before their induction and deputation to the Board in various Directorates, there is no impediment on their being appointed as proper officers for the purpose of Section 2(34) of the Customs Act, 1962.

271. Merely because the Officers of the Customs and Central Excise Department are selected and are deputed in the respective Directorates does not mean that they cease to be Officers of the respective Departments as these Directorates are created only to assist the Board to implement the object of respective fiscal enactments. It is an internal arrangement within the Ministry of Finance, Department of Revenue (DRI).

272. If Section 3 and Section 4 of the Act and the Notification issued thereunder referred to supra were perhaps brought to the attention of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs, 2021 (376) E.L.T.3(S.C.), the Hon'ble Supreme Court would have given a different interpretation. In any event, these discussion are academic in the light of the validation in Section 97 of the Finance Act, 2022.

273. It must also be remembered that the “Officers of Customs” in Section 3(1)(a) to (h) of the Customs Act, 1962 (as amended under Section 3(1) (a) to (j) after 2022 amendment) are Officers from Group 'A' Cadre of the Customs Department (IRS) like their counterparts from the Central Excise Department as Central Tax Officers under GST.

274. A reading of Section 2(34) with Section 4 of the Customs Act, 1962 also makes it clear that the expression “proper officer” means the “Officer of Customs” who has been assigned those functions either by the Board or by the Principal Commissioner of Customs or by Commissioner of Customs in relation to any function to be performed under the Act.

275. Notifications which have been issued to appoint these officers from Directorate of Revenue Intelligence (DRI) to act as “Proper Officers” are enabling Notification notwithstanding the fact

that they are already “Officers of Customs” under Notification issued under Section 4(1) of the Customs Act,1962.

276. Further, the Board can also authorize the Principal Commissioner of Customs or Chief Commissioner of Customs or Principal Chief Commissioner or Commissioner of Customs or Joint or Assistant or Deputy Commissioner of Customs, to appoint Officers of Customs below the rank of Assistant Commissioner of Customs. Thus, the following Group 'B' Executive - Gazetted and Non-Gazetted Officers assist in the initial stage of assessment of goods as:-

<b>Sl. No.</b>	<b>Group 'B' Executive Gazetted Officer</b>	<b>Group 'B' Executive Non – Gazetted Officer</b>
1	Superintendent of Customs (Preventive)	Preventive Officers (Customs)
2	Appraiser of Customs	Examiner (Customs)

277. As mentioned above, assessment is neither by the Group 'B' Executive – Gazetted Officer nor by Group 'B' Executive – Non-Gazetted Officer after 08.04.2011. Only, prior to 08.04.2011, the assessment of goods at the port was vested with the Group 'B' Executive – Gazetted Officer. However, after the said date, the fundamental of assessment has undergone a sea change and changed permanently as mentioned above.

278. These fundamental changes brought to the manner of the assessment under the Customs Act, 1962 with effect from 08.04.2011 appear to have not been brought to the attention of the Hon'ble Supreme Court and therefore the assumption in the paragraph Nos.12 to 15 in the case of Canon India Private Limited Vs. Commissioner of Customs, 2021 (376) E.L.T.3(S.C.) may require a re-consideration insofar as pending cases before the Hon'ble Supreme Court and other Courts.

279. Further, union tax laws undergo periodical amendments during successive Finance Act. The Central Excise Act, 1944, the Customs Act, 1962, Chapter V of the Finance Act, 1994 as also the Income Tax Act, 1961 are no exception. They have undergone several amendments. These changes have a bearing on the law.

280. Therefore, it is important that these are brought to the knowledge of the Court so that the Courts can interpret them and lay down the law to govern the assessee's and Department under the respective tax enactments.

281. If the provision as stood during the period in dispute are not produced for the attention of the Court which is seized of the case, the Courts may by oversight end up giving ratio which are not consistent with the provisions as in force for the period in dispute.

282. As far as recovery of duty not levied or not paid or short levied or short paid or erroneously refunded to a person, the power has been again vested with Senior Officers of Customs as “proper officers” as defined under Section 2 (34) of the Customs Act, 1962 read with relevant

Notification referred to supra.

283. The above discussions and observations have been made only with a view to point out certain aspects which appears to have not been brought to the knowledge of the Hon'ble Supreme Court.

284. Though the law laid down by the Hon'ble Supreme Court in Canon India Private Limited case referred to supra is a declaration of law under Article 141 of the Constitution of India and therefore binding on this Court and therefore some of these Writ Petitions would have to be allowed. However, in view of the validations in Section 97 of the Customs Act, 1962 vide Finance Act, 2022, I am unable to allow these Writ Petitions.

285. Therefore, there is no merits in these Writ Petitions filed by the respective petitioners challenging the Show Cause Notices issued by the Officers under the Directorate of Revenue Intelligence. Therefore, the consequential orders passed under Section 28 of the Customs Act or under Section 124 and other provisions of the Customs Act also cannot be assailed.

286. In *Pahwa Chemicals Pvt. Ltd., Commissioner of Central Excise, 2005(181) ELT 339*, the Hon'ble Supreme Court has held that even if an officer issues a noticee or adjudicates a Show Cause Notice, it would be not a ground for holding that he had no jurisdiction to issue show cause notice or to set aside the adjudication order. The notice issued can be adjudicated by the other Officers from the Customs Department. Paragraph 13 of the above decision, reads as under:-

*“13. In order to consider the powers of the Board, one needs to see certain provisions of the Act. Section 2(b) defines “Central Excise Officer” and it is mentioned therein that any officer of the Central Excise Department or any person who has been invested by the Board with any of the powers of the Central Excise Officer would be a Central Excise Officer. Thus, the Board has power to invest any Central Excise Officer or any other officer with powers of Central Excise Officer. By virtue of Section 37-B the Board can issue orders, instructions or directions to the Central Excise Officers and such officers must follow such orders, instructions or directions of the Board. However, these directions can only be for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods. It is thus clear that the Board has no power to issue instructions or orders contrary to the provisions of the Act or in derogation of the provisions of the Act. The Board can only issue such direction as is necessary for the purpose of and in furtherance of the provisions of the Act. The instructions issued by the Board have to be within the four corners of the Act. If, therefore, the Act vests in the Central Excise Officers jurisdiction to issue show-cause notices and to adjudicate, the Board has no power to cut down that jurisdiction. However, for the purposes of better administration of levy and collection of duty and for purpose of classification of goods the Board may issue directions allocating certain types of works to certain officers or classes of officers. The circulars relied upon are, therefore, nothing more than administrative directions allocating various types of works to various classes of officers. These administrative directions cannot take away jurisdiction vested in a Central Excise Officer*

*under the Act. At the highest all that can be said is that Central Excise Officers, as a matter of propriety, must follow the directions and only deal with the work which has been allotted to them by virtue of these circulars. But if an officer still issues a notice or adjudicates contrary to the circulars it would not be a ground for holding that he had no jurisdiction to issue the show-cause notice or to set aside the adjudication”.*

287. That apart, notices issued under the various other provisions of the Customs Act, 1962 cannot be quashed in the light of the law laid down in Canon India Private Limited case referred to supra, as the ratio laid therein is neither applicable to the proceedings under the provisions of the Customs Act, 1962 nor can the impugned Show Cause Notices / Orders-in-Original be quashed in view of the validation in Section 97 of the Finance Act, 2022 to the pending proceedings.

288. However, where reliance is placed on the statement of third party who were not produced for cross-examination before the impugned Orders-in-Originals were passed, I am inclined to quash those impugned Orders-in-Originals and remit the case back to the respective adjudicating authority to pass a speaking order de novo.

289. In case the respective adjudicating authority still want to rely on the statement of such third party, they shall produce them for cross-examination. On the other hand, if an independent evidence is available, cross-examination can be dispensed with.

#### **PART X – CONCLUSION**

290. In my view, what was implicit in the provisions of the Customs Act, 1962 has been now made by explicit in the amendment to the Customs Act, 1962 vide amendment in Finance Act, 2022. Therefore, these writ petitions are liable to be dismissed by giving liberty to the petitioners to work out their remedy before the alternate forum.

291. Thus, under the Customs Act, 1962, there are different Power Centres for appointing persons as “Officers of Customs” for discharging their powers and functions (duties) imposed under the Act. The contours of powers to be exercised by such “Officers of Customs” is to be drawn by the Board. Section 3, of the Customs Act, 1962, recognizes the classes of “Officers of Customs”. It also includes such other classes of “Officers of Customs” who may be appointed for the purpose of the Act by the Board.

292. Under Sub-Section 2 to Section 4, the Board can also authorize the officers mentioned therein to appoint “Officers of Customs” below the rank of the Assistant Commissioner of Customs.

293. For giving effect to the last Sub-clause of Section 3 of the Customs Act, 1962, the Board has been vested with the power to appoint such officers as it fit to be the “Officers of Customs”.

294. The other specified officers in Section 3 are from Group-A Cadre who mostly belong to the Indian Revenue Service (IRS), either appointed by direct recruitment by the Union Public Service Commission (UPSC) or those promoted from Group-B Cadre.

295. Thus, officers from Group-B who are already from the Customs Department can be

appointed as “Officers of Customs”. Similarly, the Officers of Directorate of Revenue Intelligence (DRI) are appointed as “Officers of Customs” under notification issued under Section 4(i) of the Customs Act, 1962.

296. Apart from the above, the Central Government may by notification can also entrust the function of the Board or any “Officers of Customs” under the Customs Act, 1962, on any other officer from any other department, viz., the Central Government, the State Government or the Local Authority either conditionally or unconditionally. Thus, under Section 6 of the Customs Act, 1962, the powers and functions(duties) of the Board and/or “Officers of Customs” specified in Section 5 read with Section 4 and notifications issued there under to implement the same can be entrusted on these officers.

297. Further, show cause notices issued under various provisions cannot be stifled to legitimize evasion of Customs duty on technical grounds that the Officers from Directorate of Revenue Intelligence (DRI) were incompetent to issue notices and were not officers of customs.

298. Insofar as completed proceedings ie. where proceedings have been dropped prior to passing of Finance Act, 2022 is concerned, the proceedings cannot be revived. However, the pending proceedings have to be decided in the light of the validation in Section 97 of the Finance Act, 2022.

299. In the light of the above discussion, the challenges to the impugned Show Cause Notices and the Orders in Original on the strength of the decision of the Hon'ble Supreme Court in Canon India Private Limited Vs. Commissioner of Customs, 2021 (376) E.L.T. 3 (S.C.) fail.

300. In the result, the following Writ Petitions are dismissed with liberty to file a statutory appeal before the Central Excise, Customs and Service Tax Appellate Tribunal (CESTAT) within a period of thirty days from the date of receipt of a copy of this Order:

- i. W.P.No.33099 of 2015 filed by M/S.N.C.Alexander;
- ii. W.P No.27344 of 2017 filed by E.Duraisamy & Brothers; and
- iii. W.P.No.12929 &12933 filed by Farooq Ubaitulla.

301. If such appeals are filed within such time by the respective petitioners, the Registrar of the Central Excise, Customs and Service Tax Appellate Tribunal, Chennai (CESTAT) shall proceed to number the appeal without any further reference to limitation and list the case on their turn for final hearing before the Tribunal

302. Needless to state that the respective petitioners shall predeposit amount under Section 129E of the Customs Act, 1962 and produce the proof thereof along with the appeal.

303. W.P No.18918 of 2016 filed by Chirag U Jain is partly allowed and the impugned Order-in-Original No.44560 of 2016 dated 05.02.2016 is quashed and and case is remitted back to the competent officer of the respondent to pass a fresh order on merits and in accordance with law preferably within a period of 120 days from the date of receipt of a copy of this order.

304. Considering the fact that the Order-in-Original dated 31.12.2021 has been passed pending

disposal of W.P.Nos.11268, 11271, 11274 & 11156 of 2021, I am also inclined to quash the same and remit the cases back to the respondent therein to pass appropriate orders on merits.

305. It is made clear that in case the respondent(s) want(s) to rely on the statement of person who may have given statement against the petitioner, such person shall be produced for cross examination by the petitioner.

306. In case such person is not available for cross -examination, the respondent shall pass orders on merits by applying the principle of preponderance of probability and decide the case. Needless to state, the petitioner shall be heard before final orders are passed.

307. The respective petitioners are also directed to co-operate with the respective respondents in the de novo proceeding, failing which, the respective respondents are at liberty to pass appropriate orders on merits based on the available material. Rest of directions contained in the above W.P.No.18918 of 2016 will apply mutatis mutandis .

308. Rest of the Writ Petitions in Table-II challenging the impugned Show Cause Notices are dismissed by directing the jurisdictional adjudicating authority to pass appropriate orders on merits and in accordance with law preferably within a period 120 days from the date of receipt of a copy of this order.

309. The respective petitioners are at liberty to file their reply and written submission within a period of 30 days from the date of receipt of a copy of this order. In case the petitioner(s) fail(s) to file their reply within such time or within such extended time as may be allowed by the jurisdictional adjudicating authority, order shall be passed based on the available records and materials.

310. It is made clear that in case the respondent wants to rely on the statement of person who may have given statement against the petitioner, such person shall be produced for cross examination by the petitioner.

311. In case such person is not available for cross -examination, the respondent shall pass orders on merits by applying the principle of preponderance of probability and decide the case. Needless to state, the petitioner shall be heard. The petitioner is also directed cooperate with the respondent in the de novo proceeding, failing which, the respondent is at liberty to pass appropriate orders on merits based on the available material.

312. Pending proceedings are directed to be completed in the light of the validations contained in Section 97 of the Finance Act, 2022.

313. In the result,

i. W.P.Nos.18918 of 2016 and W.P.Nos.11268, 11271, 11274 & 11156 of 2021 are partly allowed by way of remand.

ii. W.P.No.33099 of 2015, W.P.No.27344 of 2017 and W.P.Nos.12929, 12933, 9484, 9434, 9306, 8242, 9405, 9407, 27009 & 26200 of 2021 are dismissed with liberty to file statutory appeal before the appropriate Appellate Tribunal within a period of 30 days of receipt of this Order.

iii. No cost. Consequently, connected Miscellaneous Petitions are closed.

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**Citations:** in 2022 (6) TMI 723 - MADRAS HIGH COURT

1. [2021 \(9\) TMI 316 - Supreme Court](#)
2. [2021 \(3\) TMI 384 - Supreme Court](#)
3. [2021 \(3\) TMI 291 - Supreme Court](#)
4. [2019 \(9\) TMI 802 - Supreme Court](#)
5. [2015 \(9\) TMI 345 - Supreme Court](#)
6. [2011 \(2\) TMI 5 - Supreme Court](#)
7. [2010 \(10\) TMI 660 - Supreme Court](#)
8. [2007 \(11\) TMI 21 - Supreme Court](#)
9. [2007 \(10\) TMI 300 - Supreme Court](#)
10. [2007 \(7\) TMI 9 - Supreme Court](#)
11. [2006 \(12\) TMI 203 - Supreme Court](#)
12. [2005 \(2\) TMI 136 - Supreme Court](#)
13. [2004 \(10\) TMI 606 - Supreme Court](#)
14. [2004 \(9\) TMI 105 - Supreme Court](#)
15. [2000 \(8\) TMI 88 - Supreme Court](#)
16. [1999 \(3\) TMI 628 - Supreme Court](#)
17. [1996 \(2\) TMI 536 - Supreme Court](#)
18. [1994 \(2\) TMI 74 - Supreme Court](#)
19. [1972 \(9\) TMI 15 - Supreme Court](#)
20. [2021 \(11\) TMI 1079 - SC Order](#)
21. [2020 \(1\) TMI 1309 - SC Order](#)
22. [2016 \(9\) TMI 1622 - SC Order](#)
23. [2011 \(9\) TMI 947 - SC Order](#)
24. [2022 \(1\) TMI 777 - BOMBAY HIGH COURT](#)
25. [2022 \(1\) TMI 524 - RAJASTHAN HIGH COURT](#)
26. [2021 \(12\) TMI 859 - BOMBAY HIGH COURT](#)
27. [2021 \(12\) TMI 686 - MADRAS HIGH COURT](#)
28. [2021 \(10\) TMI 1267 - BOMBAY HIGH COURT](#)

29. [2021 \(10\) TMI 1335 - MADRAS HIGH COURT](#)
30. [2021 \(12\) TMI 295 - DELHI HIGH COURT](#)
31. [2021 \(9\) TMI 1397 - MADRAS HIGH COURT](#)
32. [2021 \(10\) TMI 122 - MADRAS HIGH COURT](#)
33. [2021 \(8\) TMI 1236 - PUNJAB AND HARYANA HIGH COURT](#)
34. [2021 \(8\) TMI 178 - KARNATAKA HIGH COURT](#)
35. [2021 \(7\) TMI 388 - MADRAS HIGH COURT](#)
36. [2021 \(5\) TMI 771 - PUNJAB AND HARYANA HIGH COURT](#)
37. [2021 \(4\) TMI 1250 - PUNJAB AND HARYANA HIGH COURT](#)
38. [2021 \(3\) TMI 1034 - MADRAS HIGH COURT](#)
39. [2020 \(12\) TMI 1230 - PUNJAB AND HARYANA HIGH COURT](#)
40. [2020 \(9\) TMI 270 - MADRAS HIGH COURT](#)
41. [2020 \(1\) TMI 440 - PUNJAB & HARYANA HIGH COURT](#)
42. [2019 \(7\) TMI 1307 - PUNJAB AND HARYANA HIGH COURT](#)
43. [2019 \(6\) TMI 110 - MADRAS HIGH COURT](#)
44. [2019 \(1\) TMI 499 - MADRAS HIGH COURT](#)
45. [2018 \(9\) TMI 25 - PUNJAB & HARYANA HIGH COURT](#)
46. [2017 \(6\) TMI 688 - DELHI HIGH COURT](#)
47. [2016 \(5\) TMI 225 - DELHI HIGH COURT](#)
48. [2015 \(12\) TMI 1148 - MADRAS HIGH COURT](#)
49. [2015 \(3\) TMI 735 - MADRAS HIGH COURT](#)
50. [2014 \(11\) TMI 534 - MADRAS HIGH COURT](#)
51. [2013 \(10\) TMI 567 - GUJARAT HIGH COURT](#)
52. [2013 \(1\) TMI 359 - ANDHRA PRADESH HIGH COURT](#)
53. [2011 \(1\) TMI 314 - MADRAS HIGH COURT](#)
54. [2009 \(4\) TMI 812 - MADRAS HIGH COURT](#)
55. [2006 \(7\) TMI 232 - HIGH COURT OF JUDICATURE AT MADRAS](#)
56. [1995 \(11\) TMI 103 - HIGH COURT OF JUDICATURE AT MADRAS](#)
57. [1995 \(1\) TMI 78 - HIGH COURT OF JUDICATURE AT MADRAS](#)

58. [2021 \(12\) TMI 488 - CESTAT NEW DELHI](#)
59. [2021 \(11\) TMI 665 - CESTAT NEW DELHI](#)
60. [2020 \(2\) TMI 644 - CESTAT AHMEDABAD](#)
61. [2018 \(8\) TMI 335 - CESTAT NEW DELHI](#)
62. [2013 \(10\) TMI 1003 - CESTAT NEW DELHI](#)