

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 50098 OF 2017

(Arising out of Order-in-Original No. 04/NKU(04-07)/ADG(Adj.)/DRI/N.DELHI/2016-17 dated 28.10.2016 passed by the Additional Director General (Adjudication), New Delhi)

M/s Sony India Private Ltd

A-31, Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi

....Appellant

versus

**Additional Director General
(Adjudication)**

Directorate of Revenue Intelligence
New Delhi 110037

....Respondent

WITH

CUSTOMS APPEAL NO. 50099 OF 2017

(Arising out of Order-in-Original No. 04/NKU(04-07)/ADG(Adj.)/DRI/N.DELHI/2016-17 dated 28.10.2016 passed by the Additional Director General (Adjudication), New Delhi)

M/s Canon India Private Ltd

7th Floor, Tower B, Building#5 DLF Epitome,
DLF Phase III, Gurgaon, Haryana

....Appellant

versus

**Additional Director General
(Adjudication)**

Directorate of Revenue Intelligence
New Delhi 110037

....Respondent

WITH

CUSTOMS APPEAL NO. 50100 OF 2017

(Arising out of Order-in-Original No. 04/NKU(04-07)/ADG(Adj.)/DRI/N.DELHI/2016-17 dated 28.10.2016 passed by the Additional Director General (Adjudication), New Delhi)

M/s Nikon India Private Ltd

Plot No. 71, Sector-32, Institutional Area,
Gurgaon, 122001, Haryana

....Appellant

versus

**Additional Director General
(Adjudication)**

Directorate of Revenue Intelligence
New Delhi 110037

....Respondent

AND

CUSTOMS APPEAL NO. 50280 OF 2017

(Arising out of Order-in-Original No. 04/NKU(04-07)/ADG(Adj.)/DRI/N.DELHI/2016-17 dated 28.10.2016 passed by the Additional Director General (Adjudication), New Delhi)

**M/s Samsung India Electronics
Private Limited**

....Appellant

Plot No. 71, Sector-32, Institutional Area,
Gurgaon, 122001, Haryana

versus

**Additional Director General
(Adjudication)**

....Respondent

Directorate of Revenue Intelligence
New Delhi 110037

APPEARANCE:

Shri V. Lakshmikumaran, Shri Dhruv Matta and Ms. Namrata Singhal, Advocates
for the Appellant

Shri Ajay Jain, Special Counsel of the Department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

DATE OF HEARING/ DECISION: 09.04.2025

FINAL ORDER NO's. 50483-50486/2025

JUSTICE DILIP GUPTA:

All these four appeals have been placed for hearing in view of the order passed by the Supreme Court on 07.11.2024. The order is reproduced below:

"1. Hon'ble Mr. Justice J B Pardiwala pronounced the judgment of the Bench comprising Hon'ble Dr Justice Dhananjaya Y Chandrachud, Chief Justice of India, His Lordship and Hon'ble Mr. Justice Manoj Misra.

2. In terms of the reportable judgment, the review petitions are disposed of. The Registry shall take steps to list the connected appeals and petitions before the appropriate Bench and they shall be disposed in terms of the observations made in terms of the judgment.

3. After the pronouncement of the judgment in Review Petition (Civil) No. 400 of 2021, our attention was drawn by the learned counsel appearing for the respective parties vide a joint note for clarification, which reads as under:

"JOINT NOTE FOR CLARIFICATION

Pursuant to pronouncement of judgment in the Review Petition and connected matters, the Ld. Counsel for the Assessee Respondents -Shri. V. Lakshmikumaran requested that the four Civil Appeals against which the Review Petition on the point of jurisdiction of DRI officers was filed be remanded back to the Customs, Excise and Service Tax Appellate Tribunal, Delhi for determination of the eligibility of the exemption notification within the limitation period of one year. This has the consent of the Ld. ASG. N. Venkatraman.

The details of the Civil Appeals are as under:

- i. C.A. No. 1827/2018 - Canon India Private Limited
- ii. C.A. No. 1832/2018 - Nikon India Private Limited
- iii. C.A. No. 3213/2018 - Samsung India Electronics Private Limited
- iv. C.A. No. 1875/2018-Sony India Private Limited"

4. In view of the aforesaid, the show cause notices which were challenged in the Civil Appeal Nos. 1827, 1832, 1875 and 3213 of 2018 respectively, which were within the requisite period of limitation, are remanded to the CESTAT for adjudication on merits. We accordingly pass such order.

5. Pending application, if any, stands disposed of.

2. It transpires from the records that all these four appeals were earlier dismissed by the Tribunal by an order dated 19.12.2017. It was held that the 'digital still image video cameras' imported by the appellant would not be entitled to basic customs duty exemption under the notification dated 01.03.2005, as amended by the notification dated 17.03.2012.

3. It is against the said order of the Tribunal that four Civil Appeals were filed by the department before the Supreme Court. These four Civil Appeals have been disposed of by the Supreme Court by the aforesaid order dated 07.11.2024 and the appeals have been remanded to the Tribunal for adjudication on merits only with regard to the normal period of limitation contemplated under section 28(1) of the Customs Act, 1962¹. It needs to be noted that the Supreme Court had earlier, in the judgment pronounced on 09.03.2021, held that the extended period of limitation under section 28(4) of the Customs Act could not have been invoked.

4. Thus, what has to be examined by the Tribunal in all the four Customs Appeals is whether the adjudicating authority was justified in confirming the demand proposed in the show cause notice for the normal period of limitation. In other words, what has to be examined is whether the demand confirmed for the normal period of limitation contemplated under section 28(1) of the Customs Act for the reason that 'digital still image video cameras' imported by the appellant would not be entitled to basic customs duty exemption under the notification dated 01.03.2005, as amended by the notification dated 17.03.2012 is justified or not.

5. During the course of hearing of Customs Appeal No. 52218 of 2019 (M/s. Nikon India Pvt. Ltd. vs. Commissioner of Customs (Import), New Customs House, New Delhi), a Division Bench of the Tribunal doubted the correctness of the view taken by the Tribunal in the aforesaid decision dated 19.12.2017 of a Division Bench of the Tribunal and, therefore referred the matter to a Larger Bench of the Tribunal to decide the following two issues:

1. the Customs Act

“(i) Whether the ‘digital still image video cameras’ imported by the appellant would be entitled to BCD exemption under the notification dated 01.03.2005, as amended by the notification dated 17.03.2012, whereby an ‘Explanation’ was added;

(ii) Whether the Tribunal, in the decision rendered on 19.12.2017, has correctly interpreted the scope of ‘Explanation’.”

6. A Larger Bench of the Tribunal, by an interim order dated 14.06.2024, answered the reference in the following manner:

“(i) The “digital still image video cameras” would be entitled to BCD exemption under Notification No.25/2005-Cus. dated 01.03.2005 as amended by Notification No.15/2012 dated 17.03.2012.

(ii) The interpretation of the Explanation by the Division Bench of the Tribunal in Sony India Pvt.'s case denying the benefit of exemption is a result of incorrect interpretation of the Explanation of the said Notification.”

7. Customs Appeal No. 52218 of 2019, thereafter came up for final decision before a Division Bench, and by order dated 09.09.2024 the Tribunal allowed the appeal and set aside the order dated 06.06.2019 that was impugned. The decision of the Tribunal is reproduced below:

“M/s. Nikon India Private Limited² is aggrieved by the order dated 06.06.2019 passed by the Commissioner of Customs (Appeals)³ by which the appeal that was filed by it to assail the order dated 13.05.2016 passed by the Assistant Commissioner of Customs, Group-VA⁴ has been dismissed. **The Assistant Commissioner had held that NIKON brand “digital still image video cameras” imported by the appellant are not entitled to**

2. the appellant
3. the Commissioner (Appeals)
4. the Assistant Commissioner

Basic Customs Duty⁵ exemption under the notification dated 01.03.2005, as amended by the notification dated 17.03.2012.

2. When the matter was heard by this bench, a detailed order dated 08.03.2024 was passed. Paragraphs 64 to 65 of the order are reproduced below:

"64. The view that we have taken, namely, that 'digital still image video cameras' imported by the appellant would be entitled to BCD exemption under the notification dated 01.03.2005, as amended on 17.03.2012, is contrary to the view taken by the Division Bench of the Tribunal on 19.12.2017 in the earlier round of proceedings arising out of the show cause notice dated 09.08.2014.

65. **It would, therefore, be appropriate to refer the matter to the President of the Tribunal for constituting a larger bench of the Tribunal for deciding the following issues:**

"(i) Whether the 'digital still image video cameras' imported by the appellant would be entitled to BCD exemption under the notification dated 01.03.2005, as amended by the notification dated 17.03.2012, whereby an 'Explanation' was added;

(ii) Whether the Tribunal, in the decision rendered on 19.12.2017, has correctly interpreted the scope of 'Explanation'."

(emphasis supplied)

3. **The matter has since been decided by the larger bench of the Tribunal by an order dated 14.06.2024. The larger bench held as follows:**

"34. The ratio laid down in the aforesaid judgment reveals that in case of ambiguity in a charging provision, the benefit must be given to the assessee and in case of an exemption Notification, the benefit of ambiguity is strictly interpreted in favour of the Revenue. This ratio has been laid down by the Constitutional Bench while overruling the earlier decision in Sun

Export Corporation v. Collector²³ case. To apply the said ratio to the facts of a case, presence of ambiguity in the subject for interpretation is a sine qua non. If there is no ambiguity in the interpretation of the exemption Notification, the same should be liberally interpreted adopting the tools of interpretation applicable to a Notification granting exemption from payment of duty. Also, it is essential that the burden lies on the claimant of the Exemption to establish that this case falls within the parameters of the exemption Notification. In the present case, there is no ambiguity in reading the Explanation of the Notification No.25/2003-Cus. dated 01.03.2005 as amended, in as much as, a literal interpretation of the said Explanation, as discussed above, reveals that all the three parameters/functions of a digital camera should be cumulatively read so as to ascertain whether all the characteristics are above the threshold limit; in that event, the digital camera would not be eligible to the exemption from BCD under the said Notification. In the event any one of the parameter/characteristic is below the threshold limit e.g. recording time is less than 30 minutes in a single sequence using the maximum storage (including expanded) capacity, then the cameras would be eligible to the benefit of the said Notification. Also, the Revenue has never claimed that there is ambiguity in the said Notification. On the contrary, the Learned Special Counsel in the written submission mentioned that there is no ambiguity in the wordings of the Notification and it should be literally interpreted within the legal frame work. The appellant in the present case also fairly established that their case falls within the four corners of the said Notification by adducing evidence discussed above.

35. In view of above, it can fairly be inferred that the appellants are eligible to

exemption from BCD under the said Notification 25/2005 CE dated 1.3.2005 as amended.”

(emphasis supplied)

4. The appellant would, therefore, be eligible to claim exemption from Basic Customs Duty under notification dated 01.03.2005.

5. The impugned order dated 06.06.2019 passed by the Commissioner of Customs (Appeals) is, accordingly, set aside and the appeal is allowed with consequential relief.”

(emphasis supplied)

8. It needs to be noted that Customs Appeal No. 52218 of 2019 that was filed by Nikon India was for a period subsequent to the period involved in Customs Appeal No. 50100 of 2017 that had been filed by Nikon India. This is one of the four Customs Appeals that are being heard.

9. Both Shri V. Lakshmikumaran, learned counsel appearing for the appellant and Shri Ajay Jain, learned special counsel appearing for the department have stated that the digital still image video cameras that were involved in Customs Appeal No. 52218 of 2019 that was finally decided by Tribunal on 09.09.2024 are also involved in the present four Customs Appeals. Thus, the issue as to whether digital still image video cameras would be entitled to basic customs duty exemption under Notification dated 01.03.2005, as amended by Notification No. 15/2012 dated 17.03.2012, is the issue that was involved in Customs Appeal No. 52218 of 2019 and is also the issue involved in the present four Customs Appeals.

10. Such being the position, the order dated 09.09.2024 passed in Customs Appeal No. 52218 of 2019, following the answer to the reference by the Larger Bench of the Tribunal on 14.06.2024, would govern the

issue involved in all the four Customs Appeals. The digital still image video cameras involved in the present Customs Appeals would, therefore, be entitled to exemption from basic customs duty in terms of the Notification dated 01.03.2005, as amended on 17.03.2012.

11. Thus, the order dated 28.10.2016 impugned in all the present four Customs Appeals deserves to be set aside and is set aside. All the four Customs Appeal No.'s 50098 of 2017, 50099 of 2017, 50100 of 2017 and 50280 of 2017 filed by Sony India, Canon India, Nikon India and Samsung India, respectively, are, accordingly, allowed with consequential relief(s), if any.

(Order dictated and pronounced in the Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Shenaj, Shreya