CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 51699 OF 2018

(Arising out of Order-in-Original No. CC(A)CUS/D-I/IMPORT/103/2018 dated 20.03.2018 passed by the Commissioner of Customs (Appeals), New Delhi)

M/s Sony India Private Ltd **....Appellant**
A-18, Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi

versus

Commissioner of Customs (Appeals) **....Respondent**
New Customs House, Near I.G.I. Airport
New Delhi

APPEARANCE:

Shri B L Narasimhan, Shri Ashwani Bhatia and Ms. Anjali Gupta, 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: 15.04.2025

Final Order No. 50497/2025

JUSTICE DILIP GUPTA:

M/s. Sony India Private Ltd.[1] has sought the quashing of the order dated 20.03.2018 passed by the Commissioner of Customs (Appeals)[2], by which the appeal has been dismissed and the order passed by the Deputy Commissioner of Customs holding 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 has been upheld.

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1. **the appellant**
2. **the Commissioner (Appeals)**

2. The order passed by the Commissioner (Appeals) has placed reliance upon a decision dated 09.12.2017 of a Division Bench of the Tribunal in **M/s. Sony India Pvt. Ltd. and others** vs. **Commissioner of Customs, New Delhi**[3].

3. 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 in **Sony India** and, therefore referred the matter to a Larger Bench of the Tribunal to decide the following two 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;
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> (ii) Whether the Tribunal, in the decision rendered on 19.12.2017, has correctly interpreted the scope of 'Explanation'."

4. 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 NotificationNo.25/2005-Cus. dated 01.03.2005 as amended by Notification No.15/2012 dated 17.03.2012.
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> (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."

5. Customs Appeal No. 52218 of 2019, thereafter came up for final decision before a Division Bench, and by order dated 09.09.2024 the

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3. 2017 (12) TMI 1112 – CESTAT New Delhi

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 Limited[4] is aggrieved by the order dated 06.06.2019 passed by the Commissioner of Customs (Appeals)[5] 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-VA[6] has been dismissed. **The Assistant Commissioner had held that NIKON brand "digital still image video cameras" imported by the appellant are not entitled to Basic Customs Duty[7] exemption under the notification dated 01.03.2005, as amended by the notification dated 17.03.2012.**
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> **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:
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>> "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.
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>> 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:**
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>> "(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;

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4. **the appellant**
5. **the Commissioner (Appeals)**
6. **the Assistant Commissioner**
7. **BCD**

> (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)

6. It also transpires that against the aforesaid order dated 19.12.2017 passed by the Tribunal, four Civil Appeals were filed by the department before the Supreme Court. These four Civil Appeals were disposed of by the Supreme Court by an order dated 07.11.2024. The appeals were 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, 1962[8]. It needs to be noted that the Supreme Court had

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8. the Customs Act

earlier, in the judgment pronounced on 09.03.2021, held in these four Civil Appeals that the extended period of limitation under section 28(4) of the Customs Act could not have been invoked.

7. Thus, what was required to be examined by the Tribunal in all the four Customs Appeals that were remanded was 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 was to be examined was 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 was justified or not.

8. All the four Customs Appeals came up for hearing before a Division Bench of the Tribunal on 09.04.2025. The impugned order dated 28.10.2016 that was impugned in all the four Customs Appeals was set aside and all the four Customs Appeals were allowed. The relevant portion of the decision rendered on 09.04.2025 is reproduced below:

> "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.
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> 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."

9. In view of the aforesaid decisions, the order dated 20.03.2018 passed by the Commissioner (Appeals) holding 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 on the basis of the decision rendered by the Tribunal on 19.12.2017 would, therefore, have to be set aside and is set aside. The appeal is, accordingly, allowed.

(Order dictated and pronounced in the Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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