

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 52552 OF 2019

(Arising out of Order-in-Appeal No. CC (A)/CUS/D-I/Import/NCH/255/2019-20 dated 14.06.2019 passed by the Commissioner of Customs (Appeals), New Customs House, Near I.G.I. Airport, New Delhi)

Nikon India Private Ltd.

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

.....Appellant

VERSUS

Commissioner of Customs (Import),

New Customs House, Near I.G.I. Airport,
New Delhi – 110037

.....Respondent

APPEARANCE:

Shri V. Lakshmikumaran, Ms. Anjali Gupta and Shri Ashwani Bhatia, Advocates for Appellant

Shri P.R.V. Ramanan, Special Counsel and Shri Rakesh Kumar, Authorized Representative appearing for the Department

CORAM:

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

Date of Hearing: 18.11.2025

Date of Decision: 06.04.2026

FINAL ORDER NO. 50671/2026

BY THE BENCH:

Nikon India Private Ltd.¹ has filed this appeal to assail the order dated 14.06.2019 passed by the Commissioner of Customs (Appeals), New Customs House, Near I.G.I. Airport, New Delhi², by which the application filed by it for refund of duty said to have been paid under protest on the 52 Bills of Entry that were filed during the period from 05.01.2015 to 27.02.2015 has been rejected.

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1. the appellant
 2. the Commissioner (Appeals)

2. The appellant is engaged in the import and trade of various electronic products, including digital still image video cameras³. According to the appellant, it was entitled to claim exemption from payment of basic customs duty on the import of digital cameras in terms of a Notification dated 01.05.2005 that was subsequently amended on 17.03.2012⁴. The appellant claims that the benefit of the Exemption Notification was earlier granted to the appellant for the period from 17.03.2012 to 12.02.2014 but as an investigation was carried out by the Directorate of Revenue Intelligence on the imports of digital cameras, the department did not allow the appellant to claim the benefit of the Exemption Notification from February, 2014 onwards. When the department did not allow the appellant to claim exemption from payment of basic customs duty in terms of the Exemption Notification, the appellant submitted a letter requesting the department to provisionally assess the Bills of Entry filed for importing digital cameras. The Deputy Commissioner wrote a letter dated 14.03.2014 to the appellant stating that digital cameras were not eligible for exemption of customs duty, but if the appellant did not agree, it could intimate the department so that a speaking order could be passed under section 17(5) of the Customs Act, 1962⁵. The appellant, by a letter dated 18.03.2014, requested the officer to pass a speaking order. However, the appellant paid basic customs duty under protest for future Bills of Entry and filed protest letters with each of the Bills of Entry.

3. As speaking orders were not passed, the appellant claims that it had no choice but to file a refund application on 21.07.2015 before the Assistant Commissioner of Customs (Refund), New Delhi⁶ claiming refund

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3. **the digital cameras**
 4. **the Exemption Notification**
 5. **the Customs Act**
 6. **the Assistant Commissioner**

of duty amounting to Rs. 7,32,77,496/- paid under protest for the period from 29.12.2014 to 27.02.2015. The refund application was filed in Form No. 102 and it also contained a covering letter. In Column No. 10 of the said Form, the appellant stated as follows:

10.	Any further details deemed necessary and relevant to the refund claim	:	<p>Department had initially allowed us to import the DSC on provisional basis availing the benefit of Notification No. 25/2005-Cus. However, on 14.03.2014 we were informed that department had reassessed the bills of entry. We were informed that if we do not agree to the re-assessment, we may intimate the same to the department in writing so that a speaking order may be passed as envisaged under Section 17(5) of the Customs Act, 1962. Thereafter, we filed bills of entry under protest and asked for a speaking order. However, even after multiple reminders, no speaking order has been passed till date. Therefore, in abundant caution, we are filing the refund claim. Covering letter is enclosed as Appendix-2.</p>
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(emphasis supplied)

4. In the covering letter, the appellant stated:

"8. It is submitted that we are eligible to claim the refund of the amount paid under protest, as the cameras are entitled to the benefit of exemption from payment of BCD. Brief submissions explaining such eligibility of the cameras are as follows:

(a) to (q) *****

(r) In this background, we are filing the refund application in abundant caution without prejudice to our

request for passing of a speaking order which has not been passed till date despite repeated reminders. We request your goodself to grant us the refund of Rs. 7,32,77,496/- along with interest at applicable rate. An affidavit affirming the above facts is attached. Further, following documents are being submitted in this regard:-

- Letter of payment of duty under protest **(Annexure-2)**;
- TR-6 Challan as evidence of payment of duty **(Annexure-3)**;
- Attested copy of the Audited balance sheet showing claims recoverable (Customs duty) for financial year 2014-15 **(Annexure-4)**;
- CA Certificate for unjust enrichment along with Co-relation certificate **(Annexure-5)**;
- Original Copy of the bills of entry **(Annexure-6)**.

9. At the time of filing of earlier refund application on 16.03.2015, your goodself pointed out several deficiencies and sought for following documents namely Original Bills of entry, CA certificate and Co-relation certificate. It is submitted that we are filing the present application accompanied with Original Bills of entry, CA certificate along with Co-relation certificate as Annexures 6 and 5 respectively."

5. A speaking order has to be passed within a period of 15 days from the date of re-assessment of the Bills of Entry as contemplated under section 17(5) of the Customs Act. The appellant had made a request for passing speaking order on 18.03.2014 but as it was not passed despite reminders submitted by the appellant, the appellant filed Writ Petition No. 8009 of 2015 before the Delhi High Court on 21.08.2015 for a direction upon the respondent to pass a speaking order.

6. On 15.09.2015, the Assistant Commissioner issued a memorandum asking the appellant to explain why the refund claim should not be rejected in the absence of re-assessed Bills of Entry in view of the judgment of the Supreme Court in **Priya Blue Industries Ltd. vs.**

Commissioner of Customs (Preventive)⁷. The appellant submitted a reply dated 30.09.2015 stating therein the appellant was entitled to the benefit of the Exemption Notification and that re-assessed Bills of Entry were not required to be filed for claiming the refund.

7. Writ Petition No. 8009 of 2015 filed by the appellant before the Delhi High Court came to be disposed of on 08.02.2016. A direction was issued to the Deputy Commissioner to pass a speaking order under section 17(5) of the Customs Act within fifteen days.

8. The Assistant Commissioner, by order dated 12.02.2016, rejected the refund application filed by the appellant on the ground of absence of re-assessed Bills of Entry. The relevant portions of this order dated 12.02.2016 are reproduced below:

"I have gone through the case records and examined the documents submitted by the party. **The party filed refund application for excess duty paid against Bills of entries filed between the period December 2014 to February 2015 on the ground that the party is eligible to claim the benefit of exemption from payment of basic customs duty provided under Notification No. 25/2005 Cus- dated 01.03.2005.** The party imported Digital Still image video Cameras (DSCs) and classified the same under Customs Tariff heading 85258020 and the party claimed the benefit under Notification 25/2005-Customs dated 01.03.2005 as amended by Notification No. 15/2012 Customs dated 17.03.2012. The Deputy Commissioner of Customs, Group VA, New Customs House, New Delhi denied the benefit of exemption under Notification No. 25/2005 Cus dated 01.03.2005 on the DSCs imported by the party and finalized the Bill of Entries in terms of Section 17(4) of the Customs Act, 1962.

Further, party has filed refund claim without getting the said Bill of Entry re-assessed from the

7. 2004 (172) E.L.T. 145 (S.C.)

concerned assessing group or without any order passed by the appellate authority in favour of the party for eligibility of the said exemption Notification. They submitted refund application along with Bills of entries filed between the period December 2014 to February 2015, CA Certificate, Co-relation sheet, Correspondence with department and requested that refund application be allowed to be filed and be adjudged on the merits of the case and a formal order be passed.

I observe that the relevant Bills of entry were finally assessed by the concerned assessing Group and benefit of Notification No. 25/2005 Customs dated 01.03.2005 was denied and thus there is no excess payment, as the exemption under Notification 25/2005- Cus dated 01.03.2005 was denied to the party by the Deputy Commissioner of Customs, Group-VA, and therefore, if the party has any different view they should have approached the appellate authorities for getting orders for the re-assessment of the said bills of entry. Accordingly, memorandum dated 15.09.15 and 07.01.2016 were issued to the party and an opportunity for personal hearing was also granted to the party In response to the said memorandum, the party appeared for personal hearing on 18.01.2016 and submitted a written submission.

In view of the above, I find that party's claim for refund is not justifiable and thus not admissible for refund of excess payment of customs duty under section 27 (1) (a) of the Custom Act, 1962. Court cases and other supporting grounds relied upon by the party do not squarely cover the issue and without getting bills of entry re-assessed, excess payment cannot be established.

It is observed that the party failed to submit any re-assessment order or speaking order under Section 17(5) of the Customs Act, 1962 from the concerned group on classification of goods under consideration. **Further, it is beyond the scope of jurisdiction of refund branch to decide the issue on merits without the assessment of the said Bills of Entry**

by the concerned appraising group and refund branch can only decide cases where excess payment is clearly established with documentary evidence. Hon'ble Supreme Court order in the case of M/s Priya Blue Industries Ltd., Vs. Commissioner as reported in 2004 (170) ELT A 308 (SC) held that once an order of assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 28 and /or modified in an Appeal that order stands. A refund claim is not an appeal proceeding. The officer considering a refund claim cannot sit in Appeal over an assessment made by a competent officer. The officer considering the refund claim cannot review an assessment order.

In view of the above, I find that refund claim of Rs. 7,32,77,496/- filed on 21.07.2015 is not maintainable since the importer has failed to fulfill the basic condition for claiming of excess payment of customs duty under section 27(1)(a) of the Customs Act, 1962. I find there is no proof for payment of excess custom duty in respect of Bills of entries filed for the period December 2014 to February 2015. Thus the claim is not admissible and liable to be rejected.

(emphasis supplied)

9. The appellant challenged the aforesaid order dated 12.02.2016 passed by the Assistant Commissioner by filing an appeal before the Commissioner (Appeals).

10. A speaking order was also passed by the Assistant Commissioner after a period of almost two years on 12.05.2016. The benefit of the Exemption Notification on import of digital cameras imported by the appellant was denied. This order was also assailed by the appellant by filing an appeal before the Commissioner (Appeals).

11. The appeal filed by the appellant against the speaking order dated 12.05.2016 was dismissed by the Commissioner (Appeals) by order dated 06.06.2019 after placing reliance on the decision of the Tribunal rendered on 19.12.2017 in the matter of the appellant wherein exemption claimed from payment of basic customs duty on digital cameras was not accepted. The relevant portions of the order dated 06.06.2019 passed by the Commissioner (Appeals) are reproduced below:

"2.1 The Appellant had filed 626 Bills of Entry during the period from 13th February, 2014 to 7th March, 2015 for clearance of 'NIKON' brand "Digital Still Image Video Cameras" under CTH 85258020 with duty rates 0% +12%+0%+0% vide Notification No. 25/2005-Cus dated 01.03.2005 (hereinafter referred to as "Notification No. 25/2005-Cus") Sr. No. 13 as amended by Notification No. 15/2012-Cus. However, while finalizing the assessment of the impugned Bills of Entry, the Department assessed the duty rates as 10%+12%+2%+1%+0% without granting the exemption benefit of 10% Basic Customs Duty (BCD). **The Appellant cleared the goods on payment of differential duty "under protest".**

2.2 Accordingly, the Adjudicating Authority passed the impugned Order that 'NIKON' brand "Digital Still image Video Cameras" imported by the Importer under subject Bills of Entry are not entitled to BCD exemption as per Notification No. 25/2005-Cus as amended by Notification No. 15/2012-Cus as they do not fit into the category of "explanation" provided thereunder at SI. No.13. Therefore, the re-assessment by the Department by denying the exemption benefit based upon the features and the contentions raised by the Importer is in accordance with the said Notifications and the referred Board's Circular. Held Accordingly.

5.8 Hon'ble CESTAT, Principal Bench, New Delhi in Final Order No. 58446-58450/2017 dated 19.12.2017 in the matter of M/s. Sony India Pvt. Ltd., M/s. Canon India Pvt. Ltd., M/s. Nikon India

Pvt. Ltd. & Others, wherein the identical issue of the benefit of exemption of Basic Customs duty to Digital Still image Video Cameras under Notification No. 25/2005- Cus., as amended on 17.03.2012, held, inter alia, that:

"Para 22. The imported digital cameras taking into consideration the memory capacity at the time of import, were found to have the capability of recording video in a single sequence of more than 30 minutes. However, during investigation, it was found that such capabilities have been restricted through firmware to a single sequence of less than 30 minutes. Hence, the fact of matter is that the imported digital cameras, can run a single sequence of only less than 30 minutes whereas the cameras have the capability to have a single sequence of much more than 30 minutes. If the arguments of the appellant are to be accepted, then the notification benefit is to be extended to all those digital still image video cameras, in which a single sequence recording is of less than 30 minutes. Such an interpretation will make the stipulation in the explanation to the Notification about the maximum storage (including expanded) capacity as redundant. It is obligatory to read and satisfy all the conditions of the notification without rendering any part therein as redundant. Since in the present case, the imported digital cameras are capable of recording video with minimum resolution and minimum recording speed for more than 30 minutes in a single sequence; using maximum storage capacity, such cameras will not be entitled to the benefit of notification. It is well settled that a person who claims exemption or concession, has to establish that he is entitled to that exemption or that concession. In the present case, as discussed above, the impugned goods do not fulfil all the conditions specified in the notification and hence it is inevitable that the benefit of notification is denied to these goods."

5.9 Therefore, the impugned Order is legally correct in holding that the impugned 'Digital Still Image Video Cameras' imported by the Appellant are not entitled to BCD exemption as Notification No. 25/2005-Cus., as amended. **Therefore, re-assessment by the Department by denying the exemption benefit is in accordance with the said Notification."**

(emphasis supplied)

12. The appeal filed by the appellant against the order dated 12.02.2016 rejecting the refund application was also dismissed by the Commissioner (Appeals) by order dated 14.06.2019. The relevant portions of the said order dated 14.06.2019 are reproduced below:

"2. The facts of the case are that the appellant filed a refund claim of Rs. 7,32,77,496/- against the Customs duty paid in excess on the imported goods cleared vide Bills of Entry filed between the period from 29th December, 2014 to 27th February, 2015 on the grounds that they were eligible to claim the benefit of basic Customs duty provided under Notification No. 25/2005-Cus dated 01.03.2005. The Asstt. Commissioner of Customs (Refund) vide the impugned order rejected the claim filed by the appellant on the grounds that the bills of entry were finally assessed by the appraising group and no re-assessment order or order-in-appeal were issued against the said bills of entry.

5.3 Hon'ble CESTAT, Principal Bench, New Delhi in Final Order No. 58446-58450/2017 dated 19.12.2017 in the matter of M/s Sony India Pvt. Ltd., M/s Canon India Pvt. Ltd., M/s Nikon India Pvt. Ltd. & Others, wherein the identical issue of the benefit of exemption of Basic Customs duty to Digital Still image Video Cameras under Notification No. 25/2005- Cus., as amended on 17.03.2012, held, inter alia, that: *****

5.4 Therefore, the impugned 'Digital Still Image Video Cameras' imported by the Appellant are not entitled to BCD exemption as per Notification No. 25/2005-Cus., as amended. Therefore, re-assessment by the Department by denying the exemption benefit was in accordance with the said Notification.

5.5 The impugned appeal involves two issues:

- (i) Benefit of Notification No. 25/2005-Cus.
- (ii) Consequent refund of excess duty paid by applying Hon'ble Delhi High Court judgement of Aman Medical Products and Micromax Informatics Ltd. supra.

As discussed above, on merits, the case has been decided by Hon'ble CESTAT and benefit of Notification No. 25/2005-Cus. is not admissible to the imports made by the Appellant. Thus, there is no case for any refund of excess duty paid. In the absence of any excess duty paid or borne by the Appellant, no grounds for refund arise. Thus, there was no need for any re-assessment of the finalised Bills of Entry. The ratio of judgements cited above can come in aid when excess duty paid is refundable on merits. So, this case is against the appellant.

6. In the above light, I hold that nothing exists on merits to say that the order per se is wrong or legally not tenable. I dismiss the present Appeal.”

(emphasis supplied)

13. The appellant filed Customs Appeal No. 52218 of 2019 before this Tribunal against the order dated 06.06.2019 passed by the Commissioner (Appeals) in connection with the speaking order. The Tribunal, by an interim order dated 08.03.2022, did not agree with the decision earlier rendered by the Tribunal on 19.12.2017 and, therefore, referred the matter to a Larger Bench of the Tribunal to decide the following two issues:

- (i)** Whether the digital cameras imported by the appellant would be entitled to basic customs duty exemption under the Exemption Notification, as amended by the Notification dated 17.03.2012, whereby an 'Explanation' was added; and
- (ii)** Whether the Tribunal, in the Final Order dated 19.12.2017, has correctly interpreted the scope of 'Explanation'.

14. The Larger Bench of the Tribunal, while answering the reference by order dated 14.06.2024, held that the digital cameras imported by the appellant would be entitled to exemption from payment of basic customs

duty in terms of the Exemption Notification. The relevant portions of the interim order dated 14.06.2024 passed by the Larger Bench of the Tribunal are reproduced below:

"34. *****. 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 with in 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.

36. The reference is answered, accordingly, as follows:

- (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.”

(emphasis supplied)

15. The Division Bench of the Tribunal, on the basis of the aforesaid answer to the reference by the Larger Bench, allowed Customs Appeal No. 52218 of 2019 on 09.09.2024 by granting the benefit of the Exemption Notification to the digital cameras imported by the appellant. The impugned order dated 06.06.2019 passed in connection with the speaking order was set aside with consequential relief. The relevant portions of the order are reproduced below:

“M/s. Nikon India Private Limited is aggrieved by the order dated 06.06.2019 passed by the Commissioner of Customs (Appeals) 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 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 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:

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)

16. The Bills of Entry covered in the present appeal from 05.01.2015 upto 27.02.2015 are part of the aforesaid order dated 09.09.2024 passed by the Tribunal covering the period from 29.12.2014 to 27.02.2015.

17. The present appeal seeks to challenge the order dated 14.06.2019 passed by the Commissioner (Appeals) upholding the order dated 12.02.2016 passed by the Assistant Commissioner rejecting the refund application filed by the appellant.

18. The factual position, as stated above, is summarised in the following chart. The dates mentioned in shaded background pertain to speaking order/availability of the Exemption Notification, while the non-shaded background pertain to the refund application:

Date	Particulars
01.05.2005 & 17.03.2012	Exemption Notification dated 01.05.2005 granted exemption from payment of basic customs duty to all digital cameras. It was amended on 17.03.2012.
2012	The appellant imported digital cameras through Air Cargo Complex Delhi and availed basic customs duty exemption under the Exemption Notification. Post amendment, the benefit was initially disputed but allowed later for the period 17.3.2012 to 12.2.2014 without any dispute.
November 2013 (DRI investigation)	An investigation was initiated by the Directorate of Revenue Intelligence ⁸ regarding the imports of digital cameras at concessional rate of duty which resulted into issuance of show cause notice dated 19.08.2014 proposing to deny benefits of the exemption which had been claimed at the time of import of the digital cameras during the period 16.03.2012- 15.02.2014. The said matter was decided by Supreme Court in Civil Appeal No. 1832 of 2018 by order dated 09.03.2021. The Supreme Court set aside the show cause notice on the ground of jurisdiction. The said order was challenged by the department by filing a Review Petition. The Supreme Court, by Final Order dated 07.11.2024, remanded the matter back to the Tribunal for deciding the issue on merits for the normal period of limitation.
12.03.2014	Due to the DRI investigation, department did not allow the appellant to claim benefit of exemption on the digital cameras imported by it from February 2014 onwards. The appellant, therefore, submitted a letter requesting the department to provisionally assess the Bills of Entry filed for importing digital cameras.
14.03.2014 (Benefit of the Exemption Notification)	The Deputy Commissioner wrote a letter to the appellant stating: (i) Digital cameras are not eligible for exemption under the Exemption Notification. Therefore, the department has been re-assessing the Bill of Entry under section 17(4) of the Customs Act without granting the benefit of the Exemption Notification.

	(ii) In case, the appellant does not agree with the re-assessment, they may intimate the same in writing to the department so that a speaking order under section 17(5) of Customs Act can be passed.
18.03.2014 (Request for speaking order)	As the appellant did not agree with the re-assessment, it requested for passing of a speaking order.
15.03.2014 and 18.03.2014 (Payment of duty under protest)	The appellant started paying duty under protest for future Bills of Entry and filed protest letters with the Bills of Entry. The appellant also requested for passing speaking order in all the letters.
16.04.2014 30.05.2014 27.06.2014 06.02.2015 08.07.2015 (Reminders for passing speaking order)	Various reminder letters were filed by the appellant requesting passing of a speaking order for the imports of digital cameras wherein duty was paid under protest.
21.07.2015 (Refund application filed)	In spite of repeated reminders when no speaking order was passed, and as the time limit for filing refund application was near to its expiry, the appellant was constrained to file refund application before the Assistant Commissioner for 52 Bills of Entry covering the period 29.12.2014 to 27.02.2015 for an amount of ₹7,32,77,496/-.
21.08.2015	As no speaking order was passed despite multiple reminders filed by the appellant, the appellant filed Writ Petition (Civil) No. 8009 of 2015 before the Delhi High Court seeking a direction to the authorities to pass a speaking order so that an appropriate action could be taken by the appellant.
15.09.2015 (Memorandum-1 for refund application)	The Assistant Commissioner issued memorandum asking the appellant to explain why refund claim should not be rejected in absence of re-assessed Bills of Entry in the light of judgment of the Supreme Court in Priya Blue .
30.09.2015	The appellant responded to the memorandum by letter dated 30.09.2015 stating that the appellant is entitled to benefit of the Exemption Notification and that re-assessed Bills of Entry are not required for claiming refund.
08.02.2016 (Writ order)	The Writ Petition filed by the appellant was allowed by the Delhi High Court by order dated 08.02.2016. The Delhi High Court directed the Deputy Commissioner to pass a speaking order under section 17(5) of the Customs Act within 15 days.
12.02.2016	The Assistant Commissioner passed an order dated 12.02.2016

(received on 03.10.2016) (order-in-original rejecting refund application)	rejecting the refund applications filed by the appellant on the ground of absence of re-assessed impugned Bills of Entry. The Assistant Commissioner relied upon the judgment of the Supreme Court in Priya Blue . The appellant challenged the order rejecting the refund applications before the Commissioner (Appeals).
09.03.2016 31.03.2016 04.05.2016 (Reminder letters for speaking order post writ order)	Despite the direction by the Delhi High Court, no speaking order was passed within 15 days from the date of decision. The appellant sent repeated reminders to the department requesting for passing of speaking order pursuant to the directions of the Delhi High Court.
12.05.2016 (Speaking order)	The Assistant Commissioner passed the speaking order on 12.05.2016 denying the benefit of exemption to digital cameras imported by the appellant, including imports made by impugned Bills of Entry. The appellant filed an appeal against the speaking order before the Commissioner (Appeals).
06.06.2019 (CC(A) order for speaking order)	After a delay of almost 3 years, the Commissioner (Appeals) by an order dated 06.06.2019 upheld the speaking order denying the benefit of the Exemption Notification to the appellant.
14.06.2019 (Impugned order by CC(A) for refund application)	The Commissioner (Appeals) passed an order dated 14.06.2019 upholding the order dated 12.02.2016 that rejected the refund application by relying on the decision of the Tribunal dated 19.12.2017 in M/s. Sony India Private Limited vs. Commissioner of Customs, New Delhi ⁹ to hold that benefit of the Exemption Notification is not available. Further, it was stated that there is no need to decide the issue regarding requirement of re-assessed Bills of Entry as the issue is already decided on merits against the appellant by the Tribunal.
05.09.2019 (Appeal against OIA for speaking order)	The appellant filed an appeal against the order dated 06.06.2019 before the Tribunal bearing Customs Appeal No. 52218 of 2019.
13.09.2019 (Appeal against refund rejection order)	The order dated 14.06.2019 has been challenged by the appellant in the present appeal before the Tribunal.
08.03.2022 (Referral order to	The Tribunal, by interim order dated 08.03.2022, dissented with the findings given by the Tribunal in the earlier case of the

larger Bench for speaking order)	appellant. Accordingly, the issue on merits was referred to a Larger Bench to decide the following two questions: (i) Whether the digital cameras imported by the appellant would be entitled to basic customs duty exemption under the Exemption Notification, as amended by the Notification dated 17.03.2012; (ii) Whether the Tribunal in Sony India decided on 19.12.2017, had correctly interpreted the scope of 'Explanation'?
14.06.2024 (Larger Bench order)	The Larger Bench of the Tribunal by an interim order dated 14.06.2024 held that the digital cameras imported by the appellant would be entitled to benefit of the Exemption Notification.
09.09.2024 (CESTAT order in C/52218/2019-Speaking order)	The Tribunal, by order dated 09.09.2024, allowed the benefit of the Exemption Notification to the appellant following the Larger Bench order and set aside the order dated 06.06.2019 with consequential relief. The Bills of entry covered in the present appeal are part of this order of the Tribunal wherein the issue on merits has been decided in favour of the appellant.
January, 2025	The department has challenged the Order dated 09.09.2024 of the Tribunal in Civil Appeal No. 3541 of 2025 before the Supreme Court. However, no stay has been granted and notice has been issued on 24.02.2025.
09.04.2025	Post remand from the Supreme Court by order dated 07.11.2024, the Tribunal heard the issue on merits and relying upon the order dated 09.09.2024, allowed the benefit of the Exemption Notification.

19. Shri V. Lakshmikumaran, learned counsel for the appellant assisted by Ms. Jyoti Pal, Ms. Anjali Gupta and Shri Ashwani Bhatia, made the following submissions:

- (i) The reason given by the Commissioner (Appeals) in the impugned order dated 14.06.2019 for rejection of refund claim that the issue stood concluded by a decision dated 19.12.2017 of the Tribunal rendered in the matter of the appellant no longer subsists in view of the Larger Bench order dated 14.06.2019 of the Tribunal. Accordingly, the

impugned order is liable to be set aside and the refund application dated 21.07.2015 is liable to be allowed for refund of the differential duty along with interest in terms of section 27 read with section 27A of the Customs Act;

- (ii) The Larger Bench of the Tribunal decided the issue on merits in favor of the appellant by order dated 14.06.2024 and in terms of the Larger Bench order of the Tribunal, the Division Bench of Tribunal passed the Final Order on 09.09.2024. The impugned Bills of Entry for which refund has been filed by the appellant are covered under the order dated 09.09.2024 of the Tribunal allowing the benefit of the Exemption Notification to digital cameras. Thus, the order of the Tribunal read with impugned Bills of Entry would tantamount to re-assessment of the impugned Bills of Entry. Therefore, once re-assessment has been done in favor of the appellant by order dated 09.09.2024 of the Tribunal, the issue raised in the order dated 12.02.2016 passed by the Assistant Commissioner for rejecting the refund application also does not survive;
- (iii) The judgment of the Supreme Court in **ITC Ltd. vs. Commissioner of Central Excise, Kolkata**¹⁰ and other judgments relied upon in the order dated 12.02.2016 passed by the Assistant Commissioner are not applicable to the present case. In any case, the order passed by the Assistant Commissioner stood merged in the order passed by the Commissioner (Appeals) and only one reason has been given, which reason can no longer stand in view of the Larger Bench decision of the Tribunal;

10. 2019 (368) E.L.T. 216 (SC)

- (iv)** The refund application filed by the appellant on 21.07.2015 was maintainable on the date of filing as there was no legal bar in moving the application;
- (v)** The department cannot deny refund of differential duty with interest to the appellant by taking advantage of its own delay in passing the speaking order;
- (vi)** The appellant is entitled to interest from the expiry of three months from the date of filing of the refund application in terms of section 27A of the Customs Act;
- (vii)** The appellant is entitled to refund as a consequential relief to the order dated 09.09.2024 of the Tribunal. The present refund claim filed by the appellant is in respect of the very same Bills of Entry which were covered and decided in the speaking order dated 12.05.2016, by which the claim of the appellant for availing benefit of the Exemption Notification was initially denied. However, the Larger Bench of the Tribunal decided the reference in favour of the appellant and the Division Bench of the Tribunal passed in the order dated 09.09.2024 in terms of the reference answered by the Larger Bench. A natural corollary of the above order would be to grant refund of the duty paid by the appellant at the time of filing of disputed Bills of Entry, along with necessary interest. This has to be regarded as consequential relief;
- (viii)** It is a well-settled legal position that "an appeal is in continuation of assessment proceedings" by virtue of which in case of passing of an assessment order (in this case, the impugned Bills of Entry read with the speaking order), the assessee has the statutory right to challenge it before higher authorities, namely the Commissioner (Appeals) and subsequently the Tribunal. The appellate process is not a

fresh or independent proceeding. It is treated as an extension of the original assessment. This principle ensures that the final outcome of the appellate process is deemed to have effect from the date of the original assessment and not from the date of the appellate order. It means when the Tribunal held that the appellant was entitled for the exemption, the speaking order and the subsequent order of the Commissioner (Appeals) stood modified and it is this order which survives. Therefore, as a consequential relief, and appeal being continuation of assessment proceedings, the order takes effect from the day of assessment of impugned Bills of Entry. It cannot be that when the Tribunal passed the order, the appellant became entitled to benefit of the Exemption Notification from that date i.e. 09.09.2024;

- (ix) The order passed by the Assistant Commissioner rejecting refund application has been modified by order dated 09.09.2024 of the Tribunal;
- (x) Section 27(1B) does not restrict the assessee from filing refund claim prior to the date of favourable order but only extends the time period for doing so in case of pending litigation. Section 27(1B) only fixes the final date till when the refund claim can be filed. However, the initial date has not been fixed by the said provision;
- (xi) The judgment of the Supreme Court in **ITC** does not prevent or restrict any assessee from filing refund application prior to re-assessment of Bills of Entry but only allows grant of refund subject to modification of original assessment; and
- (xii) By virtue of the doctrine of merger and the doctrine of relation back, the order dated 09.09.2024 passed by the Tribunal relates back to the date of passing of speaking

order. Therefore, refund application filed by the appellant on 21.07.2015 was valid on the date of filing. The appellant is entitled to interest from the expiry of three months from the date of refund application in terms of Section 27A of Customs Act.

20. Shri P.R.V. Ramanan, learned special counsel assisted by Shri Rakesh Kumar, learned authorized representative appearing for the department made the following submissions:

- (i) The ratio laid down by the Supreme Court in **ITC and Priya Blue and Collector of Central Excise, Kanpur vs. Flock (India) Pvt. Ltd.**¹¹ is applicable in the present facts and circumstances. In fact, the ratio laid down in **Priya Blue**, which the Assistant Commissioner has relied to reject the refund application, will squarely cover the present matter;
- (ii) The statute provides for filing for refund application under section 27 of the Customs Act but it does not mean the same is entertainable/maintainable before the assessment order is challenged and modified subsequently by the quasi-judicial authority (the proper officer). Thus, the refund application filed at that time did not carry any authority (no cause of action) in the absence of any modified order passed after the assessment order/assessed Bills of Entry. Thus, the refund application was not maintainable at that time as per ratio laid down by the Supreme Court in **ITC**. The cause of action had not arisen to the appellant on 21.07.2015 when the refund application was filed and, therefore, the refund application was rightly rejected. In support of this contention, learned special counsel placed reliance upon the

11. 2000 (120) E.L.T. 285 (S.C.)

judgment of the Supreme Court in **Dena Snuff (P) Ltd. vs. Commissioner of Central Excise, Chandigarh**¹²;

- (iii) The Tribunal, in its order dated 09.09.2024, relying on the Larger Bench decision of the Tribunal passed an order in favour of the appellant and they had the authority as per law to get the refund subsequent to the date of the order of the Tribunal on 09.09.2024 and not from the date of the refund application filed on 21.07.2015;
- (iv) The department cannot be compelled to grant interest from the date when the application was filed as it would tantamount to granting refund without authority of law;
- (v) There was no delay on the part of the department in passing speaking order. Even otherwise, once the Bills of Entry had been assessed, the appellant could challenge the assessments without waiting for a speaking order as per law laid down by the Supreme Court in **ITC** which holds that assessment includes self-assessment and re-assessment and even self-assessment order is an appealable order;
- (vi) To say that the speaking order dated 12.05.2016 and the order of the Commissioner (Appeals) have merged in the order passed by the Tribunal on merit on 09.09.2024 is a misnomer because while one order dated 12.02.2016 has arisen out of the executive function of the Assistant Commissioner (lacking any quasi-judicial authority), the other order was passed on 12.05.2016 by the quasi-judicial authority as per order of the Delhi High Court. Both the orders have separate jurisdictions and cannot be collated by applying the doctrine of merger as it would destroy the

12. 2003 (157) E.L.T. 500 (SC)

distinctiveness of the provisions of section 27 and section 17 of the Customs Act;

(vii) The doctrine of relation back cannot apply in the present facts and circumstances, more so when the present dispute is not related to grant of interest or refund but it relates to the question of maintainability/entertainability of the refund application filed by the appellant without getting the assessment order passed by the quasi-judicial authority modified in appeal; and

(viii) Even if the duty was paid under protest, the limitation of one year shall not apply. That means that the application of refund could be filed even beyond one year of the date of deposit. But once the assessment order is challenged, the said protest is vacated and the refund, if any, would be subject to the outcome of that challenge to the assessment order. In other words, the provisions of section 27(1B)(b) now takes guard of the proceedings to be adopted by the authority while granting refund. Thus, the refund can be available to the appellant only after the decision of the Tribunal on 09.09.2024 and not before that. Any refund allowed without applying the provisions of the section 27(1B)(b) of the Customs Act will be bad in law.

21. The submissions advanced by the learned counsel for the appellant and the learned special counsel appearing for the department have been considered.

22. The appellant claims that it was entitled to claim exemption from payment of basic customs duty on the import of digital cameras in terms of the Exemption Notification, but as this was denied to the appellant, the appellant requested the department to provisionally assess the Bills of

Entry. The Deputy Commissioner, however, by a letter dated 14.03.2014 informed the appellant that the digital cameras imported by the appellant were not eligible for exemption of customs duty and if the appellant did not agree it could intimate the department so that a speaking order could be passed. In response to this letter, the appellant requested the department to pass a speaking order but at the same time it paid basic customs duty under protest for future Bills of Entry. As no speaking order was passed, the appellant filed refund application on 21.07.2015 claiming refund of the duty amount paid under protest from 29.12.2014 to 27.02.2015. This refund application was rejected by the Assistant Commissioner by order dated 12.02.2016 as the Bills of Entry had not been re-assessed. This order was challenged by the appellant before the Commissioner (Appeals) and the appeal was dismissed by an order dated 14.06.2019. The Commissioner (Appeals) relied upon the order dated 19.12.2017 passed by the Tribunal in the matter of the appellant and two other appellants wherein the benefit of exemption was denied. The Commissioner (Appeals), therefore, held that the appellant was not entitled to exemption from basic customs duty.

23. It also needs to be noted that a speaking order was passed by the Assistant Commissioner after two years on 12.05.2016 and the benefit of the exemption notification was denied to the appellant. This order was also assailed by the appellant before the Commissioner (Appeals), who by order dated 06.06.2019, rejected the appeal after placing reliance upon the decision of the Tribunal rendered on 19.12.2017 in the matter of the appellant and two others wherein the claim of the appellant for exemption from payment of basic customs duty was not accepted.

24. This order of the Commissioner (Appeals) was assailed by the appellant before this Tribunal and by an order dated 08.03.2022, a Division Bench of the Tribunal did not agree with the earlier decision rendered by the Tribunal on 19.12.2017 and referred the matter to a Larger Bench of the Tribunal to decide whether the digital cameras imported by the appellant would be entitled to exemption from basic customs duty under the Exemption Notification.

25. A Larger Bench of the Tribunal answered the reference by an order dated 14.06.2024 and held that the digital cameras imported by the appellant would be entitled to exemption from basic customs duty in terms of the Exemption Notification. In view of the order passed by the Larger Bench, the Division Bench of the Tribunal allowed Customs Appeal No. 52218 of 2019 filed by the appellant on 09.09.2024. The impugned order was set aside with consequential relief to the appellant.

26. The Bills of Entry covered under the present appeal from 05.01.2015 upto 27.02.2015 are part of the aforesaid order dated 09.09.2024 passed by the Tribunal covering the period from 29.12.2014 to 27.02.2015.

27. As noticed above, the Commissioner (Appeals) had decided the appeal filed by the appellant against the rejection of the refund application for the reason that the Tribunal, by an order dated 19.12.2017, in the matter of the appellant, had denied exemption to the appellant from payment of basic customs duty in terms of the Exemption Notification and, therefore, the question of refund did not arise. This order dated 19.12.2017 no longer lays down good law as a Larger Bench of the Tribunal, by an order dated 14.06.2024, held that digital cameras imported by the appellant would be eligible for exemption from basic customs duty under the Exemption Notification.

28. The contention of the learned counsel for the appellant is that once the Tribunal by order dated 09.09.2024 allowed the benefit of the Exemption Notification to digital cameras, the order of the Tribunal read with the impugned Bills of Entry would tantamount to re-assessment of the Bills of Entry and, therefore, the reason assigned by the Assistant Commissioner in the order dated 12.02.2016 for rejecting the refund application also does not survive. Learned counsel also submitted that once the Larger Bench of the Tribunal held that the appellant is entitled to exemption from payment of basic customs duty and the Division Bench allowed the appeal filed by the appellant against the order rejecting the refund application with consequential relief, the appellant would be entitled to refund.

29. Learned counsel for the appellant also submitted that there was no bar in moving the refund application on 21.07.2015 and the appellant would be entitled to interest from the expiry of three months from the date of filing the refund application in terms of section 27A of the Customs Act. Learned counsel submitted that an appeal is a continuation of the assessment proceedings and once the final order is passed by the Appellate Authority, it shall be deemed to have effect from the date of original assessment and not from the date of the appellate order. According to the learned counsel for the appellant, the judgment of the Supreme Court in **ITC** does not prevent or restrict any assessee from filing refund application prior to re-assessment of the Bills of Entry but only allows grant of refund subject to modification of the original assessment.

30. Learned special counsel appearing for the department, however, submitted that the appellant could not have filed the refund application on 21.07.2015 since no cause of action had arisen on that date and in this

connection, learned special counsel placed reliance upon the judgment of the Supreme Court in **Dena Snuff** to contend that the cause of action to the appellant to file the refund application could have arisen only after the dispute was finally settled by the Tribunal.

31. It would, therefore, be necessary to first examine this contention of the learned special counsel for the department.

32. In **Dena Snuff**, the appellant therein had classified the product under sub-heading 2404 60 of the Central Excise Tariff and had continued to pay duty till 27.09.1990 when the inspector declined to clear the product unless duty at higher rate under tariff sub-heading 2404 50 was paid. The appellant made payments under protest. However, in a matter filed by another trader, the Tribunal held that the said product would be classifiable under sub-heading 2404 60. It is on the basis of this decision of the Tribunal that the appellant filed a refund application claiming refund of duty which it had paid under protest. The Tribunal rejected the application on the preliminary ground that the application for refund was not maintainable. However, the Supreme Court on 28.08.2003 in the matter of the appellant own case, decided that the appellant was right all along and that the duty was leviable under tariff sub-heading 2404 60. It is in this context that the Supreme Court in **Dena Snuff** observed that the cause of action to the appellant would arise only after the dispute regarding classification list had been settled by the Supreme Court on 28.08.2003. The observation of the Supreme Court in **Dena Snuff** are:

"5. As far as the first submission is concerned, we are of the view that the Tribunal's appreciation of the relevant paragraph in Mafatlal Industries (supra) was correct. **The "cause of action" of the appellant would arise only after the final dispute regarding the classification list had been settled by this Court. That was done as recently as on 28-8-**

2003. The application for refund by the appellant was therefore premature. We have noted the proviso to sub-section (1) of Section 11(B) which says that the period of limitation of one year prescribed under sub-section (1) will not apply in case duties are paid under protest. The question then is from which date will the period of limitation start to run? **It appears on the basis of the paragraph of Mafatlal Industries decision which has been relied upon by the Tribunal it would have to be from the final decision in the assessee's own case."**

(emphasis supplied)

33. The facts of the present case are almost similar to the facts of the case before the Supreme Court in **Dena Snuff**. The issue is as to whether the appellant could have filed refund claim even before the issue as whether the appellant could claim exemption from payment of basic customs duty was settled by the Tribunal on 14.06.2024 when the Larger Bench of the Tribunal answered the reference. In terms of the judgment of the Supreme Court in **Dena Snuff**, the cause of action had not arisen to the appellant when the refund application was filed as the appellant had filed the refund application on 21.07.2015. The refund application was, therefore, liable to be rejected for this reason.

35. Learned counsel for the appellant, however, submitted that if this view is accepted, then the department cannot also issue protective demand notices under section 28 of the Customs Act. Learned counsel, therefore, submitted that if protective notices are held to be valid, then the present refund application filed by the appellant should also be held to be a valid application.

36. Section 28 of the Customs Act deals with recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. To issue a show cause notice under section 28 to recover duty not levied, not

paid, short levied, short paid or erroneously refunded, the cause of action must have two elements- (a) the fact that duty was paid or refunded and (b) in the opinion of the proper officer issuing the notice more duty should have been paid or levied or that duty has been refunded erroneously. It is usually the practice of the department to keep issuing 'show cause notices for subsequent periods or subsequent clearances' under section 28 of the Customs Act contrary to the decisions holding the field at that time and, therefore, without a cause of action in the hope of succeeding in appeal. These, so called 'protective demands', i.e., show cause notices issued without cause of action will be equally covered by the judgment of the Supreme Court in **Dena Snuff** and even if the cause of action arises subsequently, the show cause notice cannot be issued at a time when there was no cause of action.

37. In view of the aforesaid discussion, the refund application filed by the appellant was rightly rejected by the Commissioner (Appeals). This appeal would, therefore, have to be dismissed and is dismissed.

(Order pronounced on **06.04.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 52552 OF 2019

(Arising out of Order-in-Appeal No. CC (A)/CUS/D-I/Import/NCH/255/2019-20 dated 14.06.2019 passed by the Commissioner of Customs (Appeals), New Customs House, Near I.G.I. Airport, New Delhi)

Nikon India Private Ltd.

.....Appellant

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

VERSUS

Commissioner of Customs (Import),

.....Respondent

New Customs House, Near I.G.I. Airport,
New Delhi – 110037

APPEARANCE:

Shri V. Lakshmikumaran, Ms. Anjali Gupta and Shri Ashwani Bhatia, Advocates for Appellant

Shri P.R.V. Ramanan, Special Counsel and Shri Rakesh Kumar, Authorized Representative appearing for the Department

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 18.11.2025

Date of Decision: 06.04.2026

ORDER

Order pronounced.

(BINU TAMTA)
MEMBER (JUDICIAL)

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