CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

E-HEARING

CUSTOMS APPEAL NO. 55355 OF 2023
WITH
CUSTOMS STAY APPLICATION NO. 50547 OF 2023
(ON BEHALF OF THE DEPARTMENT)
AND
CUSTOMS CROSS OBJECTION APPLICATION NO. 50640 OF 2023
(ON BEHALF OF THE RESPONDENT)

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-II/Prev./NCH/66/ 2023-24 dated 18/05/2023 passed by The Commissioner of Customs (Appeals), New Delhi.]

Principal Commissioner of Customs, ...Appellant
Preventive Commissionerate,
New Customs House, Near IGI Airport,
New Delhi – 110 037

Versus

M/s B.S. Electronics Private Limited ......Respondent
Plot No. 327, Phase-V, Sector – 56,
EHTP, Kundli, Sonipat,
Haryana – 131 028.

WITH
CUSTOMS APPEAL NO. 55370 OF 2023
WITH
CUSTOMS STAY APPLICATION NO. 50556 OF 2023
(ON BEHALF OF THE DEPARTMENT)
AND
CUSTOMS CROSS OBJECTION APPLICATION NO. 50639 OF 2023
(ON BEHALF OF THE RESPONDENT)

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-II/Prev./NCH/66/ 2023-24 dated 18/05/2023 passed by The Commissioner of Customs (Appeals), New Delhi.]

Principal Commissioner of Customs, ...Appellant
Preventive Commissionerate,
New Customs House, Near IGI Airport,
New Delhi – 110 037

Versus

M/s Supreme Circuits ......Respondent
F-46, Okhla Industrial Area, Phase – I,
New Delhi – 110 020.

WITH
CUSTOMS APPEAL NO. 55372 OF 2023
WITH
CUSTOMS STAY APPLICATION NO. 50559 OF 2023
(ON BEHALF OF THE DEPARTMENT)
AND
CUSTOMS CROSS OBJECTION APPLICATION NO. 50641 OF 2023
(ON BEHALF OF THE RESPONDENT)

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-II/Prev./NCH/66/ 2023-24 dated 18/05/2023 passed by The Commissioner of Customs (Appeals), New Delhi.]

Principal Commissioner of Customs, ...Appellant
Preventive Commissionerate,
New Customs House, Near IGI Airport,
New Delhi – 110 037

Versus

M/s India Circuits Pvt. Ltd. ......Respondent
I & II, HSIIDC Industrial Estate, Barwala,
Punchkula – 134 118.

APPEARANCE:

Shri Mukesh Kumar Shukla, Authorized Representative for the Department
Shri Alok Agarwal and Shri Prachit Mahajan, Advocates for the respondent.

AND
CUSTOMS APPEAL NO. 50030 OF 2024

[Arising out of the Order-in-Original No. DLI/CUS/Prev./HKP/Commr./02/ 2023 dated 13/10/2023 passed by The Commissioner of Customs (Preventive), New Delhi – 110 037.]

M/s Vintek Circuits India Pvt. Ltd. ......Appellant
Plot No. 244, Sector – 7, IMT Manesar,
Gurugram, Haryana – 122 050

Versus

The Commissioner of Customs ....Respondent
(Preventive),
New Customs House, Near IGI Airport,
New Delhi – 110 037

APPEARANCE:

Shri Alok Agarwal and Shri Prachit Mahajan, Advocates for the appellant.
Shri Rajesh Singh, Authorized Representative for the Department

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

FINAL ORDER NO. 50555-50558/2025

DATE OF HEARING : 27.02.2025
DATE OF DECISION: 30.04.2025

P.V. SUBBA RAO

These four appeals – one filed by the importer and three filed by the Revenue involve the same question and, hence, these are being disposed of together. The question involved in all these appeals is whether the importers were entitled to the benefit of Notification No. 25/1999-CUS dated 28.02.1999 (Sl. No. 62) and Notification No. 24/2005-CUS dated 01.03.2005 (Sl. No. 39) on the "aluminium based Copper Clad laminates" which they had imported and used after following the procedure prescribed in the Customs (Import of Goods at concessional rate of duty for manufacture of excisable goods) Rules, 2017[1] to manufacture "aluminium clad printed circuits boards" or not.

2. In **Customs Appeal No. 50030 of 2024** – M/s Vintek Circuits India Pvt. Ltd.[2] assailed the order-in-original dated 13.10.2023 passed by the Principal Commissioner of Customs

1. **2017 Rules**
2. **Vintek**

(Preventive), New Delhi[3], whereby he denied the benefit of the aforesaid two notifications, demanded recovery of differential customs duty and imposed penalties.

2.1 **Customs Appeal No. 55372 of 2023** is filed by the Commissioner of Customs (Preventive), New Delhi to assail the order-in-appeal dated 18.05.2023 passed by the Commissioner of Customs (Appeals)[4], whereby he allowed the appeal filed by the importer – M/s India Circuits P. Ltd.[5] and set aside the order passed by the Joint Commissioner of Customs with consequential relief. The Joint Commissioner had denied the benefit of the aforesaid notifications. The Commissioner (Appeals) by his order allowed the benefit of the notifications and Revenue is aggrieved. **Cross Objection Application No. 50641 of 2023** filed by M/s India Circuits prays for upholding the order-in-appeal and dismissal of the appeal filed by the Department. **Stay Application No. 50559 of 2023** is filed by the Revenue seeking stay of the order-in-appeal passed by the Commissioner (Appeals), which has become infructuous since the appeal itself is now being decided.

2.2 **Customs Appeal No. 55370 of 2023** is filed by the Revenue to assail the order-in-appeal dated 18.05.2023 passed by the Commissioner (Appeals) on an appeal filed by

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3. Principal Commissioner
4. Commissioner (Appeals)
5. India Circuits

M/s Supreme Circuits, New Delhi[6] whereby the order of the Joint Commissioner dated 11.11.2022 was set aside with consequential relief. The Commissioner (Appeals) allowed the benefit of the exemption notification to Supreme and Revenue is aggrieved. **Cross Objection Application No. 50639 of 2023** filed by the respondent prays for upholding the order-in-appeal and dismissal of the appeal filed by the Department. **Stay Application No. 50556 of 2023** is filed by the Revenue seeking stay of the order-in-appeal passed by the Commissioner (Appeals), which has become infructuous as the appeal itself is now being decided.

2.3 **Customs Appeal No. 55355 of 2023** is filed by the Revenue to assail the order-in-appeal dated 18.05.2023 passed by the Commissioner (Appeals) whereby he allowed the appeal filed by M/s B.S. Electronics Pvt. Ltd.[7] and set aside the order of the Joint Commissioner dated 29.11.2022. The Commissioner (Appeals) allowed the benefit of the exemption notification to B.S. Electronics. **Stay Application No. 50547 of 2023** is filed by the Revenue to seek stayed of the order-in-appeal which has now become infructuous as the appeal itself is being disposed of. **Cross Objection Application No. 50640 of 2023** is filed by B.S. Electronics seeks upholding the order-in-appeal and dismissing the appeal by the Revenue.

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6. Supreme
7. B.S. Electronics

2.4 Thus, in the case of Vintek, the order passed by the Principal Commissioner denying the benefit of the exemption notifications is assailed by the importer – Vintek while in the other three appeals, Revenue is assailing the orders passed by the Commissioner (Appeals) allowing the benefit of the exemption notifications.

2.5 The importers in all these cases imported copper clad aluminium based laminates and used them to manufacture aluminium clad printed circuits boards. The two notifications provided for exemption to copper clad laminates which are used to manufacture printed circuits boards. The question is whether "printed circuits board" includes "aluminium clad printed circuits boards" also and whether the laminates which are imported with aluminium base will also be entitled for the benefit of exemption notifications. According to the importers, "printed circuits boards" includes those which have an aluminium base and, therefore, they are entitled to the benefit of notifications. According to the Revenue, "copper clad laminates with an aluminium base" are not covered by the exemption notification and the final products, which were printed circuits boards with an aluminium base are also not included in the expression printed circuits boards. Extract of the relevant exemption notifications is as follows :-

Notification No. 25/99-Customs

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in column (3) of Table below, and falling under the Chapters of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) specified in the corresponding entry in column (2) of the said Table, when imported into India for use in the manufacture of the finished goods specified in the corresponding entry in column (4) of the said Table, from so much of that portion of the duty of customs leviable thereon which is specified in the said First Schedule, as is in excess of the amount calculated at the rate of,-

(a) 5% ad valorem in the case of the imported goods specified in List A;

(b) 15% ad valorem in the case of the imported goods specified in List B; and

(c) 25% ad valorem in the case of the imported goods specified in List C: Provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996".

S. No.	Chapter	Description of imported goods	Description of finished goods
(1)	(2)	(3)	(4)
62.	39, 74	Copper clad laminates laminated to nylon, teflon, polyester, Aluminium clad entry foil and back up laminates	Printed Circuit Boards.

2.6 This notification was amended by Notification No. 14/2022-Cus dated 01.02.2022 and Entry No. 122 was modified as follows :-

"122.	39, 74, 75, 76	(a) Composite copper clad materials consisting of Paper + Epoxy + Glass cloth; (b) Glass Epoxy Copper clad laminates or Paper Phenolic Copper clad laminates; (c) Aluminium based Copper clad laminate;	Printed Circuit Boards; Metal Clad Printed Circuit Boards.";

		(d) Copper based Copper Clad Laminate	

2.7 Notification No. 24/2005-Cus dated 01.03.2005 and Entry No. 39 is as follows :-

39.	Any Chapter except Chapter 74	All goods except solar tempered glass or solar tempered (anti-reflective coated) glass for the manufacture of goods covered by S. Nos. 1 to 38 above, provided that the importer follows the procedure set out in the customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

3. The importers in these cases imported copper clad laminates and manufactured printed circuits boards. These, however, also had an aluminium layer at the bottom which helps in dissipation of heat. According to the Revenue, the additional layer of aluminium at the bottom of the imported laminates makes them different from laminates for PCBs. According to the Revenue, the final products are also not PCBs, but aluminium clad PCBs. According to the importers, they are PCBs and additional layer of aluminium at the bottom to dissipate heat does not make them different and the aluminium clad PCBs are only a subset of PCBs. According to the importers, the imported goods are copper clad laminates and the mere fact that there was also an aluminium layer at bottom will make no difference.

Submissions on behalf of Vintek

4. Shri Alok Agarwal and Shri Prachit Mahajan, learned counsels for Vintek made the following submissions:

(i) The impugned order passed on 13 October 2023, deciding the proposals made in the show cause notice dated 5 July 2022 is void *ab initio* because it was passed after the period of one year from the show cause notice prescribed under section 28(9) of the Act. Reliance is placed on the judgment of Delhi High Court in **Swatch Group India Pvt. Ltd.** versus **UOI[8].**

(ii) The impugned order covered 80 bills of entry of which, in respect of 29 bill of entry of 2019–2020 and 2021–2022 **were covered by two earlier show cause notices and the demands were dropped by the COMMISSIONER by order-in-original dated 26.9.2022**. This order was not appealed against by the Revenue and hence the issue has attained finality. Therefore, the issue being again raised and decided in the show cause notice is against the principle of Res judicata.

(iii) MCPCB is a type of PCB classifiable under Customs Tariff Heading[9] 8534 as decided by the CESTAT in **Crompton Greaves Consumer Electricals Limited** versus **Commissioner[10].**

(iv) The benefit of Notification No. 25/1999 -Cus. dated 28 February 1999 (S. No. 62 and 122) and Notification No. 24/2005-Cus dated 1.3.2005 (S. No. 39 covers all goods) is available to aluminium core copper clad aluminiums.

(v) The amendment at serial number 122 of Notification No. 25/1999-Cus is clarificatory and the benefit was available even before the amendment.

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8. 2023(386) E.L.T. 356 (Del)
9. CTH
10. (2023) 5 Centax 228 (Tri-Bom.)

(vi) The appeal may be allowed and the impugned order dated 13.10.2023 may be set aside.

Submissions on behalf of the Revenue

5. Learned authorized representative of the Revenue vehemently supported the impugned order and made the following submissions :-

(i) MCCBs have a metal base, a dialectic layer, and copper cladding, making them distinct from PCBs, which have an insulating base.

(ii) MCPCB are used for high thermal conductivity in LED lighting systems, unlike regular PCB used in Standard electronic devices. The necessity of a metal base for heat dissipation highlights a unique functionality and distinct classification.

(iii) The exemption under Notification No. 25/1999-Cus (S.No. 62) and Notification No. 24/2005-Cus (S.No. 39) is available only to inputs used to manufacture PCBs it is not available to aluminium based copper clad laminates used for manufacturing MCPCBs. These were included much later by Notification No. 14/2022–Cus with effect from 2 February 2022. Before the date, the inputs were not eligible for concessional rate of duty.

(iv) Any exemption notification must be strict as held with the Supreme Court in **Commissioner of Customs (Import)** versus **Dilip Kumar & Company**[11] versus **UOI** and any benefit of doubt must be given to the Revenue and not to the assessee.

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11. 2018 (361) E.L.T. 577 (S.C.)

(v) The appellant imported aluminium based copper clad laminates, and manufactured MCPCBs and wrongly, claimed the benefit available for manufacture of PCBs. Therefore, invocation of extended period of limitation under section 28(4) to recover differential duty is correct.

(vi) The order of the Tribunal in the case of **Crompton Greaves** was on the question of classification and not on the eligibility of the notification in dispute.

(vii) The appeal filed by Vintek may be dismissed and the impugned order may be upheld.

6. **Revenue's submissions in it's Customs Appeals No. 55355 of 2023, 55370 of 2023 and 55372 of 2023**

(i) In all these three appeals, the Joint Commissioner of Customs (Preventive) denied concessional rate of duty under Notification No. 25/1999-Cus on Aluminium based Copper Clad Aluminium and confirmed demands with interest and penalties.

(ii) The Commissioner (Appeals) set aside the order of the Joint Commissioner holding that the importers were eligible for the benefit of the notification.

(iii) The Committee of Chief Commissioners reviewed the order of the Commissioner (Appeals) and as per it's directions, these three appeals were filed by the Revenue.

(iv) The Commissioner (Appeals) wrongly held that the imported goods were covered by S. No. 122 of Notification No. 25/1999-Cus which provides for exemption as follows:

S.No.	Chapter or heading or sub-heading of the goods	Description of goods	Finished goods
122	39,74,75,76	Composite copper clad materials consisting of paper+ Epoxy+ Glass cloth	Printed circuit boards
123	74	Glass epoxy copper clad laminated or paper phenolic copper clad laminates	Printed circuit boards

(v) Evidently, the benefit of S.No. 122 of the notification is available only to copper clad laminates consisting of paper+ Epoxy+ Glass cloth or "paper clad laminates' for manufacture of PCBs. The importers imported Aluminium based copper clad laminates and used them to manufacture MCPCBs. S.No. 122 does not apply at all to ALCCL imported by the importer nor does it apply to goods used to manufacture MCPCBs.

(vi) Only on 2.2.2022 was S.No. 122 of this exemption notification amended to cover Aluminium based copper clad laminates and Copper based copper clad laminates as follows:

S.No.	Chapter or heading or sub-heading of the goods	Description of goods	Finished goods
122	39,74,75,76	(a) Composite copper clad materials paper+ epoxy+ glass cloth; (b) Glass epoxy	Printed circuit boards

		copper clad laminates or paper phenolic copper clad laminates; (c) Aluminium based copper clad laminates; (d) Copper based copper clad laminates	

(vii) MCPCBs and PCBs are distinct products and the benefit of the unamended notification (S.No. 122) was wrongly given to the importers by the Commissioner (Appeals).

(viii) Exemption notifications must be strictly interpreted as held by the Supreme Court in **Dilip Kumar & Company** and any benefit of doubt must be extended to the Revenue and against the assessee.

Submissions on behalf of the respondent importers (B S Electronics, Supreme Circuits and India Circuits) in Revenue's appeals:

7. Learned counsels for the respondents vehemently supported the order of the Commissioner (Appeals) and made the following submissions:

(i) This Tribunal had held in **Crompton Greaves** that MCPCB is a PCB and this decision was upheld by the Supreme Court by dismissing the Civil Appeal Diary No. 28888/2024 on 29th November 2024.

(ii) The exemption under S.No. 122 of the notification was available to the importers even before the amendment.

Findings

8. We have considered the submissions on both sides in these appeals and perused the records. The following issues need to be decided by us in these appeals:

a) Are Metal core printed circuit boards (MCPCBs) also printed circuit boards (PCBs) or are they different from them?

b) Was the benefit of the exemption Notification No. 25/1999-Cus (S.No. 122) before it's amendment on 2.2.2022 available to the aluminium based copper clad laminates which were imported?

c) In the case of Vintek, when in respect of 29 of the 80 Bills of Entry were already decided by the jurisdictional Commissioner in favour of the importer by order dated 13.10.2023 and further when such decision was not even assailed by the Revenue, could the Commissioner of Customs (Preventive) pass a contrary order confirming the demand in respect of 80 Bills of Entry, including the 29 in respect of which an order was already passed?

9. The first issue to be decided is if the MCPCBs are PCBs or they are distinct from them. It would be profitable to examine what are PCBs in the first place. To manufacture any electronic good, various components have to be assembled as per the

particular circuit diagram. The traditional way of doing this was to solder together the different components using wires and install the entire structure on a chassis and produce the good. This system was then replaced with printed circuit boards where the copper printing on the board takes the place of wire and connects the various components. Although it is called a 'printed circuit', it is usually made by taking a composite laminate with an insulator base with a thin layer of copper at the top. This laminate is then put through a process and copper as per the circuit diagram is retained on the laminate and rest of it is etched out leaving a thin layer of copper as per the circuit diagram. It is then laminated at the top, holes are drilled at various places on the laminate into which the leads of the components are inserted and soldered. Thus, the entire circuit will be small and compact. The PCB with the components is called as populated printed circuit boards. The mother board of computer or laptop is a commonly known populated PCB.

10. Further advances in technology led to development of integrated circuits (IC) and very large scale integrated circuits (VLSI). VLSI are often referred to as chips. The chip of laptop or mobile phone may comprise billions of sub-microscopic transistors, for instance. All modern electronic goods are made assembling PCBs, ICs, chips and other components.

11. The importers in all these appeals imported composite laminates and used them to manufacture printed circuit boards and claim the benefit of exemption notification. There is no dispute about the eligibility of exemption notification insofar as the laminates imported to manufacture PCBs is concerned. Some PCBs have a metal core besides the insulating substrate and the copper printing on the top. This metal core helps dissipate the excess heat generated in the PCB. The reason for this is that insulating material is not efficient in dissipating heat. To manufacture such metal core PCBs, one has to start with an appropriate laminate which not only has the insulating material and the copper layer on top but also the metal core.

12. In all these cases, the importers imported aluminium based copper clad laminates, i.e., the laminates which had, in addition to the insulating material and the copper layer on top, an aluminium layer. They used them to manufacture aluminium core printed circuit boards. Aluminium based copper clad laminates were specifically included in the exemption with effect from 2.2.2022. The disputes in these appeals pertain to a period before the amendment.

13. The case of the Revenue is that MCPCBs are not PCBs and since the description of the goods in the notification before amendment was "Composite copper clad materials consisting of paper + Epoxy + Glass cloth", the imported goods which

have, in addition, an aluminium core, were not covered by the notification.

14. Insofar as the question whether MCPCB is also a PCB is concerned, we find that Metal core printed circuit board performs the same function as the printed circuit board and is manufactured using the same method but has an additional functionality of dissipating heat quickly which is required in certain applications. Merely because a good has some additional functionality, it does not cease to be the good. A car, for instance, will NOT cease to be a car simply because it has power steering or power break or auto-transmission, advanced navigation or entertainment systems. The car does not cease to be the car because of these additional features and functions.

15. In **Crompton Greaves,** a bench of this Tribunal decided that MCPCB is also a form of PCB. The Commissioner (Appeals) relied on this decision. Revenue's Civil Appeal Diary No. 28888/2024 against the decision of this Tribunal was dismissed by the Supreme Court, both on delay and merits. The order is as follows:

ORDER

1. There is a gross delay of 312 days in filing the Civil Appeals which has not been satisfactorily explained by the appellant.
2. Even otherwise, we see no good ground to interfere with the impugned order passed by the Custom, Excise and Service Tax Appellate Tribunal, Mumbai.

3. The Civil Appeals are, accordingly, dismissed on the ground of delay as well as on merits.
4. Pending applications, if any, also stand disposed of.

16. Thus, the decision has attained finality and MCPCBs are PCBs.

17. The next question is when the description of the goods in the notification at S.No. 122 is 'Composite copper clad materials consisting of Paper + Epoxy + Glass cloth' and it nowhere mentions 'aluminium' or any other metal, can the benefit be extended to laminates which also have aluminium core? According to the Revenue, the benefit cannot be extended to laminates with aluminium core. Much emphasis was laid on the amendment which came into effect from 2.2.2022 when 'aluminium based copper clad laminates' were specifically covered. The submission of Revenue is that before this date, they were not covered and hence through an amendment, the exemption was extended. If they were already covered in the unamended notification, there would have been no need for the amendment.

18. The arguments of the Revenue appear attractive but a closer examination of the unamended notification shows a different picture. The description of the goods was 'composite copper clad materials consisting of paper + epoxy + glass cloth'. The description does NOT say the exemption is available if 'consisting of ONLY paper + Epoxy + glass cloth'. So there

could also be other materials in addition to paper, epoxy and glass cloth. Metal core laminates are not specifically excluded from the description of the goods.

19. It would also be necessary to read the second column of the table titled ‘Chapter or heading or sub-heading of the goods’ and against S.No. 122, Chapters 39,74,75 and 76 are mentioned. The question which arises is how can the goods fall under any of the four Chapters of the Customs Tariff. Since the goods in question are composite materials, applying the General Rules of Interpretation, they could fall under any of the Chapters depending upon the composition and essential character of the goods. Chapter 39 covers goods of plastic, Chapter 74 covers goods of copper, Chapter 75 covers goods of nickel, and Chapter 76 covers goods of aluminium. The goods covered by S.No. 122 of the notification can fall under any of these Chapters. Therefore, it cannot be said that goods which also have aluminium core are not covered by the notification when clearly goods which are classifiable under Chapter 76 are also covered by the notification. For instance, if there is metal core laminate with large amount of aluminium by weight and if it is classified accordingly as an article of aluminium, the goods are still entitled to exemption under S.No. 122.

20. There is no manner of doubt that metal core laminates meant to make metal core printed circuit boards were clearly

covered by the unamended S.No. 122 of the notification. The importers were entitled to the benefit of the notification.

21. Insofar as **Customs Appeal no. 50030 of 2024** filed by Vintek is concerned, in respect of 29 Bills of Entry, two SCNs were issued demanding differential duty. One was decided by the jurisdictional Commissioner and the other was decided by the impugned order by the Commissioner of Customs (Preventive) along with 51 other bills of Entry (total 80 bills of entry) against Vintek.

22. When two or more authorities or quasi judicial authorities or courts have concurrent jurisdiction over a subject matter, they cannot simultaneously exercise jurisdiction in the same case. Civil courts may have concurrent jurisdiction and in such cases, once one court exercises jurisdiction, the other courts will not exercise jurisdiction in the matter. Similarly, many customs officers may be 'proper officers' to exercise jurisdiction over a case but once one proper officer exercises jurisdiction, other officers are precluded from exercising jurisdiction in that case. This issue was examined by the Supreme Court in **REVIEW PETITION NO. 400 OF 2021 IN CIVIL APPEAL NO. 1827 OF 2018 Commissioner of Customs** versus **Canon India** and it was held that the issue of SCN under Section 28 by a proper officer would preclude the jurisdiction of other officers empowered

under section 28. The relevant portion of the judgment is reproduced below:

"164. The contention that Section 97 could not have overruled the finding of fact relating to the actual exercise of jurisdiction in *Canon India* (supra) is untenable for the following reasons :

(a) The argument that once a particular officer has exercised the function of assessment, it is a jurisdictional fact that has occurred to the exclusion of all other groups in the Customs Department and therefore, only that officer or his superiors, who had undertaken assessment under Section 17 in the first place, shall have the jurisdiction to issue notices for recovery of duty under section 28, does not hold water.

(b) As discussed above, the functions of assessment and re-assessment under section 17 and the recovery of duty under section 28 are distinct. Therefore, the exercise of functions under section 17 can only act as a "jurisdictional fact" for the purpose of excluding the jurisdiction of other proper officers empowered under that section for the exercise of the rest of the functions specified therein. Similarly, the exercise of the function of issuing show cause notices under section 28 by a particular proper officer serves as a jurisdictional fact which would exclude the jurisdiction of other proper officers empowered under section 28.

(c) *Canon India* (supra) proceeded on an erroneous assumption that the jurisdiction of the proper officer under Sections 17 and 28 is linked. This is due to the erroneous understanding of the provisions of Act, 1962 that functions under Section 28 involve re-assessment.

(d) Therefore, the very basis of the determination of jurisdictional fact for exercise of functions under Section 28 has been clarified by us. Thus, we are of the considered view that the challenge to Section 97, on the

> ground of inability of a validating Act to overrule a finding of fact, is unfounded and liable to be dismissed.

23. As discussed above, the functions of assessment and re-assessment under Section 17 and the recovery of duty under Section 28 are distinct. Therefore, the exercise of functions under Section 17 can only act as a "jurisdictional fact" for the purpose of excluding the jurisdiction of other proper officers empowered under that section for the exercise of the rest of the functions specified therein. **Similarly, the exercise of the function of issuing show cause notices under Section 28 by a particular proper officer serves as a jurisdictional fact which would exclude the jurisdiction of other proper officers empowered under Section 28.**

24. In **Customs Appeal 50030 of 2024** filed by Vintek, the impugned order dated 13.10.2024 passed by Commissioner (Preventive) has been passed in pursuance of SCN dated 30.6.2022 issued by the Principal Commissioner of Customs (Preventive) confirming demand of duty under Section 28 denying the benefit of the notification in respect of 80 Bills of Entry.

25. Almost two years before, the jurisdictional Commissioner of Customs (Import), Inland Container Depot, Tughlakabad passed order dated 26.9.2022 deciding the proposals made in two SCNs dated 4.6.2021 issued by the Additional Commissioner of Customs (Preventive) and SCN dated

29.6.2021 issued the Deputy Commissioner of Customs (Group IV), ICD-Import, TKD on the same issue and he dropped the demand of duty under section 28(1) by allowing the benefit of the notification in respect of Bills of Entry including 29 Bills of Entry which were also included in the impugned order of Commissioner of Customs (Preventive).

26. Clearly, the demand in respect of the 29 Bills of Entry is hit by lack of jurisdiction of the Principal Commissioner of Customs (Preventive) to issue the SCN dated 30.6.2022. Once the Additional Commissioner (Preventive) and Deputy Commissioner exercised their powers under section 28 in respect of these Bills of Entry, it automatically precluded every other proper officer, including the Principal Commissioner of Customs (Preventive) from also exercising his jurisdiction under section 28 in respect of the same Bills of Entry. This legal position is evident from **Cannon India.**

27. The order of the Commissioner of Customs (Preventive) dated 30.6.2022 cannot also be sustained in respect of the remaining 51 Bills of Entry because the issue involved in all the 80 Bills of Entry is identical. Once the order dated 26.9.2022 passed by the Commissioner of Customs (Import), Tughlakabad decided the issue and it was not appealed against and thereby attained finality, the Commissioner of Customs (Preventive) could not have taken a contrary view on the same

issue. It would have been a different case if the issue was still disputed and SCNs were issued for subsequent Bills of Entry.

28. To sum up:

a) MCPCBs are also PCBs as decided by this Tribunal in **Crompton Greaves** and upheld by the Supreme Court.

b) S.No. 122 of Notification No. 25/1999- Cus before amendment dated 2.2.2022 covered Composite copper clad materials consisting of paper + epoxy + glass cloth which may fall under Chapters 39,74,75 and 76 which clearly shows that the exemption also covered materials which are predominantly copper falling under Chapter 74, which are predominantly nickel falling under Chapter 75 and which are predominantly aluminium falling under Chapter 76. Therefore, it is not correct to say that laminates with metal core used to manufacture MCPCBs were not covered by S.No. 122 of the exemption. The importers were entitled to the benefit of the exemption notification.

c) Insofar as the 29 overlapping Bills of Entry are concerned, the SCN dated 30.6.2022 issued demanding duty under section 28 by the Principal Commissioner of Customs (Preventive) is without jurisdiction because other proper officers viz., the Additional Commissioner of Customs (Preventive) and the Deputy Commissioner of Customs (Group IV) had already exercised jurisdiction under section 28 by issuing SCNs dated 4.6.2021 and 29.6.2021 respectively. This exercise of jurisdiction by the

Additional Commissioner and Deputy Commissioner precluded the jurisdiction of the Principal Commissioner of Customs (Preventive) to issue SCN under section 28 in respect of these 29 Bills of Entry.

d) The issue in the remaining 51 Bills of Entry is identical to the issue in the aforesaid 29 Bills of Entry which was decided by the Commissioner of Customs (Import) Tughlakabad in favour of the importer and the decision attained finality. Therefore, taking a contrary view is not sustainable.

29. As a result, **Customs Appeal No. 50030 of 2024** filed by Vintek is allowed and the impugned order is set aside with consequential relief to the appellant.

30. **Customs Appeals No. 55355 of 2023, 55370 of 2023 and 55372 of 2023** filed by the Revenue are dismissed. Cross objections and stay applications filed in them are also disposed.

(Order pronounced in open court on 30/04/2025.)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

PK