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(2025) 09 BOM CK 0343

In the Bombay High Court

Case No : Writ Petition No. 9937 Of 2025

Canon India Pvt. Ltd APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 09-09-2025

Acts Referred:

Constitution Of India, 1950 — Article 226
Customs Act, 1962 — Section 17

Citation : (2025) 09 BOM CK 0343

Hon'ble Judges : M.S. Sonak, J;M. Sethna, J

Bench : Division Bench

Advocate : V. Sridharan, Sriram Sridharan, Aditi Jain, Siddharth Chandrashekha, Megha Bajoria, Chirag Sawant

Final Decision : Allowed

Judgement

M.S. Sonak, J

1. Heard learned counsel for the parties.

2. Rule. The Rule is made returnable immediately, at the request and with the consent of the learned counsel for the parties.

3. By instituting this Petition under Article 226 of the Constitution of India, the Petitioner seeks the following reliefs:

a) that this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ, order or direction under Article 226 of the Constitution of India directing the Respondent No.2 to pass a speaking order under Section 17 of the Customs Act, 1962 in relation to the nine Bills of Entry (V) more particularly described at S. No. 1 – 9 of the Table in Para 4 above;

b) that this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ, order or direction under Article 226 of the Constitution of India directing the Respondent No.2 to finalize and pass speaking orders in relation to the eight (08) provisional Bills of Entries (Exhibit-) more particularly described at S. No. 10 – 17 of the Table in Para 4 above;

4. The record bears out that the Petitioner made 17 imports of the product "Digital Still Image Video Cameras" (imported goods) at the Nhava Sheva port for the period between 11 September 2014 and 05 January 2015. The Petitioner sought the benefit of exemption from Basic Customs Duty ("BCD") under Notification No. 25/2005 (as amended). However, the Customs Authorities, relying upon an explanation to Sr. No. 13 of the Notification No. 25/2005, were not agreeable to grant such exemption. The Petitioner has pleaded that the Custom Authorities were not even prepared to accept the bills of entries with the exemption claims.

5. Accordingly, the Petitioner filed in all 17 Bills of Entry under protest, without claiming the exemption which they contend they were entitled to. Mr. Shridharan explained that along with each Bill of Entry, a letter of protest was lodged. Such letters are a part of the record. He further explained that all this was necessary because otherwise, the Petitioners would suffer serious prejudice on account of demurrage etc.

6. In case of 9 Bills of Entry referred to in prayer clause (a) of the Petition, the Customs Authorities finalized the Bill of Entry without passing a speaking order. In case of the balance 8 Bills of Entry, the Custom Authorities made a provisional assessment, again, without passing any speaking order.

7. Mr. Shridharan submitted that the Custom Authorities were duty bound in the above circumstances to pass speaking orders so that if the Petitioner, if aggrieved by such orders, could challenge the same in accordance with law. He submitted that since no speaking orders were being passed, this Petition has been instituted seeking a writ of mandamus to direct the 2nd Respondent to pass speaking orders and communicate the same to the Petitioner in respect of all the 17 Bills of Entry.

8. We had adjourned the matter on 21 July 2025 to enable Mr. Chandrashekhar, the learned counsel for the Respondents to obtain instructions. At the same time, we had directed that the matter be posted on 05 August 2025 for final disposal at the admission stage.

9. Mr. Chandrashekhar, the learned counsel for the Respondents submits that an obligation for making speaking orders arises only where the Custom Authorities do not agree with the classification proposed in the Bills of Entry. He submitted that in the present case, since the Custom Authorities accepted the Bills of Entry which were made without claiming any exemptions, there was no obligation to pass any speaking order. In the absence of any such obligation, Mr. Chandrashekhar submitted no mandamus could issue.

10. We have considered the rival contentions in the context of the undisputed facts and other material on record. The Petitioner, all throughout, was asserting

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its claim for exemption. The Petitioner pointed out how in the past such exemption was allowed in respect of identical imports to the Petitioner. However, this time, in respect of the subject 17 Bills of Entry, the Customs Authorities, by relying upon an explanation in the exemption notification expressed their disinclination to grant such exemption. The Petitioners have pleaded that the Custom Authorities were not even prepared to accept Bills of Entry with the claim of exemption. In such circumstances, the Petitioner filed Bills of Entry without claiming exemption. However, these Bills of Entry were filed under protest and without prejudice to their contention regards entitlement of exemption. The Petitioner did pay the full duty without claiming exemption but again, even this duty was paid under protest without prejudice.

11. The Petitioner has enclosed along with the Petition the letters of protest in relation to each of the Bills of Entry. This position is indisputable and even otherwise, the same is not disputed by the Respondents.

12. In the above circumstances, this is not a case of the Custom Authorities simply agreeing with the Petitioner’s classification as reflected in the Bills of Entry. On one hand, the Custom Authorities cannot refuse to accept the Bills of Entry that do not align with their understanding of the exemption notification and on the other hand, the Customs Authorities cannot refuse to pass the speaking order merely because the importer files Bills of Entry under protest and without prejudice to their original contentions regards entitlement of exemption. Even in a situation where Bills of Entry are filed without prejudice or under protest, the Customs Authorities would be obliged to decide on the importers claim and dispose of such claim by passing a speaking order.

13. By not passing speaking orders, the Custom Authorities cannot frustrate Petitioner’s right of effective redressal through appeal or other remedies that might be available to it. The Petitioner must have a reasonable opportunity to pursue its claim for exemption in accordance with the law. This opportunity would stand frustrated without a speaking order. Therefore, we hold that it was obligatory upon the Custom Authorities to pass a speaking order dealing with the Petitioner’s claim of exemption. Since the Custom Authorities are unjustifiably resisting compliance with this obligation, a mandamus must issue.

14. In the cases of Ingram Micro India Pvt. Ltd. V/s. Principal Commissioner of Customs Chennai 2017 (358) E.L.T. 125 (Mad.) and Micromax Informatics Ltd. V/s. Principal Commissioner 2017 (358) E.L.T. 38 (Mad.), the Hon’ble Madras High Court has held that where the Bills of Entry are filed under protest, there is obligation of passing speaking orders.

15. Accordingly, we allow this Petition and make the Rule absolute in terms of prayer clauses (a) and (b). We, further direct that in the peculiar facts of this case, the speaking order must be passed and communicated within three months of the uploading of this order, after hearing the Petitioner.

16. All contentions of all parties on merits are however left open because we

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have not adjudicated them on merits of the Petitioner’s claim of exemption.

17. The Rule is made absolute in the above terms without any costs order.

18. All concerned to act on an authenticated copy of this order.

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