



BHARAT
SARKAR

सीमाशुल्कआयुक्त (न्हावाशेवा - V) काकार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-V,
मूल्यांकनसमूह-अ, जवाहरलालनेहरूसीमाशुल्कभवन,
APPRaising GR. 5A, JAWAHAR LAL NEHRU CUSTOM HOUSE,
न्हावाशेवा, ता. उरण, जिला - रायगढ़ - 400707, महाराष्ट्र.
NHAVA -SHEVA, TAL. URAN DIST- RAIGAD - 400 707, MAHARASHTRA.



F. No. CUS/7710/2025-Legal Section-O/o Commissioner-Customs-Nhava
Sheva-V
S/10-Adj-398/2025-26/Gr. VA, JNCH

Date of Order: .12.2025
Date of Issue: .12.2025

Order passed by: **Shri GVSS Sharma, Assistant Commissioner of Customs, NS-V, JNCH, Nhava Sheva**

Order-in-Original No. 1509/2025-26/AC/Gr. VA/NS-V/CAC/JNCH
DIN: 20251228NX000000FE18

Name of the Importer: **M/s. Canon India Pvt. Ltd. (IEC No. 0596062443)**

ASSESSMENT / SPEAKING ORDER UNDER SECTION 17 (5) OF THE CUSTOMS ACT, 1962

सीमा शुल्क अधिनियम, १९६२ की धारा १७ (५) के अंतर्गत मूल्यांकन/तर्कपूर्ण आदेश

1. यहप्रतिजिसव्यक्तिकोजारीकीजातीहै, उसकेउपयोगकेलिएनिःशुल्कदीजातीहै।

This copy is granted free of charge for the use of the person to whom it is issued.

2. इसआदेशकेविरुद्धअपीलसीमाशुल्कअधिनियम 1962 कीधारा 128 (1) केतहतइसआदेशकीसंसूचनाकीतारीखसेसाठदिनोंकेभीतरसीमाशुल्कआयुक्त)अपील(, जवाहरलालनेहरूसीमाशुल्कभवन, शेवा, ता.उरण, जिला - रायगढ़, महाराष्ट्र- 400707 कोकीजासकतीहै।अपीलदोप्रतियोंमेंहोनीचाहिएऔरसीमाशुल्क(अपील (नियमावली, 1982 केअनुसारफॉर्मसी.ए.-1 संलग्नमेंकीजानीचाहिए।अपीलपरन्यायालयफीसकेरूपमें 2.00 रुपयेमात्रकास्टांपलगायाजायेगाऔरसाथमेंयहआदेशयाइसकीएकप्रतिलगायीजायेगी।यदिइसआदेशकीप्रतिसंलग्नकीजातीहैतोइसपरन्यायालयफीसकेरूपमें 2.00 रुपयेकास्टांपभीलगायाजायेगाजैसाकिन्यायालयफीसअधिनियम 1870 कीअनुसूची 1, मद 6 केअंतर्गतनिर्धारितकियायाहै।

An appeal against this order lies with the Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Sheva, Taluka : Uran, Dist : Raigad, Maharashtra - 400707 under Section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 annexed to the Customs (Appeals) Rules, 1982. The appeal should bear a Court Fee stamp of Rs.2.00 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 2.00 only as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1870.

3. इसनिर्णयाआदेशकेविरुद्धअपीलकरनेवालाव्यक्तिअपीलअनिर्णीतरहनेतक, शुल्कयाशास्तिकेसंबंधमेंविवादहोनेपरमाँगेगयेशुल्कके 7.5% का, अथवाकेवलशास्तिकेसंबंधमेंविवादहोनेपरशास्तिकाभुगतानकरेगा।

Any person desirous of appealing against this decision or order shall, pending the appeal, make payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

This Assessment/Speaking Order is being issued in terms of Hon'ble Bombay High Order dated 09.09.2025 passed in a Writ Petition No. 9937 of 2025 filed by the Importer, M/s. Canon India Pvt. Ltd. aggrieved by the assessments made by the Nhava Sheva Customs against 17 imports of the product "Digital Still Image Video Cameras" (imported goods) at the Nhava Sheva Port for the period between 11.09.2014 and 05.02.2015.

BRIEF FACTS OF THE CASE

2. M/s. Canon India Private Limited (IEC No. 0596062443) having address at A-23, Sector- 59, Phase-III, Noida – 201 301, Uttar Pradesh (hereinafter referred to as "**the Importer**") had imported "Digital Still Image Video Camera" (hereinafter referred to as "**the goods**") covered under 17 (seventeen) Bills of Entry during the period 11.09.2014 and 05.02.2015. The importer had classified the impugned goods under CTH 8525 8020 and paid BCD @ NIL after availing BCD benefit of Sr. No. 13 of Notification No. 25/2005-Cus dated 01.03.2005 (as amended). On the basis of investigation initiated by DRI in the month of November, 2025 w.r.t. Importer's eligibility to claim duty exemption under above said Notification, some of these Bs/E were assessed finally after payment of Customs Duty 'Under Protest' and some Bs/E were assessed provisionally. The details of these Bs/E are tabulated in Table-A below

TABLE – A

Sr. No.	B/E No. & Date	Nature of Assessment Provisional or Final	Date of Protest Letter submitted
1	7895928 / 05.01.2015	Final	05.01.2015
2	7678757 / 12.12.2014	Final	15.12.2014
3	7535325 / 28.11.2014	Final	01.12.2014
4	7547045 / 01.12.2014	Final	01.12.2014
5	7382142 / 14.11.2014	Final	03.11.2014
6	7214745 / 29.10.2014	Final	30.10.2014
7	7235033 / 31.10.2014	Final	03.11.2014
8	7202919 / 28.10.2014	Final	29.10.2014
9	7073079 / 15.10.2014	Final	15.10.2014
10	7023681 / 10.10.2014	Provisional	13.10.2014
11	6997203 / 07.10.2014	Provisional	09.10.2014
12	7004783 / 20.09.2014	Provisional	09.10.2014
13	6929109 / 30.09.2014	Provisional	30.09.2014
14	6928997 / 30.09.2014	Provisional	30.09.2014
15	8728419 / 11.09.2014	Provisional	12.09.2014

16	6728429 / 11.09.2014	Provisional	12.09.2014
17	6726108 / 11.09.2014	Provisional	11.09.2014

3. The relevant Sr. No. 13 of Notification No. 25/2005-Cus dated 01.03.2005, as amended, is as under:-

Sr. No.	CTH	Description of goods
13	8525 8020	Digital Still image video cameras other than camera or camera module of cellular mobile phones Explanation: for the purpose of this entry "Digital Still Image Video Camera" means a Digital Camera not capable of recording video with minimum resolution of 800*600 pixels, at minimum 23 frames per second, for at least 30 minutes in single sequence using the maximum storage (including expanded) capacity.

4. Department of Revenue Intelligence ("DRI" in short) in November, 2013 had initiated an investigation on the question of eligibility of notification benefit on such imported cameras and hence, clarification was sought from the Importer in February, 2014. The importer requested this office that the pending/future shipments of Cameras may be cleared on Provisional Assessment basis till the completion of DRI investigation. However, the said Bs/E were re-assessed by the Department after removing the Notification benefit and the same was intimated to the Importer.

5. The Importer vide their letters dated 17.08.2015, 30.01.2025 and 15.05.2025 has requested for issuance of Speaking Order in case of re-assessment of Bs/E. On failure for issuance of Speaking Orders, the importer filed a Writ Petition No. 9937 of 2025 in Hon'ble High Court of Bombay. Hon'ble High Court vide Order dated 09.09.2025 directed the Department for issuance of Speaking Order. The direction of Hon'ble High Court is reproduced herein below:

"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".

6. In view of the above order of Hon'ble High Court, the importer vide letter dated 07.10.2025 requested for issuance of Speaking Order after giving opportunity of Personal Hearing.

WRITTEN SUBMISSION OF THE IMPORTER

7. During the course of Personal Hearing conducted on 30.10.2025, the Importer submitted written reply to substantiate their stand for eligibility of exemption Notification benefit for the subject 17 Bs/E which were assessed without extending the benefit of exemption Notification to the Importer. The contentions of the Importer are re-produced here-in-under:

A. The Company is *inter alia* engaged in the business of importing, marketing, selling, distributing and servicing of Digital Imaging and IT products such as Printers, Multifunction Devices, Digital Still Image Video Cameras, Scanners, etc.

B. The cameras imported by the Company are of different types. One of the products imported by the Company are 'Digital Still Image Video Cameras'.

C. Serial No. 13 of Notification No. 25/2005-Cus dated 01.03.2005 exempts Digital Still Image Video Cameras from payment of the whole of BCD levied under the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as the "Custom Tariff Act"). Hence, for the import of the impugned goods prior to 17.03.2012, the Company was availing exemption from payment of 10% Basic Customs Duty as per Serial No. 13 of the Notification No. 25/2005-Cus dated 01.03.2005. The subject Sr. No. 13 was subsequently amended with explanation for granting exemption for import of Digital Still Image Video Cameras and denied the said exemption for the Cameras having following features:

- i. with resolution of 800 x 600 pixels;
- ii. at minimum 23 frames per second; and
- iii. for at least 30 minutes of recording in a single sequence using maximum storage (including expanded) capacity.

D. The impugned goods imported by the Company cannot record a video of 30 minutes or more in a single sequence. As the impugned goods imported by the Company fulfils the negatively worded condition of the amended Notification No. 25/2005-Cus., it is the stand of the Company that that it was eligible to claim exemption from payment of BCD on the import of DSCs under SI. No. 13 of Notification No. 25/2005, as amended, for imports made after 17.03.2012.

E. THE IMPUGNED GOODS FALL WITHIN THE DEFINITION OF DIGITAL STILL IMAGE VIDEO CAMERA UNDER NOTIFICATION NO. 25/2005 - CUS:

E.1. It is submitted that prior to 17.03.2012, there was no dispute as the description under CTI 8525 8020 was "Digital Still Image Video Camera". The dispute arose w.e.f. 17.03.2012, when the explanation was added to the description of the goods under CTI 8525 8020.

E.2. It is pertinent to note that w.e.f. 30.04.2015 the aforesaid explanation was deleted, and the description of Cameras, as it stood prior to 17.03.2012 was reinstated as "Digital Still Image Video Cameras".

E.3. It is submitted that the term 'digital Camera' is an umbrella term in which two types of Cameras fall namely Still Image Video Camera and Video Camera. During the relevant period, the conditions under the explanation to Notification No. 25/2005-Cus intend to deny benefit to the Cameras that have the capability to record videos at a resolution of 800 x 600 pixels or more, at 23 frames or more per second, for 30 minutes or more in a single sequence using the maximum storage (including expanded) capacity.

E.4. The Company submits that the Impugned Goods do not fulfil all the three conditions cumulatively [since they do not fulfil the requirement of condition (iii)], and thus, are eligible for the BCD exemption. The DSCs have the feature to click still images and record video of resolutions equal to or higher than 800 x 600 pixels with 23 or more frames per second, but only for a maximum period of 29 minutes and 59 seconds in a single sequence. Thus, it does not fulfil the third condition that requires that the length of a video in a single sequence shall be a minimum of 30 minutes.

E.5. It is submitted that the third condition on using maximum memory is an anti-abuse provision to ensure that unscrupulous importers do not enhance the memory capacity of the Impugned Goods post import clearance and provide video recording capabilities in a single clip of 30 minutes or more. The third condition ensures assessments of the goods by assuming the capabilities of the product as if it were running on maximum available capacity.

E.6. It is submitted that, if the intent of the Government was to extend the benefit of the exemption Notification to those cameras whose recording capabilities got exhausted under 30 minutes due to lack of memory, the use of the phrase "in a single sequence" would not be necessary and would be rendered redundant. It is a Fundamental Rule of Interpretation that meaning should be ascribed to each word used, and an interpretation rendering any portion redundant is not to be favoured.

E.7. It is further contended that it is just not reasonable to read the phrase 'Using the maximum storage (including expanded) capacity' as 'exhausting the maximum storage capacity' for determining the eligibility of impugned goods because nowadays almost all the cameras available in the market support expanded memory up to 60 GB, 128 GB, etc. Thus, in such a scenario it is impossible to find a camera which utilizes or exhausts its maximum expanded capacity for the purpose of recording a single sequence of video of less than 30 minutes. Further, if a camera manufacturer develops a camera whose memory is exhausted while recording a single clip of video for less than 30 minutes, then the camera would be incapable of performing its primary function of clicking and storing still images. Thus, such a camera would not be commercially viable product as the impugned goods imported by them is primarily intended for clicking and recording still images.

E.8. In view of the aforementioned submissions, it is submitted that the Company has correctly availed the exemption under Notification No. 25/2005-Cus, as amended.

F. COMPANY'S INTERPRETATION OF NOTIFICATION NO. 25/2005 IS ALIGNED WITH INDIA'S INTERNATIONAL COMMITMENTS AT WTO:

F.1. It is submitted that the interpretation of NN 25/2005 as adopted by the Respondent- Company should be upheld as it is in line with the commitment made by India at the WTO. It is reiterated that the aim of the ITA is to promote trade in Information Technology Products and the same is affected by requiring the signatories to lower all taxes and tariffs on IT products. Reliance in this regard is placed on the Preamble to the ITA and the relevant part of the Preamble is extracted below:

"...Desiring to achieve maximum freedom of world trade in information technology products; ..."

F.2. As can be seen from the Preamble above, the objective is to provide maximum freedom of world trade in IT Products, technological development of IT Industry etc. This freedom has been given worldwide by removal of tariff (import duties) on imports of IT Products. Being a signatory to the said agreement, India had undertaken an obligation to allow imports of various IT Products including DSCs classifiable under CTH 8525 at NIL rate. The Notification No. 25/2005-Cus was issued to implement this obligation.

F.3. In view of the above, it is submitted that the benefit of NN 25/2005-Cus must be extended on the import of the impugned goods by Company.

G. THE ISSUE ON MERITS IS DECIDED BY THE LARGER BENCH AND THE LARGER BENCH CESTAT'S ORDER IS SQUARELY APPLICABLE IN THE PRESENT CASE:

G.1. It is submitted that all the submissions made above have been accepted by the Larger Bench vide **LB CESTAT's order in Nikon's case dated 14.06.2024.** The following questions were raised before the Larger Bench and the following answers were given by the Larger Bench vide LB CESTAT's order dated 14.06.2024.

Question No. 1: raised before the Larger Bench: Whether the DSCs imported by the Appellant would be entitled to BCD exemption under the NN 25/2005-Cus., as amended by the notification dated 17.03.2012, whereby an 'Explanation' was added?

Answer by the Larger Bench: The impugned goods would be entitled to BCD exemption under NN 25/2005-Cus. as amended by Notification No. 15/2012 dated 17.03.2012.

Question No. 2: raised before the Larger Bench: Whether the Hon'ble Tribunal, in the decision rendered on 19.12.2017 (LB CESTAT Order), has correctly interpreted the scope of 'Explanation'?

Answer by the Larger Bench: The interpretation of the Explanation by the Division Bench of the Tribunal in LB CESTAT's order dated 19.12.2017 denying the benefit of exemption is a result of incorrect interpretation of the Explanation of the NN 25/2005-Cus.

G.2. The views of the Larger Bench were followed in the Company's own case and also in CESTAT's Final Order dated 09.09.2024. Similarly, following the decision of the Larger Bench (*supra*), Hon'ble CESTAT (Chennai-Tri) in **M/s. Fujifilm India Pvt. Ltd. V/s. Commissioner of Customs (Airport & Cargo), 2024 (12) TMI 1036** allowed the exemption under NN 25/2005-Cus. as amended by Notification No. 15/2012 dated 17.03.2012.

G.3. Thereafter, following the aforesaid decision of Larger Bench in M/s. Nikon India Ltd. (*supra*), the Hon'ble CESTAT, Delhi, in case of **M/s. Canon India Private Limited and Ors. v. Commissioner of Customs - 2025 (4) TMI 1247 - CESTAT NEW DELHI**, has applied the same principle to the Company's own case and upheld that the Company is entitled to exemption from basic customs duty for the same goods in terms of Notification No. 25/2005 for the DSC's imported by the Company. Further, there has been no Appeal filed against the order dated 09.04.2025 to the best of the knowledge of the Company till date of filing of this Petition.

G.4. Further, the Ld. Commissioner of Customs (Appeals), New Delhi, vide **Order-in-Appeal No. CC(A)/CUS/D-1/ACC Import/NCH/444/2025-26 dated 02.06.2025**, has been pleased to allow the appeal filed by the Company. The said order sets aside the earlier Order-in-Original dated 14.08.2023 and holds that the Digital Still Image Video Cameras imported by the Company are eligible for exemption from payment of BCD under Notification No. 25/2005-Cus., as amended. The Commissioner (Appeals) has also granted consequential reliefs, thereby affirming the Company's eligibility for exemption from Education Cess and Secondary and Higher Education Cess as well.

G.5. In this regard, it is submitted that the aforementioned legal proposition has been settled by the Larger Bench and have been followed by the coordinate CESTAT Benches, which though have been challenged by the

Department before the Hon'ble Supreme Court but no stay has been granted, and the said decisions will still hold good and will be a binding precedent. In this regard reliance is placed on the decision by Hon'ble Supreme Court in the case of **M/s. Kunhayammed V/s. State of Kerala 2001 (129) ELT 11 (SC); C.C.E. & S.T., Ahmedabad-III V/s. M/s. Kalpataru Power Transmission Ltd., 2021 (48) G.S.T.L. 354 (Tri. Ahmd.); M/s. Dream Loanz V/s. Commissioner of Central Excise, Coimbatore, 2017 (6) G.S.T.L. 443 (Tri. - Chennai).**

G.6. It is respectfully submitted that the ratio laid down by the Larger Bench of the Hon'ble CESTAT in its Order dated 14.06.2024, as well as the findings in the Company's own case vide Final Order dated 09.04.2025 passed by the Hon'ble CESTAT and Order-in-Appeal dated 02.06.2025 passed by the Ld. Commissioner of Customs (Appeals), New Delhi, are squarely applicable to the facts of the present case.

G.7. In view of the above, the benefit of NN 25/2005-Cus. is available on the imported impugned goods.

H. PRESENT SUBMISSIONS TO BE TREATED AS AN APPLICATION SEEKING AMENDMENT:

H.1. Section 149 of the Customs Act, 1962 permits amendment of Bs/E even after the importation of the goods in question, on the basis of the documentation existing at the time of importation of the goods in question. In the present case, the exemption under Notification No. 25/2005-Cus., as amended, was in force at the time of import of the goods. Accordingly, the condition prescribed u/s. 149 stands satisfied, and the Company is entitled to seek amendment of the Bills of Entry to reflect the correct duty liability.

H.2. Despite the goods being eligible for exemption under Serial No. 13 of Notification No. 25/2005-Cus., as amended, the benefit was not extended to the Company at the time of import. Therefore, the Company respectfully submits that the present submissions be treated as an application seeking amendment of the nine (09) finally assessed Bs/E, to enable the Company to claim exemption from payment of BCD on the import of Digital Still Image Video Cameras (DSCs) made after 17.03.2012.

H.3. Accordingly, the nine (09) Bs/E referred in Para No. 3 above ought to be amended to reflect the Company's eligibility for exemption under Notification No. 25/2005-Cus., as amended. The benefit of exemption from payment of BCD should be granted in respect of these imports.

H.4. In view of the above, it is humbly requested that the nine (09) Bs/E be amended in accordance with Section 149 of the Customs Act, 1962, and the benefit of exemption from payment of BCD on the import of DSCs under SI. No. 13 of Notification No. 25/2005, as amended, be accorded to the Company. Consequently, the differential duty paid Under Protest may kindly be refunded.

RECORDING OF PERSONAL HEARING

8. In adherence of the Principles of Natural Justice and in compliance of Hon'ble Bombay High Court's Judgment dated 09.09.2025, an opportunity was given to the Importer to appear before the undersigned for Personal Hearing and to submit evidences to substantiate their stand in the present case. Accordingly, PH was fixed and conducted on 30.10.2025 before the undersigned through virtual mode, which was attended by Shri Sriram

Sridharan, Advocate from M/s. Lakshmikumaran & Sridharan Attorneys on behalf of the Importing firm. He re-iterated the written submission submitted in this office on 30.10.2025. Further, he relied upon the Hon'ble CESTAT's Order dated 14.06.2024 & 09.04.2025 and also Commissioner (Appeal) order dated 02.06.2025. Finally, he requested for extension of benefit of Sr. No. 13 of Notification no. 25/2005 in respect of the Imported Goods i.e. Digital Still Image Video Cameras on the basis of their written submission.

DISCUSSION AND FINDINGS

9. I have carefully gone through the facts on record, direction of the Hon'ble High Court of written submissions made by the Importer, import documents and the arguments put forth by the Advocate during the course of PH and the relevant legal provisions.

10. Hon'ble High Court of Judicature at Bomay has allowed the importer's Petition in terms of their prayer clauses (a) and (b) the gist of which is as follows:

(a) passing a speaking order under Sec 17 of the Customs Act 1962 in relation to the nine BEs described at sl. Nos: 1-9 of the table

(b) finalising and passing a speaking order under Sec 17 of the Customs Act 1962 in relation to the eight BEs described at sl. Nos: 10-17 of the table

11. Having examined the contents of the facts available on records, I find that with regard to finalisation of Bills of Entry mentioned at Serial No. 10 to 17 (as mentioned at (b) above), these Bills of Entry were assessed provisionally by the Importer under Section 18 of the Customs act 1962 by furnishing the Provisional Duty Bond (PD Bond) inasmuch as the buyer (the importer, **M/s Canon India Pvt Ltd**) and the seller of the goods (**M/s Canon Inc, Tokyo, Japan**) were related parties. I further find that subsequently on 03.08.2016, these Bills of Entry were finalised on the basis of Special Valuation Branch (SVB) Order No. SVB/CUS/55/YP/2014 dated. 03.02.2015. The departmental comments as available in the ICES system are reproduced hereunder:

"finalisation of provisional assessment, as approved by dc group VA, vide file no s/26/misc/782/16-17 group V jnch NS I dated. 08.06.16. svb order no svb/cus/55/yp/2014 dated. 03.02.15"

The subject Bills of Entry were made provisional and subsequently finalised on account of the issue other than the one under the dispute under consideration. Hence, I find that these Bills of Entry mentioned at Serial No. 10 to 17 have already been finalised on 03.08.2016 and hence no further action regarding finalization of these Bills of Entry is warranted.

12. In obedience to the further directions of the Hon'ble High Court I proceed to issue the speaking order in respect of (a) and (b), both being the same issue.

13. I find that the issues of classification under the CTH 8525 8020, the values thereof and payment of differential Customs duty 'under Protest' are not disputed. Coming to the pending issue on hand, the short point for determination in the instant case is whether or not the importer is eligible for the benefit of the Notification No. 25/2005-Cus dated 01.03.2005 (Sr. No. 13), as amended by Notification No. 15/2012-Cus dated 17.03.2012 in respect of the subject goods viz. "Digital Still Image Video Cameras"

14. However, before discussing the issue on merits, I find it relevant to reproduce the said Section 17(5) of the Act *ibid* as follows:-

"(5) Where any re-assessment done under Sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefore under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a Speaking Order on the re-assessment, within fifteen days from the date of re-assessment of the Bill of Entry or the Shipping Bill, as the case may be".

15. I find that the entire issue emanates from the entry in Notification No. 15/2012-Cus dated 17.03.2012, wherein an explanation was inserted by Notification No. 25/2005-Customs dated 01.03.2005, figuring at SI. No. 13 for the purpose of exemption available under Sr. No. 13. The said explanation for "Digital still image video cameras" is reproduced hereunder :-

Explanation. - For the purposes of this entry, "digital still image video camera" means a digital camera not capable of recording video with minimum resolution of 800 x 600 pixels, at minimum 23 frames per second, for at least 30 minutes in a single sequence using the maximum storage (including expanded) capacity".

Thus, a plain reading of the said "explanation" leads to an inference that all three conditions must be met for a digital camera to qualify as "Digital Still Image Video Camera" for the purpose of availment of the said duty exemption.

16. I find that in a similar case pertaining to the importer, the Delhi Zonal Unit of the DRI had initiated investigation against M/s. Canon India Pvt Ltd and issued SCN No. 23/85/2013-DZU (Pt. Canon) dated 09.08.2014 which was adjudicated vide O-in-O No. 04/NKU(04-07)/ADG (Adj)/DRI/N. Delhi/2016-17 dated 28.10.2016.

17. From the contents of the said SCN, I find that the DRI had claimed that the Cameras imported by M/s. Canon India Pvt Ltd had capability to record video at resolution higher than 800 x 600 pixels and at 23 frames per second or more. Regarding the third condition, viz. capability to record video for at least 30 minutes in single sequence using the maximum storage (including expanded) capacity, the DRI through physical testing of impugned goods had found that the Digital Cameras imported by the Importer could record video for a period exceeding 30 minutes when using maximum storage (including expanded) capacity; that the sequence length was being artificially curtailed below 30 minutes to incorrectly claim the exemption and that they were intentionally declaring only single chip recording duration without declaring the fact that this single sequence clip recording time was arrived at without using the maximum storage (including extended) capacity, to wrongly avail the exemption under the subject notification.

18. Further, I find that while investigating the case, the DRI recorded statements of the staff of the Importing firm u/s. 108 of the Customs Act, 1962, wherein, it was admitted, (apart from other case specific details) that the imported models of the impugned goods contained "Firmware" which restricted the recording time of video below 30 minutes in single sequence.

19. To ascertain the genuineness of the contention of the Importer, the DRI got the physical demonstration of some of the models of the imported Digital Cameras carried out by the Expert Technical Persons of these importers. From the Demonstration Report, it was revealed that all the impugned Cameras had ample recording time left after recording for more than 30 minutes, when using 8 GB/64 GB External Memory Card although these Cameras could support maximum internal memory of upto 2 TB. It was in fact, revealed that all the aforesaid Cameras had the capability to record for total duration of more than 30 minutes, but it was curtailed to 29 minutes and 59 seconds or less in a clip to avail the benefit of the said Notification irregularly. It was also brought out that multiple clips could be recorded.

20. I find that investigation by DRI had concluded that the sequence length was being restricted by stopping the video recording below 30 minutes but user could record second and more sequences by just pressing the recording button as soon as the recording after the first sequence had stopped. Thus, all the imported cameras had the capability to record for more than 30 minutes and the artificial restriction of less than 30 minutes introduced by the "Firmware" should be of no consequence, given the express and unambiguous wordings of the explanation introduced in the Notification. The DRI thus felt that the Cameras had the capability to record for more than 30 minutes, but it was being artificially curtailed by proprietary "Firmware" of the manufacturer, and also that it was not a complete/absolute limitation on the video recording as multiple clips could be made.

21. In the instant case before me, the impugned cameras are no different from the ones mentioned in the above DRI case, which can record video at a resolution equal to or greater than 800 x 600 pixels. Also, they can record video at a speed of 23 frames per second or greater. It is beyond doubt that the impugned camera does not fulfil for the said two conditions. As far as third condition is concerned, the fulfilment is simply because of the firmware installed for artificial restriction of the recording time limit. The third condition clearly mentions "Using the maximum storage (including expanded) capacity" which means that the camera, to be qualify for exemption, should not be capable of recording video for more than 30 minutes in any possible manner. The artificial restriction can be removed post import; therefore, it is apparent the impugned camera does not fulfil the third condition too. Thus, the Tribunal failed to interpret the Exemption Notification as to qualify for the exemption of the Basic Customs Duty, the camera should fulfil all the three conditions mentioned in the Exemption Notification, whereas, in the present case, the impugned camera does not fulfil any of the conditions mandated in the Exemption Notification.

22. In the case of M/s. Sony India Pvt. Ltd. , which involved similar facts but a different interpretation of the exemption conditions. The case of Sony was based on an investigation where it was found that the cameras' firmware artificially restricted recording time only for a sole intention to avail the exemption benefits. However, the installed firmware restricts the recording capacity of the imported camera just below the mandated threshold and if this installed firmware be removed post import the recording time may increase by many times. The technical and factual evidence regarding the role of firmware in limiting the recording time of the imported digital still image video cameras just below the mandated thresholdhas been demonstrated in the investigation by the DRI. It can be seen that the cameras were designed and manufactured for recording beyond the time limit of 30 minutes also but only for sole

intention to avail exemption, the firmware has been installed to cut the recording line just below the threshold mandated in the Exemption Notification. Therefore, if the firmware is removed post import, the imported camera can record much more than the threshold 30 minutes mandated in the notification. It is a fact that the imported cameras have the capacity and functions for recording video for more than 30 minutes, however, artificial restrictions have been imposed by way of firmware. The installed firmware cannot decide the capacity and function of the imported camera. The capacity of the camera should be decided on the basis of its designed mechanism and functions. The imported cameras have the capacity to record video for more than 30 minutes which was restricted artificially by the installation of firmware. It is also to note that this installed firmware does not contribute in any other functions of the camera, but has been installed only for sole intention to limit the recording time so that the exemption can be availed by the importers. The procedure for removal/disabling the installed firmware is available as an open source on internet.

23. As mentioned earlier, in an identical matter, Directorate of Revenue intelligence, Delhi Zonal Unit, investigated the matter and in the course of investigation, technical opinion was sought from Dr. James Kurien, Department of Electronics, Cochin University of Science & Technology on the issue of minimum required storage to record a 30 minutes video in a Camera at 800x600 pixels and 23fps and that whether the length of a clip be restricted by means of firmware. Also, physical demonstration of some of models of Digital Still Image Video Cameras was conducted. As a result of the technical opinion and physical demonstration, it emerged that the firmware can restrict the recording time in a single sequence and that the cameras had ample recording time left after recording for more than 30 minutes using even 8 GB memory card and that all the cameras have the capability to record for total duration of more than thirty minutes, but it was deliberately curtailed to less than 30 minutes at a single sequence in order to avail the benefit of the notification. It is a well-established legal principle that the exemption notifications should be interpreted strictly when ambiguity exists. The cameras imported by the appellant cannot be granted exemption from paying Basic Customs Duty simply because the manufacturer have intentionally installed a firmware which imposes artificial restriction for the recording time to be just below the threshold to claim the exemption. which can be removed post import.

24. If the argument of the importer is allowed then there will be no viability of any condition of the Notification. Notifications that provide exemptions or concessions are generally subject to specific conditions. The intent of conditions in notifications is typically to ensure sustained compliance over time. The notification clearly reveals that all the three parameters/functions of a digital camera should be cumulatively read so as to ascertain whether all the characteristics are available in the camera to be eligible for the exemption from BCD under the said Notification.

25. Further, in a similar case involving M/s. Sony India, the division bench ruled in favour of the revenue, vide Final Order No. 58446-58450/2017 dated 19.12.2017. However, M/s. Sony India, along with other appellant, appealed to the Hon'ble Supreme Court, and the final judgment from the Supreme Court is still pending.

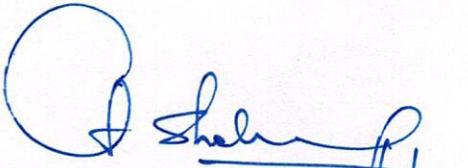
26. Therefore, from the above facts of the case and the plain reading of the provisions cited above, I am convinced that the subject goods are ineligible for the exemption claimed by them.

27. In view of the foregoing discussions, I find that the "CANON" brand "Digital Still Image Video Cameras" imported by the Importer as per the Bills of Entry mentioned in their plea (a) and (b) before the Hon'ble High Court and as detailed in Table-A above 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 scope of "explanation" provided thereunder at SI. No. 13.

28. Accordingly, I pass the following order:-

ORDER

I confirm the assessment of the impugned goods i.e., "Digital Still Image Video camera" imported vide 17 (seventeen) Bs/E (as detailed in Table-A above) under Customs Tariff Head 8525 8020 without the benefit of Sr. No. 13 of Notification No. 25/2005-Cus dated 01.03.2005, as amended vide Notification No. 15/2012-Cus dated 17.03.2012.



(G.V.S.S. SHARMA) 10/10/2012
Asst. Commissioner of Customs
Group-VA, NS-V, Nhava Sheva

To,

M/s. Canon India Private Limited,
A-23, Sector- 59, Phase-III,
Noida – 201 301, Uttar Pradesh.

Copy to:

1. The Joint/Addl. Commissioner of Customs (NS-V), Aprg. Gr. 5A, JNCH, Nhava Sheva.
2. The Asst/ Dy. Commissioner of Customs, Centralized Adjudication Cell (NS-V), JNCH.
3. The Asst/ Dy. Commissioner of Customs, Review Cell (NS-V), JNCH, Nhava Sheva.
4. Office Copy.