

# DHC Set Aside SCN Alleging Goods Being Misclassified As Parts Of Mobile Phones

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## Introduction

In a recent judgment, the Hon'ble High Court of Delhi examined the validity of a Show Cause Notice (SCN) issued under Section 28(4) of the Customs Act, 1962. The case revolved around an alleged misclassification of imported goods, leading to the issuance of two separate SCNs under Sections 28(1) and 28(4) of the Act. The Petitioner challenged the subsequent SCN on grounds of change of opinion, lack of statutory compliance, and failure to meet the prerequisites for invoking extended limitation under Section 28(4). The Petitioner further contended that the issuance of the second SCN under Section 28(4) led to an unjustified demand for a differential duty amounting to INR. 1,11,21,12,551/- along with interest under Section 28AA, along with penalties under Sections 112(a)(ii) and 114A of the Customs Act, 1962.

## Key Points Argued by the Petitioner

The Petitioner contended that the issuance of a second SCN under Section 28(4) was impermissible since a prior SCN under Section 28(1) had already been issued concerning the same goods. The two provisions operate under mutually exclusive circumstances, and once the authorities had taken a view under Section 28(1), issuing a fresh SCN under Section 28(4) was legally untenable. The Petitioner

argued that this amounted to an abuse of statutory powers and an attempt to unfairly extend the limitation period from two years to five years. Furthermore, the Petitioner argued that the impugned SCN failed to establish collusion, wilful misstatement, or suppression of facts, which are necessary conditions for invoking Section 28(4). The Petitioner had fully disclosed all relevant import details, and the alleged misclassification was due to differences in tariff interpretation rather than any fraudulent intent. Since the dispute revolved around classification, it could not be equated with suppression or misstatement as defined under the Act.

Additionally, the Petitioner submitted that the customs authorities had previously classified similar goods under a particular tariff heading, and the sudden issuance of a new SCN under a different provision constituted a mere change of opinion. The law does not permit reassessment solely on the basis of a change in interpretation unless supported by fresh, substantive evidence. The Petitioner argued that reassessing the classification without new facts violated established judicial precedents and led to an arbitrary demand for differential duty and penalties.

## Ratio Decidendi

The Court ruled in favour of the Petitioner, holding that the issuance of the second SCN

under Section 28(4) was not maintainable. It reaffirmed that Sections 28(1) and 28(4) serve different purposes, with Section 28(4) requiring clear evidence of collusion, wilful misstatement, or suppression of facts. Since the previous SCN was issued under Section 28(1), invoking Section 28(4) in the same matter was legally unjustified. The Court further observed that the Petitioner had disclosed all relevant details during the import process, and the alleged misclassification was based on interpretational differences rather than an attempt to evade duty. Reports from a Chartered Engineer further indicated that there was no concealment of facts. Therefore, the customs authorities failed to meet the statutory requirements for invoking Section 28(4), making the extended limitation period inapplicable.

Additionally, the Court found that the reassessment in the present case amounted to a mere change of opinion, which does not justify the issuance of a fresh SCN. Citing established precedents, the Court held that reassessment based solely on a different interpretation of classification, without fresh material evidence, cannot be sustained. The impugned SCN was quashed, and the ruling reinforced the principle that statutory powers must be exercised within legally defined limits, ensuring that customs authorities do not misuse their power to impose undue liabilities on importers.

### **Implications of the Ruling**

This judgment has significant implications for importers. It prevents customs authorities from issuing second SCNs under

different provisions for the same set of facts, ensuring that regulatory powers are exercised fairly. It also clarifies that differences in tariff classification cannot automatically be equated with suppression or misstatement, providing greater certainty to businesses engaged in regular imports.

Moreover, the ruling protects importers against retrospective reclassification by customs authorities. It establishes that customs officials cannot alter their stance on classification retrospectively without clear evidence of fraudulent intent by the importer. This strengthens the rights of businesses and minimizes the risk of unexpected tax liabilities. By aligning with previous judicial pronouncements on the doctrine of change of opinion, the judgment ensures consistency in tax law application and enhances procedural fairness.

### **Conclusion**

The case underscores the necessity of adhering to statutory safeguards when issuing SCNs under the Customs Act. The Court's ruling prevents the misuse of Section 28(4) to unfairly extend limitation periods and reinforces the principle that reassessment cannot be based merely on a change of opinion. By affirming the Petitioner's rights and emphasizing the importance of procedural fairness, the judgment provides greater legal certainty for businesses while ensuring accountability in regulatory actions. This decision is likely to serve as a guiding precedent in similar disputes, strengthening due process protections in tax and customs law.

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